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DIRECTORS OF A COMPANY – APPOINTMENT AND RELATIONSHIP

By Muskan Banga

Abstract

Individuals who are elected as or elected to act as, representatives of the stakeholders to establish the policies related to corporate management and make decisions on major company issue are named as the Directors of the company. Section 2 sub-section 10 of the Companies Act, 2013 provides the definition of the board of Directors or Board concerning the company and Section 2 sub-section 34 of Company Act, 2013¹ defines the meaning of ‘Director’.

The appointment of the Board of Directors is one of the main issues as the success of the company depends upon the competence and the integrity of its directors. This paper wraps the modes of appointment of the directors.

The directors of the company usually make the decision but the management of the company carries them out. It also seems that there may be a conflict between them due to the same interest held by both directors and the management of the company. This paper seeks to analyses the relationship between the board of directors and the company.

Keywords: Company Act, 2013; Board of Directors; Appointment; Management; Relationship

Introduction

¹ https://legislative.gov.in/sites/default/files/A2013-18_0.pdf

The Board of directors is the superior executives who control the management and administration of the company vests in the team of directors of the company. A corporation has neither a mind nor a body of its own which means it is an artificial existing only in contemplation of law. A corporation, called a legal entity in the eyes of law cannot act in its own person; this can be possible only through some human agency.

The directors are the brain of the company who serve, perform and protect the long term interests of all the stakeholders of the Company. This makes it all-important that every public company shall have at least three directors and every private company shall have at least two directors mentioned under section 149(1) of the Company Act, 2013². The maximum limit of the directors to appoint is fifteen for the company but the company may appoint more than fifteen directors only after passing a special resolution in a general meeting and the approval of the Central Government is not required. The board of directors is entrusted with their responsibility to act in the top interest of the company; therefore the position of the directors is that of trust and faith.



APPOINTMENT OF DIRECTORS

❖ Appointment of First Director

The first directors of the company are usually appointed by their name in the articles or as provided in. If the name is not in AOA, the first subscriber who is individual to the Memorandum of Article shall be deemed to be the first director of the company until the directors are duly appointed subject to the regulations of the company's article. According to the provision of section 152 (1), the first directors can hold the office until the directors are duly appointed. The list with the names of the person who are to be the directors of the company and their consent in writing is mandatory to deliver to the registrar of the company.

❖ Appointment of Directors at General Meeting

According to section 152, the directors can be appointed in the general meeting but he can't act as a director until he gives his consent to hold the office as a director and such consent has to file

² https://legislative.gov.in/sites/default/files/A2013-18_0.pdf

with the registrar of the company within thirty days of the appointment or in the manner prescribed therein.

❖ Independent Director

Independent directors are those who are not related to the promoters of the company and do not have any financial relationship with the company. According to section 149 (10) subject to the provision of section 152³ of the Company Act, 2013 an independent director can be appointed for five or more than five years consecutive years of the board. As per the listing agreements, all listed public companies must appoint an independent director for better transparency however the ratio of the director cannot fall below one third or more than one-third of the total directors. Section 152 (5) provide that the explanatory statement related to the appointment of an independent director that they have satisfied the condition provided in the act should contain a declaration from the Board that this has been in their opinion.

❖ Woman Director

All listed companies who have paid-up share capital of more than Rs 100 crores or turn-over of more than Rupees 300 must appoint at least one woman director within one year from the outset of the second proviso to Section 149(1)⁴ of the Act.

❖ Directors appointed by minor Shareholders

The shareholder who is holding shares of the par value of less than twenty thousand rupees of or such other amount as could also be prescribed is known as a small shareholder, who may elect one director as provided in section 151 of the Company Act, 2013., who may elect one director as provided in section 151 of the Company Act, 2013.

❖ Appointment of Additional Director

According to section 161 (1) Additional Directors can be appointed by the Board of Directors if they have such power mentioned in articles of association. Additional directors can hold the

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[http://ebook.mca.gov.in/Actpagedisplay.aspx?PAGENAME=17536#:~:text=\(4\)%20Every%20person%20proposed%20to,a%20director%20under%20this%20Act.](http://ebook.mca.gov.in/Actpagedisplay.aspx?PAGENAME=17536#:~:text=(4)%20Every%20person%20proposed%20to,a%20director%20under%20this%20Act.)

⁴ <http://ebook.mca.gov.in/Actpagedisplay.aspx?PAGENAME=17533>

office only up to the date of the subsequent annual general meeting or the last date on which the annual general meeting should have been held.

❖ **Appointment of Alternate Director-**

According to section 161 (2) of the Company Act, 2013, for the appointment of alternate director, the board of director must be authorized by its article or a resolution passed in the general meeting of the company. The person to be appointed as the Alternate Director shall be the person aside from the person holding any alternate directorship for the other Director within the Company.

❖ **Appointment of Directors by Nomination**

The section 161(3)⁵ was amended for the appointment of Nominee Directors which states that the Board may appoint a person as a director nominated by any institution in execution of the provisions of any law for the time being in force or of any agreement or by the Central Government or the State Government by virtue of its shareholding during a Government Company.

The Board of Directors vs. the Company they administer

The board of directors and the management are the two closest part of the company, the roles, duties and their responsibilities are slightly different to each other it cannot be defined as just being that of a relationship between an employee or his/her manager. If we overlook the definition it simply means the board makes the decisions and management carry them out but the board oversees the decision taken by the management and tries to approve by acting as an arbitrator. The Board of directors needs to monitor or examine the management and similarly, management also needs to take the board in confidence about their decision because the board of directors is responsible for the actions and decisions of the management.

⁵[http://ebook.mca.gov.in/Actpagedisplay.aspx?PAGENAME=17545#:~:text=\(1\)%20The%20articles%20of%20a,th e%20last%20date%20on%20which](http://ebook.mca.gov.in/Actpagedisplay.aspx?PAGENAME=17545#:~:text=(1)%20The%20articles%20of%20a,th e%20last%20date%20on%20which)

The management and the board of directors are symbiotic to each other and being a part of the single family which called an organization they have to serve each other. The point is not that the board of director and management cannot have life without each other but the central point is that they need to serve and flourish one another. The true progress of the company can be possible only when the board of directors and the management work together in a harmonious environment and to make this happen there must be provisions for the roles and duties of the independent directors and those directors who are affiliated with the management

There must be a significant representation of the management on the board. Board needs to be informed about the management of the organization to protect the legal responsibility but the role of the board of directors should not interfere or intervene between the duties of management so that there will be no agency problem and conflict of interest.

The organization may get benefits in notable ways when a board of directors and management are working in an open and healthy environment with a strong relationship. The CEO of the company may ask the board of directors for help and to intervene with management in many ways to raise their performance. Boards subject to broader and mission focus leaves the managerial activities or daily routine work to the CEO.

In Indian States Bank Ltd. v Sardar Singh⁶, it was held that the appointment of the directors of the company should be regulated by the Company Act, 2013 so that the management of the companies will be in proper hands. The success of the company depends upon the ability of its board of directors.

	Board of Directors	Management
Description	The first tier of the company hierarchy	The second tier of the company hierarchy.

⁶AIR 1934 All 855

Involvs	<ul style="list-style-type: none"> • Chairman • Inside Directors – directors appointed from inside the company • Outside Directors – directors appointed from the outside of the company. 	<ul style="list-style-type: none"> • Chief Executive Officer (CEO) – head of the executive department • Chief Operations Officer (COO) – head of operations • Chief Financial Officer (CFO) – head of the financial department • Chief Information Officer (CIO)
Responsibility	Makes the decision	Implement the decision made by board of directors.
Hiring	Hired by stakeholders	Hired by Board of Directors
Answerable	They are answerable to stakeholders.	They are answerable to Board of Directors.
Ethics and values	Directors have their full concentration in determining the ethics and values of the company.	Managers must know their ethics and take direction from the board of directors
Legal responsibility	Directors can be held liable for the duties and task they perform. They are accountable for the company' name and action.	No legal responsibility.
Company administration	Responsible to company's administration.	Duties which is related to company administration can be delegated to management.

Conclusion-

The role of the director of the company is most crucial for smooth operation or working of the company. The Director of the company has a lot of work to do with several decisions making and he also has pressure from competitors. The expectation from the director of the company is to manage and ensure that there is effective communication at all levels as they are held responsible for the effective management and good governance of the company. The powers of the board of directors can be restricted in some areas of the company; in many cases, they have the liberty to do anything. Directors have to make sure that the company must do everything under the law and which will be beneficial for future growth. Directors can act as or for the company so the decision they are making must be in the best interest of the company.

A corporation has neither a mind nor a body of its own which means it is an artificial existing only in contemplation of law. A corporation, called a legal entity in the eyes of law cannot act in its own person; this can be possible only through some human agency. Therefore, the directors of the company who are appointed by the stakeholders to set the overall policies are liable to act on the behalf of the company. The role and responsibility of the Board of directors vary on the position on which they and the company in which they are working. For a smooth operation, they delegate the upper work to the management give directions to them.

Whenever the company is not doing well, the directors and the management both are accountable for the same because the board has the top view of the organization and the management has the deepest knowledge of the organization. Managers are the one who is responsible for the running of the organization and they do what the directors sitting on its perch dictate them.

Directors and management are the two hands of the company without which the company cannot work in a smooth and healthy environment.