

LEGALFOXES LAW TIMES

AN ANALYSIS OF THE DUTIES AND RESPONSIBILITIES OF A DIRECTOR IN A COMPANY WITH SPECIFIC REFERENCE TO THE COMPANIES ACT OF 2013

By Md Jiyauddin

Assistant Professor, Department of Law, Vel Tech Rangarajan Dr. Sagunthala R&D Institute of
Science and Technology

Abstract

A company's highest governing body is its corporate board. They are responsible to and chosen by the company's shareholders and other stakeholders, on their behalf. Usually, the board delegated day-to-day management to other executives and set the company's overarching goals and rules. The directors' roles inside the corporation might be viewed as those of officers, managing partners, trustees, and agents. The presence of an effective and efficient board is a key prerequisite for the success of the business, since the board of directors holds the ultimate say in things pertaining to the organisation. The makeup of the company's board of directors are one of the many important components of corporate boards. The board composition is the term used to describe what makes up a company's board. It particularly has to do with the board's independence, diversity and the chairman or CEO dichotomy. The designation of directors of public sector banks as independent or non-independent is also made clearer by the current study. By October 1, 2014, all Indian listed businesses were required by the SEBI policy from February 2014 to have at least one female director on board. The inadequate presence of women directors on the boards of Indian companies or in most cases, their utter absence led to the passage of this rule. Through this paper its analysis of the duties and responsibilities of a director in a company.

Key words: Governing body, shareholder, board of directors, duties and responsibilities.

INTRODUCTION

Companies cannot act in their own right since they are artificial entities that only exist in the eyes of the law. Therefore, human agency is required to do business for the corporation. Really, the company's owners are its shareholders. The shareholders cannot possibly monitor every aspect of the business on a daily basis. The Board of Directors are the highest executive body of a corporation and is responsible for managing its activities. At the time of the company's establishment, the majority of shareholders may designate a director at their discretion. The effectiveness, vision, skill, and integrity of a company's directors are unquestionably critical to its development and success. In the event that shareholders desire to alter the director representing their viewpoint, a notice to the board members may be used to summon an annual general meeting. Directors may execute their rights under the Companies Act, 2013, the company's articles of association (AoA) and memorandum of association (MoA).

The Companies Act of 2013 provides no comprehensive definition. A person who has been appointed to the Board of Directors are referred to as a "Director" under Section 2 (34) of the Companies Act, 2013. As per the Companies Act of 2013, he/she is the designated person responsible for executing the duties and obligations of a director of a business.

WHO MAY BE APPOINTED AS A DIRECTOR

All companies are required to have a board of directors made up of individual directors. It is obvious that a director can only be selected by one person. A firm, organisation of people, or body corporate is not eligible to be nominated as a director of the business. A Director Identification Number is required before someone may be appointed as a director of the firm. According to the Act, a public corporation must have a minimum of three directors, and a private business must have at least two directors. A one-person business must have at least one director. A maximum of 15 directors may be appointed to a public limited corporation. A business may make an ordinary resolution at its general meeting to raise or decrease the number of directors, subject to the restrictions imposed by its Memorandum and Articles of Association. If a special resolution is approved at the general meeting, a business may nominate more than 15 directors. Adding more directors beyond the allotted number does not need Central Government approval.

ROLES OF DIRECTOR

Director is responsible for the management, oversight, and guidance of the business in his/her capacity as a member of the board of directors. It is stated that directors serve as the company's officers, trustees and agents. Even if professional men are employed by the firm to oversee organisational activities, they are not referred to be the corporation's servants. However, a director can act as both a solo employee and a director of the firm by providing his/her professional services through a separate service agreement. The Companies Act of 2013 says nothing about the status or function of directors inside the firm. Directors are referred to as trustees, MDs, or agents, according to Bowen LJ. However, these terms are not meant to be all-inclusive of their authority and obligations; rather, they are meant to serve as helpful viewpoints that they may examine for that specific time and purpose.

As a Staff Member: If a full-time director who oversees the day-to-day operations of the firm is appointed by the Board of Directors and given shareholder approval. All of the directors constitute an organisation according to the BoD's employment letter proposal.

Role of Officer: According to the High Court of Calcutta, "some officials of the company should be treated as organs of the company so that actions of that specific official company can be held liable just as a natural person is for the action of his limbs." A director's absence might render the business inoperable.

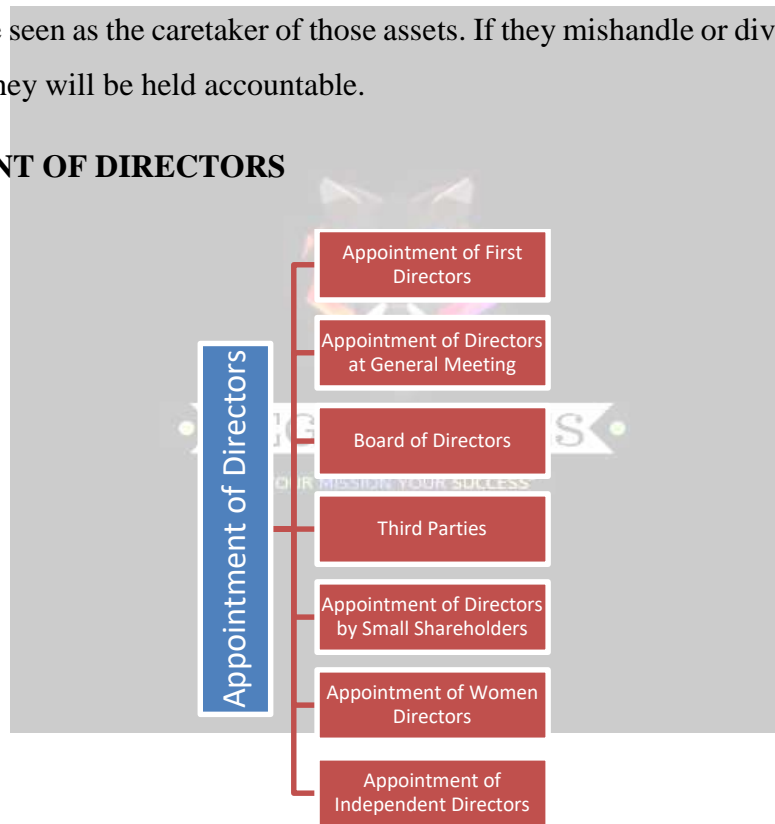
Section 2(59) of the Companies Act, 2013 states that a director is considered an official of the business, with the authority to act on behalf of the Board of Directors or other directors as they see fit. The director is regarded as an "officer in default" under section 2 (60) of the Companies Act, 2013 and may potentially face penalties for his failure to comply with certain rules.

As Agents of the Company: A company cannot operate and function on its own since it is an artificial person. Consequently, an organisation needs an employee to oversee its operations. The director therefore serves as the organization's representative in this regard. Therefore, this thesis states that the laws pertaining to agency control the relationship between the director and the corporation. As stated by Lord Cairns, who thought that directors of public companies act as the company's representatives. A principal-agent relationship exists between the Company and the Directors. As stipulated by the Memorandum and Articles of the Company, an individual in an Agency is required to establish and maintain a Principal connection with third parties; if their

actions deviate from the guidelines provided by the MOA and AOA, they are acting outside of their legal authority.

As Trustee of the Company: The directors assume the role of trustees for the business's funds, which they are obligated to manage as they represent the firm in transactions. The directors might be thought of as the company's trustees as they are fully in charge of its money in their official role and are required to use and manage them for the company's advantage and profit. Using an analogy, Lindley LJ noted that since joint stock corporations were created, directors have always been seen as trustees of the firm since they have authority over it and are accountable for making significant profits. As the company's trustee, they are tasked with using the assets in the best interests of the business and are seen as the caretaker of those assets. If they mishandle or divert the funds for their personal gain, they will be held accountable.

APPOINTMENT OF DIRECTORS



DUTIES OF DIRECTORS



Duties of Directors



Fiduciary responsibilities and obligations: A director's responsibility to act in good faith and with integrity stem from their fiduciary relationship with their firm, and they are comparable to those of a trustee. These obligations are imposed by law on the directors in order to prevent them from using their strategic position inside the firm to further their personal agendas. Since the directors have a fiduciary connection with the corporation, they have an obligation to perform their obligations honestly and in good faith. Since the director is actually a trustee of the corporation, he or she should not use their position for personal benefit. The directors of a firm twisted a contract opportunity to their own advantage in *Cook v. Deeks* (1916) 1 AC 554, where they decided the company had no interest in the contract since they possessed the 3/4th majority of the votes. Their lordship maintained that the corporation owned the equity benefit of the contract and that the directors had appropriated their voting rights for their own profit.

Director's duty of care: It is required of directors to carry out their duties with a fair degree of care and attention. As would be expected of a reasonable person with their level of knowledge and experience, they must carry out their responsibilities and tasks with diligence and expertise. If there is a legitimate error in judgement, they are not accountable. wherein the dishonest conduct of a director led misappropriation, bad debts and bad investments to force the firm to fail. After suffering a setback, the firm was finally ordered to be wound up. The director's dishonesty and carelessness resulted in his conviction. Because the articles contained an exemption holding directors accountable only for gross negligence, the director was found not guilty on appeal. Whether the corporation should bear responsibility for the tortious act the director performed while on the job or whether the director himself should be held accountable.

Directors' obligations to individual members: Whether acting on behalf of the company or for themselves, it is important to clarify that directors have a duty to their company and not to individual members while conducting business with them. It is a well-established fact that directors do not act as trustees for specific shareholders. As a result, directors who buy shares from company members are not required to reveal any information that may lead the members to seek a higher price. However, the directors would undoubtedly be accountable and the members may seek damages for the losses they incurred if they tricked them into selling their shares at a cheap price by misrepresenting the shares' true value.

Obligation to declare a personal interest: The director and the company have a fiduciary relationship, with the former acting as the principal's agent. As a result, it is the responsibility of directors to make sure that their own interests do not conflict with those of the firm. The law requires a director to carry out his responsibilities to the firm without considering his own personal interests. Section 184 of the Companies Act, 2013 establishes a unique process to remove the risk of a conflict of interest amongst directors of the business.

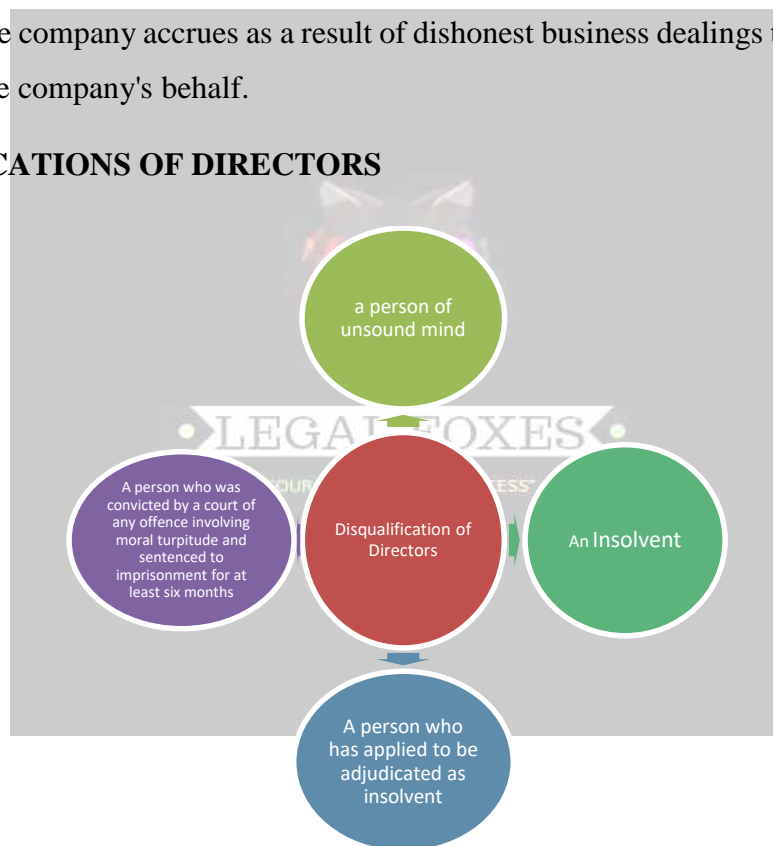
Directors are not required to attend all board meetings; however, Section 67 (1)(b) of the Companies Act, 2013 states that a director's position will be terminated if he misses three consecutive meetings of the board of directors within a 12-month period, either with or without the board granting a leave of absence. In general, a director who was not present at a board meeting cannot be held accountable for decisions made on their behalf.

Director's obligation to others: It is true that the corporation is responsible for any contracts that third parties enter into with it; the directors are not held personally liable for such transactions. Directors won't be held accountable if the corporation enters into ultra-vires contracts, as these agreements are legally invalid. However, the director will be held personally accountable for any losses the business sustains as a result of the arrangement if he signs a contract with a third party under his own name while concealing the fact that he is acting in that role as a director of the company. A director may be held personally accountable for compensating the person or people who suffer losses as a result of such transactions if they are shown to have engaged in fraud, deception, or tort in connection with a business transaction. The director is also accountable for any omissions that result in harm to other parties.

Under the Companies Act, directors may be held personally accountable to third parties in the following situations:

1. When they produced a prospectus that lacked the information needed by the Act;
2. When they made false statements in the prospectus; or
3. In cases where an unauthorised distribution occurred, or
4. In situations where the business is unable to distribute shares within 120 days of the prospectus's first publication and the funds applicants paid for shares have not returned within the next ten days.
5. In the event that the company is winding up, the directors could be held accountable for debts the company accrues as a result of dishonest business dealings the directors engaged in on the company's behalf.

DISQUALIFICATIONS OF DIRECTORS



- A person cannot be appointed as a director of a corporation if they are an undischarged insolvent or if they are of unsound mind and have had such declaration made by a competent court.

- He has been found guilty and sentenced to at least six months in prison, with five years remaining until the end of his sentence.
- He has been found guilty and sentenced to at least seven years in prison.
- A court or tribunal has issued an order disqualifying him from serving as a director, and the order is currently in effect.
- Six months have passed since the final day scheduled for the payment of the call, and he has not paid any calls about any shares of the firm that he owns.
- He has not received a DIN.
- He has been found guilty at any point in the previous five years of the crime pertaining to related party transactions under section 188.
- A director of a business that has not submitted annual reports or financial statements for five consecutive years, or until five years have passed after the date of default.
- A director of a corporation that has not paid back deposits, debentures, or dividends for a full year until five years have passed after the date of default.
- Private Companies' articles of association may include more disqualifications.

CONCLUSION

As the most significant and final governing body responsible for overseeing the management of the business's activities, the directors are vital to a company's success. The Board of Directors is the name given to this body of directors. The directors of the company, serving as the highest executive authority or cerebral entity, are essential to the management and oversight of the business's activities. Their ultimate goal is to grow the company. In the corporate structure, the role of a director is considered extremely accountable. They have been given broad authority to act in the company's best interests in accordance with the provisions included in the Companies Act, 2013. They have been bestowed with these powers in order to enable them to assist in the company's or any other firm's achievement of its objectives. In addition, the legal framework provides businesses with principles that ensure fairness and legality in their operations. These rules are necessary for businesses to grow, lower risks, and build stakeholder confidence. Together with regulatory compliance, effective corporate governance is ultimately the cornerstone of long-term

business operations and success in the competitive market of today. Furthermore, it is clear that even with their considerable power, the directors are not allowed to overreach their jurisdiction, and their actions must not contravene the provisions of the 2013 Act.

REFERENCES

- Abdul Gaffoor & S Thothadri, *Company Law and Secretarial Practice* (Vijay Nicole Imprints Private Limited, Chennai, 2017).
- N. V. Paranjape, *Company Law* (Central Law Agency, Allahabad 11st edn. 2022).
- N D Kapoor, *Business Law including Companies (Amendment) Act, 2019* (Sultan Chand & Sons, New Delhi, 7th edn. 2021).
- Duties of Directors: Code of Conduct, Responsibilities and Legal Framework (2024) available at: <https://www.geeksforgeeks.org/duties-of-directors-code-of-conduct-responsibilities-and-legal-framework/> (last visited on July 29, 2024).
- Rachit Garg (2023), Directors in Company Law, available at: <https://blog.ipleaders.in/director-companies-act-2013/> (last visited on July 21, 2024).
- S. Abhishek (2022), Role of Director under the Companies Act, 2013, available at: <https://enhelion.com/blogs/2022/07/08/role-of-director-under-the-companies-act-2013/> (last visited on July 10, 2024).
- P. SHAH, COMPANIES ACT, 2013 – DUTIES AND RESPONSIBILITIES OF DIRECTORS, available at: <https://caa-ahm.org/Pdf/Legal/Legal-155.pdf> (last visited on July 18, 2024).
- M. Rishabh & M. Hrithik (2023) Analyzing Directors' Duty of Care under the Companies Act, 2013, available at: <https://indiacorplaw.in/2023/03/analyzing-directors-duty-of-care-under-the-companies-act-2013.html> (last visited on July 12, 2024).
- M. Sweta (2023), Roles and Responsibilities Of Directors Under Companies Act, 2013 in India, available at: <https://taxguru.in/company-law/roles-responsibilities-directors-companies-act-2013.html> (last visited on July 10, 2024).
- All-About the Directors of a Company (2022), available at: <https://www.taxmann.com/post/blog/all-about-the-directors-of-a-company> (last visited on July 17, 2024).

- Pwc (2013), Companies Act, 2013 Key highlights and analysis, *available at:* <https://www.pwc.in/assets/pdfs/publications/2013/companies-act-2013-key-highlights-and-analysis.pdf> (last visited on July 20, 2024).
- J. Seema & Y. Neha (2016), Roles And Responsibilities Of A Director Under Companies Act, 2013 – Pitfalls And Safeguards, *available at:* <https://www.mondaq.com/india/directors-and-officers/510724/roles-and-responsibilities-of-a-director-under-companies-act-2013-pitfalls-and-safeguards> (last visited on July 22, 2024).
- P. Dutta (2024), Understanding the Director's Duties and Responsibilities under the Companies Act 2013, *available at:* <https://www.linkedin.com/pulse/understanding-directors-duties-responsibilities-under-prity-dutta-joraf> (last visited on July 25, 2024).
- Legal Position of a Company Director in India (2024), *available at:* <https://www.indialawoffices.com/legal-articles/legal-position-of-company-director-in-india> (last visited on July 27, 2024).
- R. Chopra (2018), Duties and responsibilities of directors under the Companies Act, 2013, *available at:* <https://www.lawyersclubindia.com/articles/duties-and-responsibilities-of-directors-under-the-indian-companies-act-2013-8890.asp> (last visited on July 26, 2024).
- P. Raj (2024), What Are the Duties of a Director in a Private Limited Company? *available at:* <https://vakilsearch.com/blog/duties-of-a-director-in-a-private-limited-company/> (last visited on July 28, 2024).