

The Ultimate Solution!

Message from the Author!

Dear Future CA,

Hope you are taking good care of yours and your family's health.

My name is Shubham Singhal, and I am the author of this book (well, feels good to say so). I had cleared my CA Final in Nov 2018 attempt (new syllabus) with an All India Rank 4. Having completed my Article ship with Deloitte, I am currently working with a venture capital firm as a Junior Associate. I am a teacher by passion, and I teach CA Final Paper 4 and Paper 6D!

This book is a result of a year's dedicated efforts to bring to you the most crisp and quality content for CA Final Paper 4 Law. I truly believe that the content of this book is what I would have personally used for my last day revision. This book consists of everything that you would basically need on your last day and the content is good enough for getting exemption.

Hope you utilise the maximum out of this and clear your Paper 4 and every other paper with Flying colors!

I dedicate this book to my Mom. But for her blessings, this book would have been impossible.

Warm regards,

CA Shubham Singhal

In case if you find any errors, typo or otherwise, in this notes - Feel free to highlight via email at - therankerway@gmail.com

All the best, Future CA!



SCAN ME TO WATCH SUPERFAST REVISION VIDEOS

OR SEARCH FOR "SHUBHAM SINGHAL" ON YOUTUBE



SCAN ME OR SEARCH FOR THE RANKER'S WAY ON TELEGRAM TO REACH

MY TELEGRAM CHANNEL FOR MCQs, REVISION AUDIOS AND AMENDMENTS

Your feedback matters!

(To be filled as and when you find any points)

5 things that you loved about the notes:

-
-
-
-
-

5 points of improvement that can make these notes even more useful for your juniors

(trust me I will work on it)

-
-
-
-
-

Once you have jotted down your points, do share a photo of this page with me either at

therankerway@gmail.com or share it on Instagram and tag me - @cashubham_air4

Index and Last Day Revision Plan

SN	Name of Chapters (In Sequence of Last Day Revision)	No. of Pages	Target Mins on Exam Day
1	Appointment and Qualifications of Directors	15	90
2	Meetings of Board and its Powers	21	120
3	Appointment and Remuneration of Managerial Personnel	12	70
4	Inspection, Inquiry, and Investigation	10	60
5	Compromises, Arrangements and Amalgamations	8	45
6	Prevention of Oppression and Mismanagement	6	20
7	Winding Up	18	90
8	Companies incorporated outside India	6	20
9	Miscellaneous Provisions	13	
10	Compounding of Offences, Adjudication, Special Courts	4	150
11	National Company Law Tribunal and Appellate Tribunal	3	
12	The SEBI Act, 1992, & SEBI (LODR) Regulations, 2015	21	150
13	The Foreign Exchange Management Act, 1999	29	180
14	The Prevention of Money Laundering Act, 2002	11	60
15	Foreign Contribution Regulation Act, 2010	12	90
16	The Arbitration and Conciliation Act, 1996	8	45
17	The Insolvency and Bankruptcy Code, 2016	29	150
		226	22 HRS

Best Part of Summary Notes - Appendix!

SN	Content	SN	Content
1	Summary of Forms	7	ABC Analysis
2	Matters requiring Ordinary Resolution	8	Exemption to Private Companies
3	Matters requiring Special Resolution	9	Exemption to Government Companies
4	Matters requiring Unanimous Resolution and Voting through Postal Ballot	10	Exemption to Section 8 and Nidhi Companies
5	Limits for Applicability of Various Sections	11	Chapter-wise Trend Analysis
6	Important Penalties in Directors	12	Names of Sections [149 to 247]

In order to be able to revise using this book on the last day, you will need to make this book yours!

1. First of all, do sample checks from ICAI module to make yourself comfortable that 100% content is covered in this material. You should not have any second thoughts on the day before exam.
2. You need to do at least 1 revision from this book before you pick this up on the day before exam.
3. Take a yellow or orange highlighter and while reading, highlight the key words (not too many)
4. If you could come up with better and funnier acronyms to byheart something, let me know :P

This book is not a replacement of any classes. Most of the abbreviations used in here is commonly used in my class.

Commonly Used Shortforms:

Note - These shortforms are merely for reference. You don't need to byheart any of it. Gradually, as you get a hold of the book, you won't even need to refer these shortforms.

AA	Adjudicating Authority	MD	Managing Director
AC	Audit Committee	MoA	Memorandum of Association
ACM	Audit Committee Meeting	MP	Managerial Person
AoA	Article Of Association	MR	Managerial Remuneration
AOI	Association of Individuals	NED	Non-Executive Directors
B&P	Books and Papers	O/S	Outstanding (or) Outside
BC	Body Corporate	OCOB	Ordinary Course of Business
BIFR	Board for Industrial and Financial Reconstruction	OG	Official Gazettee
Biz	Business	OID	Officer in default
BM	Board Meeting	OOBH	Opportunity of Being Heard
BoD	Board of Director	P/D	Partners/Directors
BR	Board resolution	PC	Political Contributions
C/A	Contract or Arrangement	PONJ	Principal of Natural Justice
CASH	Co., Associate, Subsy & Holding	PP	Political Party
CFLO	Compensation for Loss of Office	PUESC	Paid up Equity Share Capital
CG	Central Government	RBC	Resolution by circulation
CoI	Certificate of Incorporation	RD	Regional Director
CP	Chairperson	RGTB	Reasonable Grounds to Believe
DH	Debenture Holder	RO	Registered Office
DP	Designated Partner	ROBH	Reasonable Opportunity of Being Heard
ES	Explanatory Statement	ROI	Resident of India
ESG	Environmental, Social and Governance	RP	Related Party
FC	Foreign Company or Foreign Contribution (as the case may be)	RPT	Related Party Transactions
FR	Free Reserve	SC	Secured Creditor
FS	Financial Statement	SR	Special Resolution
GM	General meeting	Subsy	Subsidiary
HoP	House of Parliament	T&C	Terms and conditions
ID	Independent Director	VP	Voting Power
JS	Joint Secretary	W.R.T.	With Respect To
KMP	Key Managerial Person	W/o	Without
M&A	Merger and Amalgamation	WTD	Whole time Director

Chapter 1 - Appointment and Qualification of Board of Directors

Never count the number of pages when the chapter is as important as director!

Board or "Board of Directors" [Section 2(10)] means the **collective body** of the directors of the company

Why do we need Board of Directors (BOD)?

1. Co. is an artificial person having separate legal existence but no body or mind of its own.
2. Huge numbers of shareholders (especially in case of listed companies)
3. Requirement of Section 149

Directors are both **agent** as well as **trustee** of the company.

1. Agent - They bind co. as their principal as soon as they enter into various transactions on its behalf
2. Trustee - They are required to take care of properties, moneys, trade secrets, etc. of co.

Section 149: Company to have BOD

1. Co. to have BoD:

- Consists of **individuals**
- **Minimum** - Public (3), Private (2) and OPC (1)
- **Max** - 15 directors (To appoint > 15 directors - Pass **SR**)
[N.A. to Govt co and Sec 8 companies provided compliance with Sec 92 (AR) and 137(F.S.)]
AoA may provide for a **lower** limit of maximum directors.

Companies as may be prescribed shall have at least one **woman director**.

Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014

1. Provision of Woman Directors applies to following companies:
 - **Listed** company
 - Other public company
 - **PUSC** > = Rs. **100** crores **OR**
 - **Turnover** (T/O) > = Rs. **300** crores
 PUSC and T/O as per last date of latest audited F.S.
2. Intermittent vacancy - 3m or immediately next BOD meeting - **WI Later**
3. Newly incorporated co. - Comply within **6 months** (**Refer QB - 53**)

Example - Women Director - Death on 17th March 2022. Next BOD meeting - 25th June 2022. Co. is required to fill vacancy by 25th June or 16th June 2022 **WE Later** i.e., 25th June.

2. Transition provision

3. Resident Director - At least 1 (stay in India for > = 182 days during FY)
Take proportionate to 182 days in case of newly incorporated co.

4. Independent Director (I.D.) (N.A. to Private companies)

Listed Public Company - **At least 1/3rd** of total no. of directors to be independent [Fractions = 1]
Unlisted Public Company - As may be prescribed - **At least 2** I.D.

Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014 -

Following unlisted public co. to have at least 2 I.D:

PUSC \geq 10 crores	T/O \geq 100 crores	O/S Loan, Debentures and Deposits (in aggregate) $>$ 50 crores (If = Rs. 50 crores, then N.A.)
--------------------------	--------------------------	---

PUSC, T/O and O/S as per last date of latest audited F.S.

Above provision shall not apply to - (a) Joint Ventures (b) WoS and (c) Dormant co. u/s 455

Section 149 vs 177:

If higher no. of I.D. required due to composition of A.C. (**Sec 177**), such higher no. of I.D. applicable under this section. [Ex. In an unlisted public co. having PUSC of Rs. 100 crores, if A.C. has 7 directors, 4 of them have to be I.D. (sec 177). So, as per Sec 149, the minimum no. of I.D. shall be 4 (and not 2)]

Intermittent vacancy - **3m** or **immediately next BOD** meeting - **WI Later**

Not required to appoint I.D. if ceases to fulfil conditions (PUSC, T/O, O/S) for 3 consecutive years

Definition of Listed Company:

Listed company [Sec 2(52)] means a company which has **any of its securities** listed in Recognized Stock Exchange (RSE).

The following classes of companies shall not be considered as listed companies, namely:

1. **Public** companies (equity not listed) having listed their following securities issues on Private placement basis as per SEBI regulations:
 - Non-convertible **debt** securities, or
 - Non-convertible redeemable **preference** shares
 - Both categories of (i) and (ii) above.
2. **Private** companies which have listed their non-convertible **debt** securities on private placement basis on a RSE as per SEBI Regulations;

5. Transition provision

6. **Who can become an ID? (IMP DOGS FVNK)**

Director other than a MD, WTD or a nominee director fulfilling all the following criteria:

- a. **I**ntegrity and has relevant expertise and experience in opinion of Board (or Ministry of CG/SG administratively in charge of the co.)
- b. i. Not is/was **P**romotor of CASH
ii. Not related to promotor or director of CASH (*restricts promotor of CASH but not director of CASH*)

Funny! - As per above provision, a dir.(except for KMP) of ASH can be independent of parent company, but a person related to director of ASH is not independent.

c. Has no pecuniary (**M**onetary) relationship with CASH or their P/D during last 2 FY + CY (*N.A. to Govt. co provided 92 and 137*)

[Other than:

1. Remuneration as such director,
2. Transaction \leq 10% of his total income or
3. Transaction in Arm's Length price in the Ordinary Course of Business (OCOB)]

d. None of whose relatives:

- Holds any **S**ecurity or interest in CASH during last 2 FY + CY
(Note: May hold in company of face value not exceeding 50 lakhs or PUSC upto 2% of CASH)
- Indebted to CASH or P/D in excess of 50 lakhs - 2 FY + CY
- Given **G**uarantee or provided security for in**D**ebtedness of any third person to CASH or their promoter or director of such holding co. in excess of 50 lakhs - 2 FY + CY
- Any **o**ther pecuniary relationship with CASH \geq 2% of his Gross T/O OR Total income (P/D not covered) [in aggregate]

e. Neither himself nor relative:

- Is/was **K**MP or employee of CASH - Last 3 FY (Exception: Relative can be an employee in past 3 yrs)
- Employee/Proprietor/Partner in (CY + Last 3 FY)
 - **F**irm of auditors or **C**S in practice or **C**ost auditors of CASH
 - **L**egal/**C**onsulting **F**irm having transaction with CASH of \geq 10% of Gross T/O
- Holds (with relative) \geq 2% of **V**oting power of Co. (**Not CASH**)
- Is the **C**EO/**D**irector of **N**P.O that
 - **R**eceives \geq 25% of its receipt from CASH or P/D or
 - Holds **V**P \geq 2% of company

f. Possesses such other qualification as may be prescribed (Rule 5 - I.D. shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management etc.)

Can Mr. A be appointed as I.D. in a company be appointed as I.D. in subsidiary company? -
Yes, no such restriction u/s 149(6)

7. I.D. to declare that he meets criteria of independence:

First BOD Meeting in which he participates as director	First BOD Meeting every FY	any change in circumstance which may affect his status as ID
--	----------------------------	--

8. I.D. to abide by prov. of Schedule IV

9. I.D. shall **not be entitled to Stock Option**. I.D. may receive remuneration by way of:

Fees u/s 197 (5)	Reimbursement of expenses for participation in meetings	Profit related commissions - as may be approved by Members
------------------	---	--

In case of **no profits** or **inadequate profits**, I.D. may receive **remuneration**, excluding fees u/s 197(5), in accordance with the provisions of **Schedule V**

10. Term of I.D. - **Upto 5** consecutive years (a term of <5 years is possible)

Reappointment - Eligible on passing **SR** + Disclosure of same in BOD Report

11. No ID to hold office for more than 2 consecutive terms

Cooling period - 3 years (shall not be associated with co in any capacity, directly or indirectly)

12. ID and NED (not being KMP/promoter of co.) shall be held liable only in respect of those acts of omission or commission by a co. which had:

occurred with his
knowledge

attributable to
board process

occurred with his **consent** or
where he has not acted diligently

13. Sec 152 (6) and (7) N.A. to I.D.

Section 150: Manner of Selection of ID and Maintenance of Databank of ID

- CG may notify - Body, Institution or association having expertise in creation and maintenance of such databank (CG has notified - Indian Institute of Corporate Affairs at Manesar)
- ID may be selected from such databank containing details (Name, address, Educational and professional qualification, legal proceedings against him) of person **ELIGIBLE** and **WILLING** to act as ID.
- Responsibility to exercise **due diligence** - Lies with such co.
- Appointment of ID - To be **approved in GM** (ES annexed to notice of GM to include justification)

Rule 6 of Companies (Appointment and Qualification of Directors) Rules, 2014

- Make **online application (within 13m of Commencement)** to Institute for inclusion of name in databank if:
 - Existing ID (needs to renew till he continues to be ID in any co.)
 - Aspiring ID - He intends to get appointed as an ID (before such appointment)
- Individual not having DIN can also apply**
- Specify in application the period - 1 year, 5 years or Lifetime
- Renewal application within 30 days of expiry else name removed (N.A if life time fees paid)
- Declaration by ID - Along with declaration u/s 149 (7)

Online Proficiency Self-Assessment Test (SAT) -

- Within **2 years** of inclusion of name else removed.
- No limit on no. of attempts. Score 50% to pass the test
- Test N.A** for person who have served for **> = 3 years (If more than 1 co., count once)** as:

a) who is director or KMP in:

Listed Public co.	Unlis. Public co. - PUSC >= Rs. 10 cr.	Body corp. listed in RSE	Body corp. incorp. o/s India - PUSC >= \$2Mn	Stat. Corp (Ex. LIC)
----------------------	---	-----------------------------	---	-------------------------

b) Pay scale of Director or equivalent or above in any Ministry or Department, of CG/SG + experience in handling:

- matters relating to commerce, corp. affairs, finance, industry or public enterprises; or
- affairs related to Government companies or statutory corporations set up under an Act of Parliament or any State Act and carrying on commercial activities. [**Amendment**]

c) Pay scale of Chief General Manager or above in SEBI, RBI, IRDA, PFRDA and having experience in handling matters related to corporate/sec/econ. Law

Provided also that the following individuals, who are or have been, for at least 10 years:

- (A) an **advocate** of a court; or
 - (B) in practice as a **CA**; or
 - (C) in practice as a cost accountant; or
 - (D) in practice as a **CS**,
- shall not be required to pass the online proficiency SAT. [Amendment]

Section 151: Appointment of Director Elected by Small Shareholders (SSH)

Read with Rule 7 of the Companies (Appointment and Qualification of Directors), Rules, 2014

- Listed company **MAY** have 1 director elected by SSH (NV **not** > Rs. 20,000)
- Process for appointment - Suo motu or Notice by SSH (not < **lower** of 1,000 SSH or 1/10th SSH)
- Time limit of notice - to be given at least **14 days** before meeting
- **Content** of notice - Name, address, no. of shares held (if any) and folio number (if any) of - person whose name is proposed and all the SHs proposing such appt. (Note: SSD need not be a SH himself)
- **Statement** by proposed SSD stating - DIN, not disqualified u/s 164, his consent to act as director
- SSD considered as **ID** - if eligible under 149 (6) and gives declaration u/s 149 (7).
- Not liable to retire by rotation
- **Tenure** - 3 consecutive years. **Not eligible for reappointment**. Cooling off period - 3 years
- SSD shall **vacate** office if - Disqualified u/s 164, vacation as per 167 or ceases to meet sec 149 (6)
- Not hold the position of SSD in > **2** companies at the same time. 2nd co. not in **competing** or **conflicting** business.

Alembic Limited and Sec 160 deposit for application under this section

Section 152: Appointment of Directors

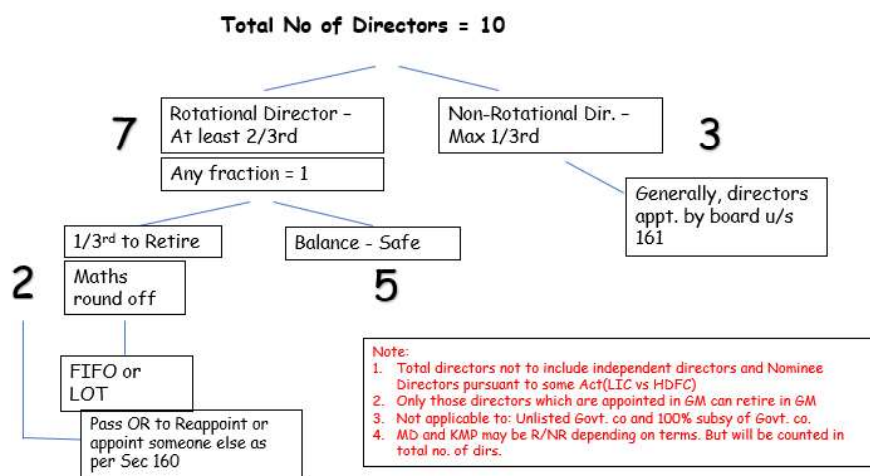
1. First director -
 - Appointed as per provisions of AoA. Otherwise, subscribers to MoA (individuals) - Deemed
 - Tenure - Till directors duly appointed as per provision of this Act
 - OPC - Individual member deemed
2. **Every director** shall be appointed **by the company** in the **GM** (unless otherwise specified)
3. No person to be appointed as dir. unless allotted DIN. (**Can Minor become dir.? - Nope. Cause can't get DIN**)
4. Every Dir. (incl Sec 161) to furnish **DIN** and **Declaration** that he is not disqualified before appt.
5. Furnish **consent** to act as a director - On or before his appt. - **DIR-2** (Director to co.)
Co. to file such consent with RoC within 30 days of such appt. in Form **DIR 12** + Fees.

Proviso (N.A to S-8 Co.) - For appt. of ID, ES to include a statement of BOD that he fulfils condition specified in the act

6. Retirement by Rotation (RBR):

In case of **public** company, unless AOA specifically provides for RBR of all directors, at every AGM:

- **At least 2/3rd of total number of directors** - Period of office liable to determination by RBR and appt. by co. in GM
- 1/3rd of the above 2/3rd shall retire by rotation [If fraction is not multiple of 3, no. nearest to 1/3rd (i.e., maths round off)]
- Who retires? - Those who have been **longest in the office since their last appointment**.
- If became directors on **same day** - Longest in office to be determined **by lot**
- Co. **may** fill up the vacancy in office of retiring director by appt. retiring director or some other person.

**Note:**

- a) Total dir. not to include I.D and nominee dir. appt. by a financial institution set up under Act or parliament (Refer Question 21 of QB).
- b) Nominee directors appointed pursuant to LIC Act shall not be included in total no. of directors (this is mentioned in LIC Act and LIC Act overrides Companies Act, 2013).
- c) Nominee director appointed by an institution **not being a financial institution set up under Act or Parliament** shall be included in total no. of directors
- d) **Only those directors who are appointed in GM can retire in GM**
- e) Directors appointed by board u/s 161(4) shall be considered non-rotational as they are appointed by Board (irrespective of whether or not subsequently approved in in GM). But, include in total no. of directors.
- f) MD and KMP may be R/NR depending on terms. But will be counted in total no. of dirs.
- g) Small Shareholder Director shall not be liable to retire by rotation, but he shall be included in total number of directors

7. Adjournment of meeting:

On retirement of a director as per Sec 152 (6), the company has to either:

- Reappoint the retiring director
- Appoint a new director
- Expressly resolve to not fill the vacancy

If vacancy is not filled in the AGM and the meeting has not resolved to not fill - Meeting adjourned (Next week, same time and place) (If national holiday -Next succeeding day which is not a holiday)

If in adjourned meeting also - vacancy not filled + not resolved - Retiring directors deemed reappointed (automatic reappointment)

Exception - No deemed / automatic reappointment if [LWR 164 162]:

Resolution put and Lost

Expressed his unwillingness in writing

Disqualified u/s 164

OR / SR required as per this Act

Sec 162 is applicable to the case (1 dir = 1 resolu)

If a co. could not hold AGM up to last due date - Dir. liable to retire to vacate office on the last due date

What if AGM is extended u/s 97? - Refer Question 24 of QB

Sec 152 (6) and (7) N.A. to: Unlisted Govt co., Govt. co ($\geq 51\%$ held by CG/SG). and WOS thereof.

Sec 153: Application for DIN

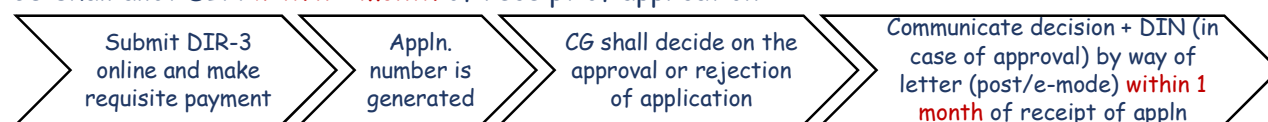
- Indv. intending to be appt. as dir. - Make appln. for DIN /other ID number as may be prescribed
- Application to the CG (Manner and fees - as may be prescribed) - Electronically - **DIR 3**
- LLP Act requires DPIN (DIN can be used as DPIN)

Rule 9 of Companies (Appointment and Qualification of Directors) Rules, 2014:

- DIR 3 to be filed by person willing to be appointed as director (Photograph, Identity proof, residence proof, mandatory DSC and certified by full time CS, MD, Directors, CEO or CFO)
- INC-32 (SPICe) to be filed by company being incorporated to get DIN for proposed first director (max 3 directors at once)

Sec 154: Allotment of DIN (Make chart in class for both 153 and 154)

- CG shall allot DIN **within 1 month** of receipt of application



- If CG finds any defect/incompleteness in application - Intimate the applicant by placing on **website** and by email. Applicant to rectify and resubmit within **15 days** of such placing on the website/email.
- On receipt of above rectification order:
 - Case 1: Defect rectified partially, or info given is still defective - CG may reject the application and ask applicant to file fresh appln. with correct and complete info + inform applicant (post/e-mode/any other mode)
 - Case 2: Defects are not at all removed within given time - treat and label such application as invalid in the e- record + inform applicant (post/e-mode or any other mode)
 - Case 3: Defects are rectified to the satisfaction of CG - Allot DIN and communicate to applicant

Sec 155: Prohibition to obtain more than 1 DIN

Sec 156: Intimation of DIN by director to co:

Every existing dir. to intimate (Form **DIR 3B**) DIN to co.(s) wherein he is a dir. **within 1 m** of receipt

Sec 157: Intimation of DIN by co. to ROC:

Within 15 days of receipt of intimation u/s 156 (Form **DIR-3C**)

If defaulted, then co. and each OID - Fine 25k + Rs. 100/day up to max Rs. 1 lakh

Sec 158: Obligation to indicate DIN - In all returns, info or particulars by director or company.

Sec 159 - Contravention of Sec 152,155,156 - Fine up to Rs. 50,000 + Up to Rs. 500 per day

Other points:

- DIN may be cancelled, surrendered or deactivated by CG/RD if:

DIN is duplicated	Obtained in a wrongful or fraudulent manner	death	unsound mind	adjudicated insolvent
-------------------	---	-------	--------------	-----------------------

application to **surrender (DIR-5)** made by DIN holder along with declaration that said DIN has never been used for filing any document.

- Intimation of changes** in particulars stated in DIR 3 - Within 30 days via **DIR-6**
- No time limit for CG to approve changes. However, once approved, CG to intimate - Applicant + **ROC**
- Director also to intimate above changes in DIN to co. **within 15 days** of such change.

Sec 160: Right of person other than retiring director to stand for directorship

A person shall be eligible for appointment as director if:

- He or some member** intending to propose him as director
- Sends a **notice** in writing at least 14 days before meeting at the registered office of co.
- Along with **deposit of Rs. 1 lakh** or such other sum prescribed

Deposit:

- Refunded** if proposed candidate gets **elected** or **> 25%** votes of total valid votes cast (show of hand or poll)
- Deposit not required** in case of:

Appointment of an ID	Director recommended by NRC	Director recommended by BOD, in case co. is not required to constitute NRC.
----------------------	-----------------------------	---

Company to inform candidature to members:

- At least **7 days** before **GM**
- Inform by way of - Serving individual notices (email or in writing) **AND** place notice on website
- Alternatively - **Advertise** at least before 7 days in newspaper. Language - Vernacular + English

Modifications:

- Nidhi** companies - Deposit of Rs. 10,000 instead of Rs. 1 lakh
- In case of **S-8** companies, BOD has to decide whether deposit made by person failing to secure 25% votes is to be forfeited or refunded (discretion of BOD)
[i.e., BOD of S-8 companies can refund the money even if proposed candidate got $\leq 25\%$ votes]

Exemptions:

The provision of this section shall not apply to:

- Private** company
- Sec 8** companies whose AOA provides for election by ballot
- 100% **Govt.** co. and WoS thereof.

Sec 161: Appointment of Additional Director, Alternate Director and Nominee Director**1. Additional Director:**

- **Articles** may confer the power to **BOD** for appointment of additional directors **at its discretion**
- This director can be any person other than who **fails to get appointed** as director in **GM**
- **Tenure** - Next AGM or Last due date of AGM whichever is earlier
- Appointed by passing a resolution in **BM** or **Resolution by Circulation**.

Conceptual clarity check!

1. Can the members pass OR/SR authorizing BOD to appoint additional director?
No. The power can only be conferred by AoA.
2. What will be tenure of additional director if AGM is extended by ROC beyond due date u/s 97 of Companies Act?
AD to vacate his office on extended last due date on which AGM should have been held.
3. Can an AD be MD/WTD? - **Yes.**
4. Is additional director a rotational director? - **No**
5. After the end of AD's tenure, if co. intends to appoint him as a normal director, is compliance of Sec 160 needed? - **Yes.**
6. Can same person be appointed as AD again and again? - **Yes (there is no such restriction)**
7. Additional directors are directors appointed by Board and hence **non-rotational**. However, they shall be included while calculating total no. of directors.
8. A company has 7 directors. Can a company appoint 3 more additional director in BoD meeting? - **No, max limit of Non-rotational director is 1/3rd.**

2. Alternate Director:

- Appointed by BOD only if authorized by - **Articles or Resolution passed in GM**
- To act in place of Original Director (OD) - **absence** of OD from India for **> = 3 months**.
- A person cannot be appointed as AD if:
 - He is **holding** any AD for any **other director** in the co. or
 - Holding directorship in the same co.
- Alternate for ID has to be **independent** as per 149(6)
- **Tenure:** Original term of OD or OD returns to India - whichever is earlier
- Automatic reappointment - Only OD. Not AD

Note: AD is **not a proxy to OD**. AD is a director in his own capacity and considered as normal dir.

Conceptual clarity check!

1. Can the Alternate Director be appointed by OD? - **No**
2. Can BOD appoint Alt. D on behalf of regular director going out for **less than 3 months**? - **No.**
3. Can Alt. D be appointed for MD/WTD also? - **YES**
4. Alt. Dir shall **NOT** be included in total no. of dir. Only OD shall be included [**Refer QB 30**]

3. Nominee Director:

- Subject to the **AOA**, the **BOD** may appoint
- any person as a director nominated by any institution
- in pursuance of - (1) law or (2) agreement or (3) **CG/SG** by virtue of shareholding in a Govt. co.

4. Casual Vacancy:

- If office of a director **appointed by the co. in GM** is vacated before expiry of term in normal course, it results in casual vacancy (CV)
- Such CV shall be filed by the **BOD** at the **board meeting** (no RBC)
- Needs to be **subsequently approved by members** in immediately next GM
- **Tenure** - Date up to which dir. in whose place he is appt. would have held office if not so vacated.

Conceptual clarity check:

1. Can vacancy in office of director appointed u/s 161 (4) be **again filled** u/s Sec 161(4)? **No** [CV in office of dir. appointed by co. in GM can only be filled u/s 161(4)]
2. If a dir. declined to assume office after appointment u/s 160, will it be casual vacancy? - **No**
3. Is dir. appointed under this Section a rotational director u/s 152(6)? - **No** (not appointed in GM)

Summary table for Section 161:

Criteria	(1) Additional	(2) Alternate	(3) Nominee	(4) Casual Vacancy
Appointed by	Board	Board	Board	Board
Ratification by SH?	Not required	Not required	Not required	Yes. In immediately next GM
Power conferred by	AoA / OR	AoA/ OR at GM	AoA	Law
Tenure	Next AGM/last date for AGM	Earlier of - Tenure of OD or OD returns to India	As per law/agreement	Tenure of director whose office vacated.
Resolution passed at	BoD meeting/RBC	BoD meeting/RBC	BoD meeting/RBC	Only Board meeting
Who cannot be appt?	Person who failed to be appt. as director in GM	a. Person acting as alt. director for any other director in the co. b. Person holding directorship in same co.	No such provision	No such provision
Additional points	-	AD of I.D to comply with sec 149(6) AD cannot be automatically reappointed	--	--
Included in Total no. of dir. [152(6)]	✓	X	✓ (Fin. Inst & LIC) X (Others)	✓
Non-Rotational?	✓	-	-	✓

Sec 162 - Appointment of Directors to be Voted Individually

1. At a GM, a motion for appt. of ≥ 2 persons as directors by a **single resolution** shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.
2. Resolution moved in contravention of above shall be **void**, whether/not any objection was taken when it was moved

Conceptual clarity check!

In a BOD meeting, can 2 or more additional director be appointed by a single resolution of BOD?

Yes, this provision is applicable only to appointments made in GM and not BOD meeting.

Sec 163 - Option to Adopt Principle of Proportional Representation (PR) for Appointment of Directors

- Notwithstanding anything contained in this Act,
- AOA may provide for a
- Appointment of not less than $\frac{2}{3}$ rd of total dirs. of co.
- by way of Proportional Representation (whether by a single transferable vote or by a system of cumulative voting or otherwise)
- Such appointments may be made once in 3 years
- CV Casual Vacancy to be filled as per Sec 161(4)

Sec 164 - Disqualifications for Appointment of Director

1. A person shall not be eligible for appointment as a director of a company, if:
 - a. declared to be of unsound **mind** by competent court
 - b. undischarged **insolvent**
 - c. application to be adjudicated as **insolvent** is pending
 - d. convicted by court of an **offence** (involving moral turpitude or otherwise) + Sentenced to imprisonment for ≥ 6 months and 5 years has not lapsed from expiry of the sentence
(what if appeal is filed?)
If imprisonment for ≥ 7 years, then not eligible for appointment. (forever disqualified)
 - e. **order** of disqualification passed by court/tribunal + order is in force
 - f. not paid any **calls** in respect of any shares of the co. held by him (whether alone/jointly) + 6 months have lapsed from last day fixed for payment
 - g. convicted of offences dealing with RPT u/s **188** at any time during last preceding 5 years
 - h. Not complied with Sec **152(3)** [DIN]
 - i. Not complied with Sec **165(1)** [Max. no of directorship]

Provided that. disqualification under clause (d), (e) and (g) shall continue even if appeal is filed.
2. A person who is/has been director of a company shall NOT be eligible to be **re-appointed** as director of **that co.** or **appointed** in any **other co.** for a period of **5 years**, if the co. in which he is a director, has:
 - a. Not filed FS or Annual Returns for continuous period 3 FY.
 - b. Failed to repay deposits + Interest (or) redeem debentures on due date + intt. (or) pay declared dividend AND such **failure continues for 1 year** or more

Provided that where a person is appointed as a director of a company which is in default under this

sub-section, he shall not incur the disqualification for a period of **6m** from the date of his appointment.

3. AOA of **Pvt.** co. may provide additional grounds for disqualification. (Public co. can't provide additional grounds)

Additional points:

- What if default is made good by the co. later on? - **Doesn't matter. 5 years cooling period.**
- If new directors are appointed to the company which have already made the default, does the new dir. also get disqualified? **No**, as per proviso, the newly appt. dir. shall not be disqualified for **6 m**
- Default in **repayment of loan** from any PFI will not attract disqualification as Sec 164(2) only covered debentures, deposits and dividend.
- Directors to inform company whether or not disqualified u/s 164(2) - Form **DIR 8**
- Whenever co. defaults u/s 164 (2), it shall within 30 days of the date of default intimate **registrar** in **DIR 9** details of directors during relevant FY.

Sec 165 - Number of Directorship: [N.A. to Sec 8 Co.]

1. No person shall hold office of director (incl. alternate) in more than **20 companies** at the same time.

Provided that, max no. of **public** co. in which a person can be director shall not **exceed 10**.

For reckoning limit of **10** public cos. - **Pvt. co. that are holding/subsy of public co. shall be included.**

For reckoning limit of **20** cos., **directorship in dormant company shall NOT be included.**

Example:

Whether directorship in these co. to be included?	Limit of 10	Limit of 20
A Private Ltd (not subsy/holding of any public co.)	No	Yes
B Ltd.	Yes	Yes
C Pvt. Ltd. (Dormant)	No	No
D Ltd. (Dormant)	Yes	No

Point being - Dormant company is to be excluded while reckoning limit of 20 but dormant public company will not be excluded while reckoning limit of 10

2. The members of co. may by a **SR**, specify a lesser no. of cos. in which a dir. of the co. may act as a dir. [they cannot specify higher no.]
3. If a person accepts appt. as a dir. in violation of this section, penalty - Rs. 2,000/day up to Rs. 2 lakhs!

Sec 166 - Duties of Directors:

1. Act in accordance with AoA
2. Act in good faith to promote objects of the co. for the benefit of all the stakeholders
3. Exercise duties with due and reasonable care
4. Not involve in situations which may possibly conflict with the interest of the co.
5. Not attempt to achieve undue gain or advantage - If found guilty, liable to pay such amt. to co.
6. Not assign his office - If assigned, void.

Contravention of duties - Fine Rs. 1 lakh to Rs. 5 lakhs.

Sec 167 - Vacation of office of Directors:

1. The office of dir. shall be vacated in following cases:

- a) incurs disqualification u/s 164
Provided that, if disqualification u/s 164(2), vacate office in all cos other than defaulting co.
- b) absents from BOD meetings held during 12 months with or w/o leave of absence
- c) acts in contravention of Sec 184 relating to entering into contracts/arrangement in which he is directly interested
- d) fails to disclose interest in contravention of sec 184
- e) disqualified by an order of court or tribunal
- f) convicted by court of an offence (involving moral turpitude or otherwise) + Sentenced to imprisonment for ≥ 6 months
- g) removed under any provision of this Act
- h) he, having been appointed a dir. by virtue of his holding any office or other employment in the ASH company, ceases to hold such office or other employment in that company.

Provided that, office shall not be vacated in case of orders referred in (e) and (f) above:

- for 30 days from the date of order
- if appeal/petition is preferred against the order within the aforesaid 30 days, until expiry of 7 days from date on which appeal/petition is disposed of.
- if further appeal/petition preferred within 7 days. until such further appeal/petition is disposed of.

2. In case if director continues to function even when office is vacated, fine - Rs. 1 lakh to Rs. 5 lakhs.
3. Where all the directors vacate their office, the promotor/CG shall appoint required no. of directors who shall hold office till directors appt. by co. in GM
4. AOA of private co. may provide for additional grounds of vacation.

Additional points:

- No opportunity of being heard (OOBH) in case of vacation u/s 167
- Automatic vacation happens u/s 167 i.e., no board resolution required
- Board cannot waive any grounds of vacation [Refer QB 45]

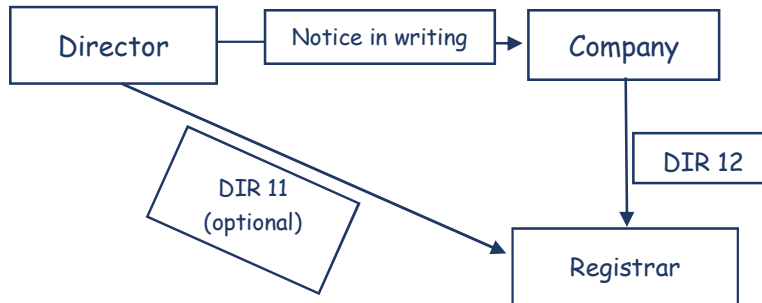
Quickly refer - Penalty u/s 207 [If a person is convicted u/s 207 - Vacate office + Disqualified]

Sec 168 - Resignation of Director:

- A director may resign - by giving notice in writing to co.
- Director may also forward copy of resignation along with detailed reason therefor to the RoC within 30 days from the date of resignation in Form DIR-11.
In case of a foreign director, if co. has already filed DIR 12, the foreign director may authorize (in writing) CA/CS or cost accountant or any other resident director to sign Form DIR 11 on his behalf.
- On receipt of such resignation notice:
 - Board to take note of the same.
 - Co. to intimate ROC in Form DIR 12 within 30 days
 - Co. to post the info. on the website

- Co. to place the fact of such resignation in BOD report in immediately following GM
- Resignation to be **effective** from - date on which notice is **received** by co. or date **specified** in notice (if any) whichever is **LATER**.
- Director to remain **liable** for offences which occurred during his **tenure** despite the resignation
- If all directors resigned, promotor/CG to appoint directors till dirs. duly appointed in GM

Note: The resignation will take effect without any need for its acceptance by the BOD or the company in GM. Even if Board doesn't accept or co. fails to intimate RoC (Form DIR 12), the resignation shall still be effective.



Sec 169 - Removal of Director:

- A company may remove a director **before the expiry of his tenure**, by passing **OR** + Giving him **OOBH**.
- **ID re-appointed** for second term u/s 149 (10) can be removed only by passing **SR** + OOBH
- A **special notice** of a resolution, to remove the director/appt someone in place of a dir. so removed is required.
[As per **Sec - 115**, special notice is to be given at least 14 days before meeting (but not earlier than 3 months) by members holding lower of 1% of VP or PUSC of Rs. 5 lakhs]
- On receipt of the special notice, the co. shall forthwith send a **copy to director** concerned.
- The director shall be entitled to be:
 - **heard** on the resolution at the meeting
 - make **representations** in writing to the company
 - request the co. to **notify** the representation to the **members**
- The company shall, if time permits,
 - in the notice given to members, **state the fact** the representation has been made
 - send a **copy** of the representation to every member
 - if copy of representation couldn't be sent, director may require the representation to be **read out** at the meeting (without prejudice to his right to oral representation)
- If on an application either by co. or person aggrieved, the **Tribunal** is satisfied that right to make representation is abused to **secure needless publicity for a defamatory matter**, tribunal may order:
 - Not to send the WR to members
 - Not to read out the WR
 - Cost incurred of making such application to tribunal be paid by director concerned.
- **Vacancy** created on removal of the director to be **filled** at the meeting provided **special notice** of intended appointment is given.

