

ROLES AND RESPONSIBILITIES OF DIRECTORS

By

J.B.Das

M. Com, LL.B, FCS, PGDM (XIMB).

Former Secretary and General Manager(P&A)
OMC Ltd.

Former Chairman ICSI, BBSR Chapter

- **Integrity** is a certain coherence between what you say and what you do and what you think and how you feel. It is just not your actions. It is the way you are and the way you carry yourself. If you don't bring it there , integrity will be a burdensome exercise where you have somehow to hold it . You do it only when others are watching you : **Saddhu Jaggi Basudev**

DIRECTORs- Nucleus of the Company

Ears, Eyes, brains
hands , nerves
and other limbs of
the Artificial
person
Called
The Company

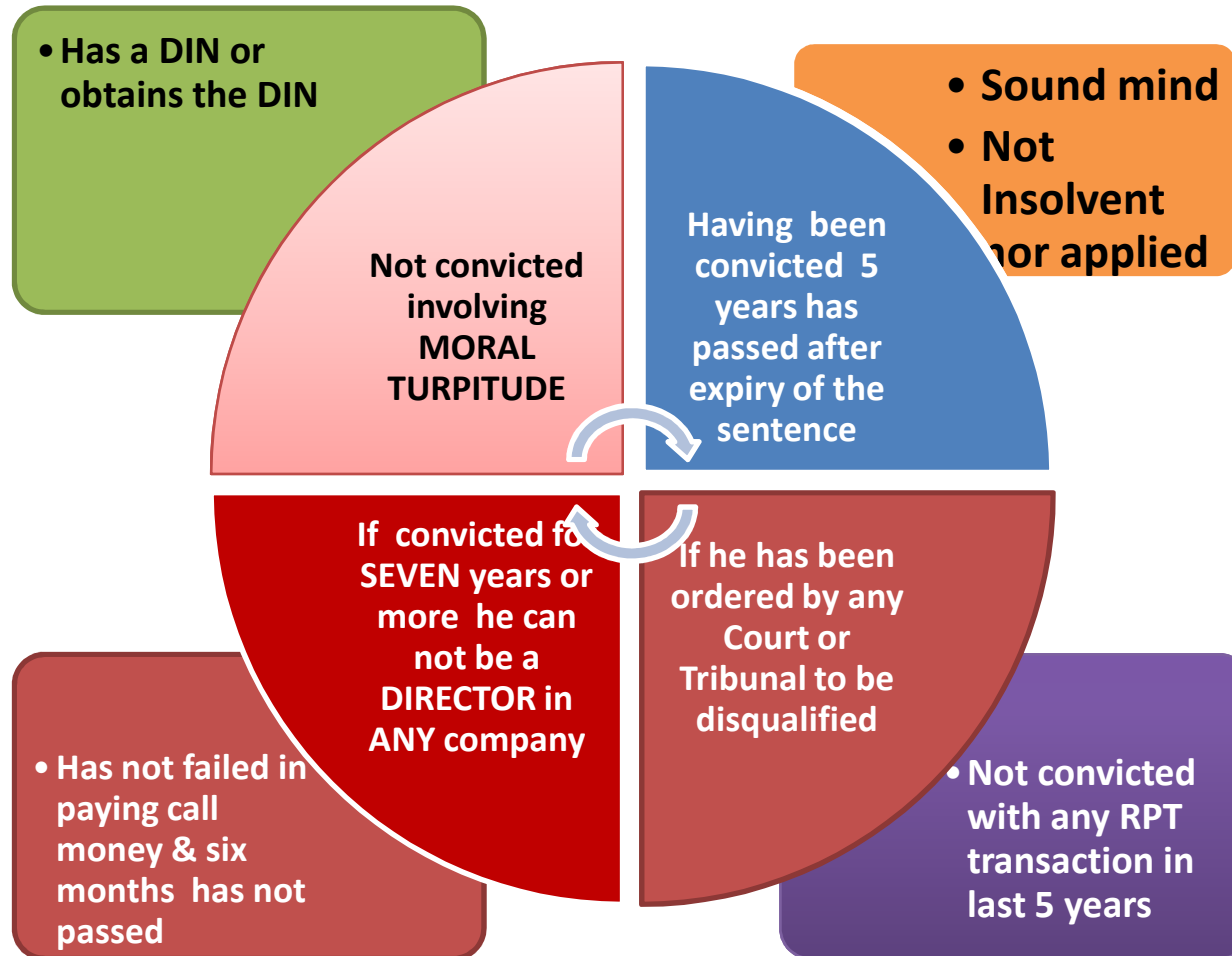
Director means
a Director
appointed to the
Board of a
company-
Sec-2(34)

Sec-2(10)
Board means
the collective
body of the
directors of
the company



Who can be a director?

164

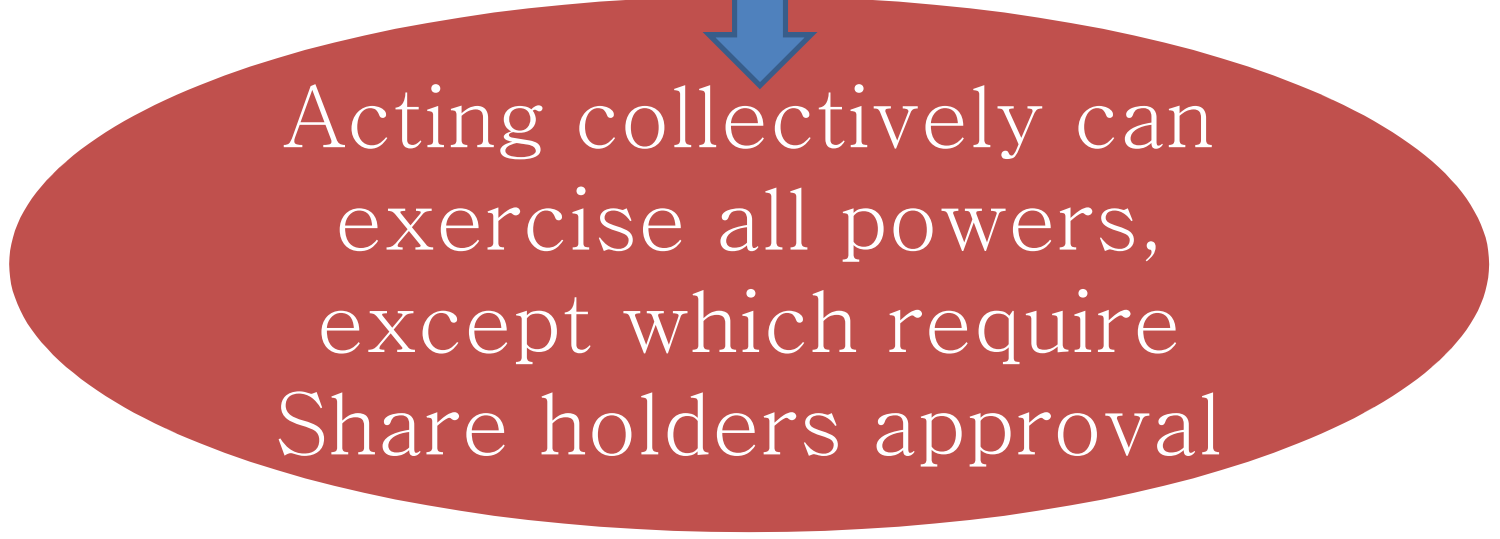


DO THEY HAVE *any* POWER ?

No ! unless authorised by the
Board



Acting collectively can
exercise all powers,
except which require
Share holders approval




NUMBERS

For Companies

Can be increased – By Special Resolution-no CG

approval required .



Max-15
Minimum 3
in case of a
Public Ltd



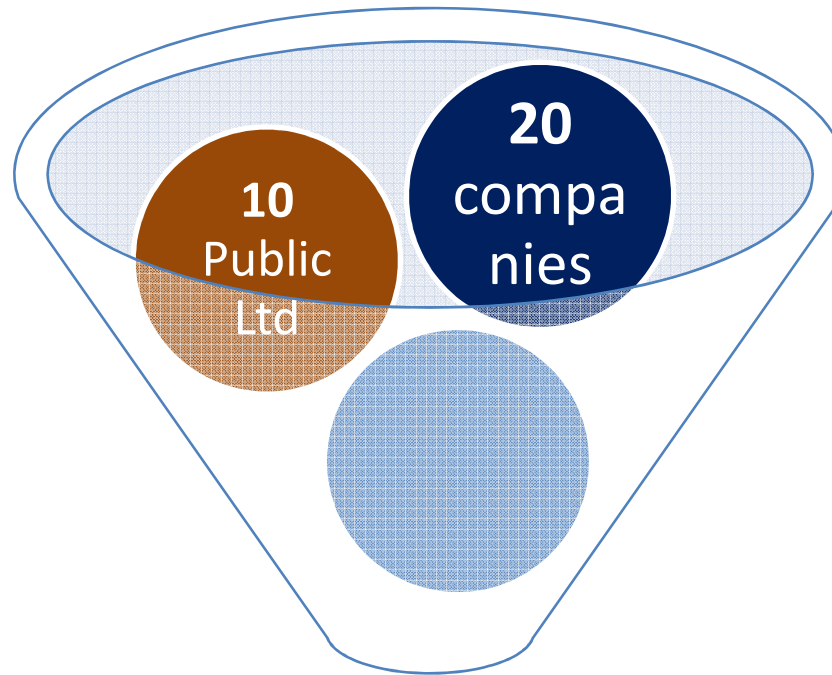
Private Ltd
Com
Max-15
Min-2



OPC
Max-15
Min-1

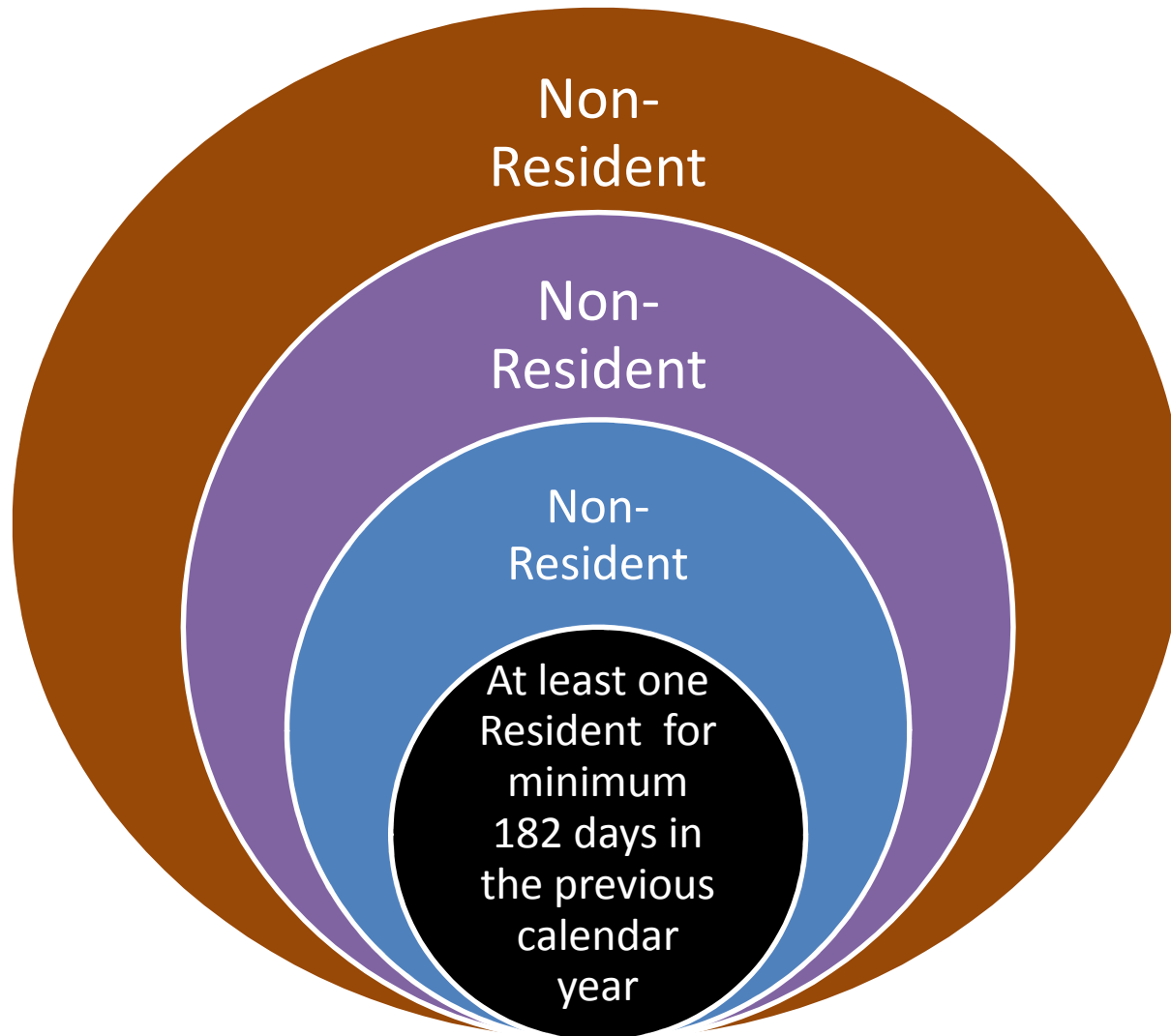
For Individuals

Can be reduced by special- resolution

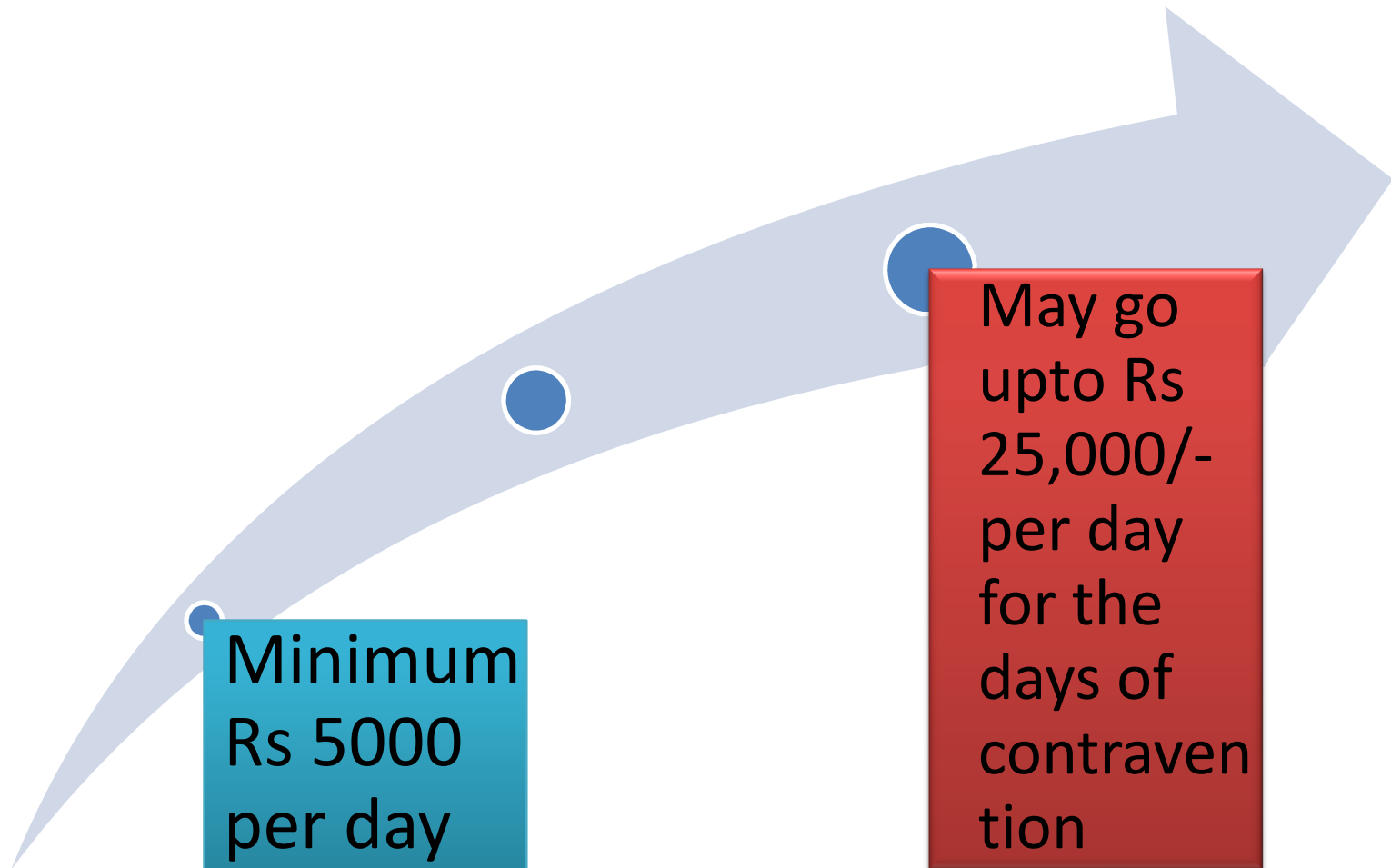


**May be in 20 Pvt Co
or 10 depends**

Residential Character- Sec 149(3)



What happens if nos of directorship exceeds the limit



Woman Director-2nd Proviso to Sec-149

- **Rule 3 of Companies (Appointment and Qualification of Directors) Rules 2014**
- **Every Listed Companies**
- **Every other Public Ltd companies having**
 - **Paid-up capital –Rs 100 cr or more ,or**
 - **turn-over of- Rs 300 cr or more**

Independent Directors

At least 1/3 rd of the Board of all listed companies or all Public Companies

Having Paid-up capital of Rs 10 crores or

Turn over of Rs 100 Cr or more , or

Aggregate outstanding Loan, debentures and deposits exceeding Rs 50 Crores

Nominee Directors are not Independent Directors

Independence ?

Persons of integrity and possess relevant expertise and experience

Who is not a promoter of the company , or of its holding, subsidiary or Associate company

Who and his relatives has no pecuniary relationship with the company ,its holding or associate, or their promoter or Director during last financial year or the current financial year

None of his relatives has any pecuniary relation or transaction with the company , holding, subsidiary etc for more than 2% of gross turn-over

Or total income or Rs 50 lakhs or such higher amount as may be prescribed , which ever will be lower during last 2 previous F-Y

Or holds or has held position of a KMP or an employee in any 3 immediate preceding F-Y or Auditor or legal Consultant or holds along with relatives 2% voting power

Code for Ind Directors-149(8)

- **Guidelines for Professional conduct,**
- **Roles ,functions and duties**
- **Manner of appointment and re-appointment**
- **Resignation or removal,**
- **Separate meetings,**
- **Evaluation mechanism**

Guidelines

- Uphold ethical standards of integrity and probity,
- Act objectively and constructively,
- Act bona-fide for interest of the company,
- Devote sufficient time & attention,
- Not allow extraneous consideration which vitiate his independent judgement ,
- Refrain from action that may cause loss of his independence, lest he must inform the Board ,
- Shall not abuse his position for his personal benefit,
- Assist in implementing best C.G practices

Roles and functions of Ind Directors

- Help in bringing an independent judgment on issues of strategy, performance, risk mgmt, resources, key appointments ,
- Objective view in evaluation of the Board's performance,
- Monitor the achievements against agreed goals,
- Ensure robustness of the financial control system and defensible risk management

contd

- Safe guard interest of all stake holders, particularly the minority holders, and balance the conflicting interest,
- Determine appropriate remuneration of Exe-Directors, KMPs, and Senior Management and remove them wherever necessary,
- Moderate and arbitrate between the stake holders and the management

Duties of Directors

- Proper induction and regular up-dating and refresh skills,
- Take external experts advise when required ,
- Attend all meetings including Committee and General meetings,
- Participate constructively in the meetings,
- Insist for recording of their views when dissenting,
- Not obstruct unfairly functioning of the Board,
- Ensure adequate deliberation before the approval of RPTs and ensure that they are in the interest of the company,
- Ensure availability of proper vigil mechanism and protection of the whistle blowers,

Duties

- Report concern about unethical behaviour, actual and suspected fraud or violation of Company's code of conduct or ethics policy,
- Assist in protecting the interest of the company and all stake holders,
- Not disclose confidential information including commercial secrets, technologies, sales promotional plans, unpublished price sensitive information unless specifically approved by the Board

Tenure

149(10 and 11)
Up to a period of
Five years and
renewed for
another five
years with a
special resolution

His previous
continuance prior to
the Act is
immaterial. He is to
be appointed fresh
for up to 5 years and
renewed for another
period

Can be
appointed
again after 3
years of
cooling period
for third time

A non-executive Director shall be held liable for actions which happened with his knowledge ,attributable through board process & with his consent or connivance only or where not acted diligently

Directors for small share holders -151

All listed companies

**One Director for
small share holders
In not more than
two companies**

**Nominal Value not
exceeding Rs
20,000/-**

**Upon notice from
1000 or 1/10th small
share holders which
ever is lower**

**Tenure shall not
exceed 3 years. No
reappointment after
3 Years**

Directors

Appointed
in AGMs
152

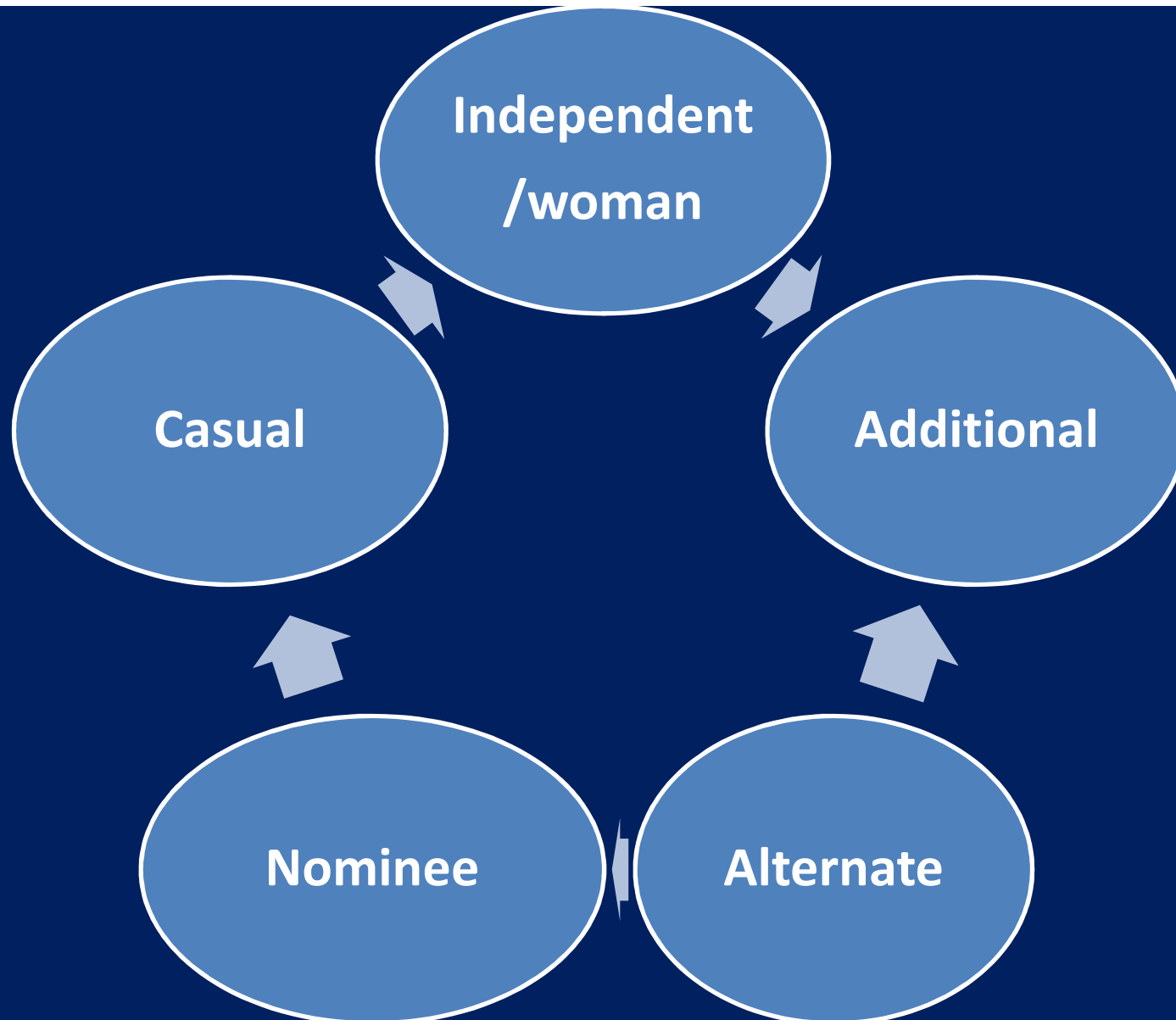
Give his
consent
in DIR-2

Compan
y files
DIR-12
within
30 days

Retire by
rotation
2/3rd
Directors
and 1/3rd in
each year

Contravention of norms above such individual Director punishable with Imprisonment which may extend to 6 months or with fine which may extend to Rs 50,000/- . If continues Rs 500/- for each days of contravention

Types



Duties of the Directors-166

- Act in accordance to the MoA and AoA
- Act in good faith to **promote the object** of the company and protection of environment
- With due & **reasonable** care, skill & diligence & independent judgment
- **Not involve** a situation in which he may have a direct or indirect interest that conflicts with company's.
- **Not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners , or associates**

- If he is found to have achieved direct or indirect undue gain then he will be liable to pay equal amount of the gain to the company.
- Shall not assign his office, and any assignment so made shall be void



Contravention of any of the above the Director shall be Punishable with not less than Rs 1 lakh which may extend to Rs 5 lakhs.

Vacation and consequences

- This is actually a responsibility of the director which he should ensure lest he vacates the office and penalised**

He becomes disqualified u/s 164

Absents from all meetings held in a year

Becomes disqualified by an order of the Court/Tribunal

Fails to disclose his interest in any contract and enters into the contract in violation of Sec 184

He is convicted by a court involving moral turpitude

And imprisoned for a period not less than 6 months

He has to vacate the office even when he has filed an appeal against such order

He has become director for another post held by him

And he loses that post



If knowing that he was supposed to demit office due to the vacation clauses but continue without vacating ,then

Punishable with imprisonment for a term extendable to One year and with fine not less than Rs 1,00,000 which may extend to Rs 5,00,000

Resignation-168 ,& Rule 15,16

- Resignation submitted is bound to be accepted from the date of submission, except of the Managing Director
- The Company files E-Form DIR-12
- The Director also has to file DIR-11 with detailed reasons of his resignation
- Both the forms are to be filed within 30 days of resignation

Removal- 169

Cannot be removed
If appointed by the
NCLT , before his
term expires

Unless an ordinary
resolution is
passed

Reasonable
opportunity has to
be given for being
heard.

For other, a special
notice has to be
given, who wants
removal of any
director

An ordinary
resolution may be
passed

The Director
concerned
proposed to be
removed be given a
hearing

If the concerned
Director gives a
representation for
notification

The company shall
send the copy of
representation to
all members

This is not
required if the
Tribunal restricts it
by an order

Meeting in Video conference

- **Attendance to be recorded by CS/Chairman**
- **He must be informed thru the notice and the director concerned inform in advance about his participation thru video.**
- **He also have to disclose his interest and refrain participation in same manner as of those physically present.**

What can't be passed in video

unless allowed specifically by Chairman

- **Approval of the annual financial statement**
- **Approval of the Boards Report**
- **Approval of the Prospectus**
- **Audit committee meetings for consideration of accounts and**
- **Approval of matters relating to amalgamation, merger, demerger , acquisition and take over**

CONFIDENTIALITY

- The directors are required to maintain strict confidentiality of not only the decision but also the board proceedings. (Fiduciary position) It can be only for the benefit of the company
- Other KMPs attending the Board meeting not being Directors such as CEO and Company Secretary shall also be reticent on the matters discussed.

