

# *Analysis on the Appointment & Qualification on “Directors of the Company”*

**navneet k. arora & co.**  
COMPANY SECRETARIES

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# Proprietor 's Profile at a Glance

## Navneet K. Arora & Co., Company Secretaries

### BASIC DETAILS

- ✂ Name of the Proprietor – **CS Navneet Arora**
- ✂ Year of Passing of ICSI Final Examination – **June 1990**
- ✂ Date of becoming Associate Member of ICSI (ACS - 8421) – **3<sup>rd</sup> March 1992**
- ✂ Date of becoming Fellow Member of ICSI (FCS - 3214) – **21<sup>st</sup> July 1997**
- ✂ Date of holding Certificate of Practice (CP - 3005) – **20<sup>th</sup> November 1998**
- ✂ Experience (No. of Years) – **25 Years (15 Years in Practice)**



### EDUCATIONAL QUALIFICATION:

- ✂ Master of Commerce.
- ✂ Fellow Member of The Institute of Company Secretaries of India
- ✂ Post Graduate Diploma in Financial Management

### PROFESSIONAL ASSOCIATION / RECOGNITION / MEMBERSHIP OF CONFEDERATION BODIES:

- ✂ Member - **All India Management Association New Delhi (AIMA).**
- ✂ Professional Member - **PHD Chamber of Commerce and Industries, New Delhi.**
- ✂ Appointed as **Peer Reviewer** by ICSI to conduct peer review of Practicing Member of ICSI.
- ✂ ICSI Certified participant of **National Workshop on Diligence Report for Banks.**
- ✂ **Convener South Delhi Study Group of NIRC of the ICSI** -2011, 2012, 2013 & 2014. Also Past Governing Body Member of Kanpur Chapter of NIRC of the ICSI & Past Member of various Professional Development Committee of NIRC of the ICSI.
- ✂ Regular Participant, Speaker of Seminars / Workshop on the Professional Development Program of various Professional Management Institutes including Institute of Company Secretaries of India (ICSI), Asia Pacific Institute of Management (AIM), National Foundation for Corporate Governance (NFCG) etc.

# *Overview of Director*

- ❑ A Company is a legal entity and its day to day function is being managed by its Board of Directors.. The person, acting on its behalf, is called Director.
- ❑ Director means a person appointed as director to the Board of a company who holds the office and works with other Directors collectively called Board of Directors or The Board.
- ❑ First Directors of the Company are those whose name is entered as first director of the Company in the Article of Association of the Company and than subsequent director of the company are appointed by the shareholders in the General Meeting of the company. Board of the Directors of the company can also appoint additional director or alternate director on the Board.
- ❑ Every Company shall have a Board of Directors consisting of individuals as directors and shall have a minimum number of :-
  - ❖ Three Directors in the case of a Public Company,
  - ❖ Two Directors in the case of a Private Company, and
  - ❖ One Director in the case of a One Person Company
- ❑ **Section 149 to 172 of the Companies Act, 2013 and Companies (Appointment and Qualification of Directors) Rules, 2014 specify the law and procedure regarding the Directors.**

# *First Directors*

- **Extract of the relevant provisions prescribed in Section 152 of the Companies Act, 2013 as under :-**
  - The First Director of the Company, whose name is entered as Director of the Company in the Article of Association of the Company . They may be the promoter of the company or any other person as the case may be.
  - The particulars of the persons mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity as may be prescribed shall be required to be submitted to Ministry of Corporate Affairs (ROC) at the time of incorporation.
  - Where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed and in case of a One Person Company an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of this section.

# *Appointment of Directors*

- **Extract of the relevant provisions prescribed in Section 152 of the Companies Act, 2013 as under :-**
  - Save as otherwise expressly provided in this Act, every director shall be appointed by the company in general meeting.
  - No person shall be appointed as a director of a company unless he has been allotted the Director Identification Number under section 154.
  - Every person proposed to be appointed as a director by the company in general meeting or otherwise, shall furnish his Director Identification Number and a declaration that he is not disqualified to become a director under this Act.
  - A person appointed as a director shall not act as a director unless he gives his consent to hold the office as director and such consent has been filed with the Registrar within thirty days of his appointment in such manner as may be prescribed.

# ***Directors liable to retire by rotation***

- **Extract of the relevant provisions prescribed in Section 152 of the Companies Act, 2013 as under :-**
- Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company Shall :-
  - (i) be persons whose period of office is liable to determination by retirement of directors by rotation; and
  - (ii) save as otherwise expressly provided in this Act, be appointed by the company in general meeting.
- The remaining directors in the case of any such company shall, in default of, and subject to any regulations in the articles of the company, also be appointed by the company in general meeting.
- At the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed in accordance with clauses (a) and (b) and at every subsequent annual general meeting, one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.
- The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.

# *Directors liable to retire by rotation*

## *Contd...*

- At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.  
[Explanation.—For the purposes of this sub-section, “total number of directors” shall not include independent directors, whether appointed under this Act or any other law for the time being in force, on the Board of a company.]
- If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.
- If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless :-
  - (i) at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and lost;
  - (ii) the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his unwillingness to be so re-appointed;
  - (iii) he is not qualified or is disqualified for appointment;
  - (iv) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or
  - (v) section 162 is applicable to the case.

# ***Right of Persons other than retiring directors to stand for directorship***

- **Extract of the relevant provisions prescribed in Section 160 of the Companies Act, 2013 as under :-**
- A person who is not a retiring director in terms of section 152 shall, subject to the provisions of this Act, be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than fourteen days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or, as the case may be, the intention of such member to propose him as a candidate for that office, along with the deposit of one lakh rupees or such higher amount as may be prescribed which shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than twenty-five per cent of total valid votes cast either on show of hands or on poll on such resolution.
- The company shall inform its members of the candidature of a person for the office of director under sub-section (1) in such manner as may be prescribed.



## ***Additional Director***

- **Extract of the relevant provisions prescribed in Section 161 of the Companies Act, 2013 as under :-**
  - The Board of Directors of the Company may appoint any person, other than a person who fails to get appointed as a director in a general meeting as an Additional Director .
  - Additional Director shall holds the office up to date of the next AGM or the last date on which the AGM should have been held.

## ***Alternate Director***

- **Extract of the relevant provisions prescribed in Section 161 of the Companies Act, 2013 as under :-**
  - The Board may appoint a person, not being a person holding any alternate directorship for any other director in the company, to act as an alternate director for a director during his absence for a period of not less than three months from India
  - Provided further that an alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India.

# *Nominee Director*

- **Extract of the relevant provisions prescribed in Section 161 of the Companies Act, 2013 as under :-**
  - The Board may appoint any person as a director nominated by any institution in pursuance 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 in a Government company.

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# *Independent Director*

- **Extract of the relevant provisions prescribed in Section 149 of the Companies Act, 2013 as under :-**
  - An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director :-
    - who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience
    - who is or was not a promoter of the company or its holding, subsidiary or associate company; who is not related to promoters or directors in the company, its holding, subsidiary or associate company
    - who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year
    - none of whose relatives has or had pecuniary relationship or transaction with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year
    - who, neither himself nor any of his relatives :-
    - holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed.

## *Independent Director -Contd...*

- is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of :-
  - a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent. or more of the gross turnover of such firm
  - holds together with his relatives two per cent. or more of the total voting power of the company; or is a Chief Executive or director, by whatever name called, of any non profit organisation that receives twenty-five per cent. or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent. or more of the total voting power of the company
  - who possesses such other qualifications as may be prescribed
- Every independent director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence as provided in sub-section (6)

# ***Independent Director -Contd...***

- **Relevant Rules in the Companies ( Appointment and Qualification of Directors ) Rules, 2014 as under :-**
  - Following Companies are required to appoint at least Two Directors as Independent Directors on its Board :-
    - Public Companies having paid up share capital of Ten Crore rupees or more**
    - OR
    - Public Companies having turnover of One Hundred Crore rupees or more**
    - OR
    - Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding Fifty Crore rupees**
  - Further such vacancy of an Independent director in the prescribed Company shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is later.
    - Explanation. - For the purposes of this rule, it is here by clarified that, the paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account
- **Qualifications of independent director**
  - An independent director shall possess appropriate skills, experience and knowledge in one or more fields of finance, law, management, sales, marketing, administration, research, corporate governance, technical operations or other disciplines related to the company's business.

# Woman Director

- **Relevant Rules in the Companies ( Appointment and Qualification of Directors ) Rules, 2014 as under :-**
- Provided further that such class or classes of companies as may be prescribed, shall have at least **one woman director**.
  - Following Companies are required to appoint at least One Woman Director on its Board :-
    - Every Listed Company and
    - Every other Public Company having :-  
**Paid- up Share Capital of One Hundred Crore rupees or More**  
**OR**  
**Turnover of Three Hundred Crore rupees or more**
  - Further such vacancy of a woman director in the prescribed Company shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is later.

[Explanation.- For the purposes of this rule, it is hereby clarified that the paid up share capital or turnover, as the case may be, as on the last date of latest audited financial statements shall be taken into account.]

# *Small shareholders' director*

- **Relevant Rules in the Companies ( Appointment and Qualification of Directors ) Rules, 2014 as under :-**

- A listed company may have one director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed.

[Explanation.—For the purposes of this section “small shareholders” means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.]

- A listed company, appoint a Small Shareholders Director may upon notice of not less than one thousand small shareholders or one-tenth of the total number of such shareholders, whichever is lower, such Director is elected by the small shareholders .
- Such company can suo motu appoint a small shareholders Director representing small shareholders and in such a case the provisions of sub-rule (2) shall not apply for appointment of such director.
- Such Small Shareholders Director shall be considered as an independent director subject to, his being eligible under sub-section (6) of section 149 and his giving a declaration of his independence in accordance with sub-section (7) of section 149 of the Act.
- No person shall hold the position of small shareholders' director in more than two companies at the same time, the second company in which he has been appointed shall not be in a business which is competing or is in conflict with the business of the first company

# Procedure

- **Consent to act as director :-** Every person who has been appointed to hold the office of a director shall on or before the appointment furnish to the company a consent in writing to act as such in Form DIR-2.
- **Application for allotment of Director Identification Number :-** Every Person, who is to be appointed as director of a company shall make an application in Form DIR-3, to the Central Government for the allotment of a (DIN).
- **Application for allotment of Director Identification Number :-** Every Person, who is to be appointed as director of a company shall make an application in Form DIR-3, to the Central Government for the allotment of a (DIN).
- **Notice of resignation of director :-** The company shall within thirty days from the date of receipt of notice of resignation from a director, intimate the Registrar in Form DIR-12 and post the information on its website, if any.
- **Copy of resignation of director to be forwarded by him :-** Where a director resigns from his office, forward to the Registrar a copy of his resignation along with reasons for the resignation in Form DIR-11.
- **Copy of resignation of director to be forwarded by him :-** Where a director resigns from his office, he shall within a period of thirty days from the date of resignation, forward to the Registrar a copy of his resignation along with reasons for the resignation in Form DIR-11
- **Return containing the particulars of directors and the key managerial personnel :-**  
A return containing the particulars of appointment of director or key managerial personnel and changes therein, shall be filed with the Registrar in Form DIR-12 within thirty days of such appointment or change, as the case may be



# *Form to be filed*

- ❖ **DIR-1** :- Person who desires to get his name included in the data bank of independent directors shall make an application to the agency.
- ❖ **DIR-2** :- Every person who has been appointed to hold the office of a director shall furnish to the company a consent in writing to act as Director.
- ❖ **DIR-3** :- Every Person, who is to be appointed as director of a company shall make an application to the Central Government for the allotment of a (DIN).
- ❖ **DIR-4** :- verification by the applicant for applying for allotment of (DIN).
- ❖ **DIR-5** :- Application by the (DIN) holder to surrender his or her DIN along with declaration.
- ❖ **DIR-6** :- Intimation of changes in particulars specified in (DIN) application.
- ❖ **DIR-7** :- verification of changes in particulars specified in (DIN) application.
- ❖ **DIR-8** :- Disqualification of directors sub-section (2) of section 164.
- ❖ **DIR-9** :- Whenever a company fails to file the financial statements or annual returns, or fails to repay any deposit, interest, dividend, or fails to redeem its debentures, company file.
- ❖ **DIR-10** :- Any application for removal of disqualification of directors.
- ❖ **DIR-11** :- Where a director resigns from his office, forward to the Registrar a copy of his resignation along with reasons for the resignation.
- ❖ **DIR-12** :- Notice of resignation of director, the company shall on receipt of notice of resignation from a director, intimate the Registrar.

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