

Appointment and Qualification of Directors

1.1 Disqualifications of Directors [Sec 164] & Vacation of Office by Directors [Sec 167]

Expected Question Type	Frequency in Past exams	Importance Level
Applicative	High	High
Sec 164 & Sec 167 are mostly tested together. Generally a disqualification question shall also talk about vacation of office. Questions asked are deeply conceptual and focus on fine points and time limits. Also Sec 164(1)(i) was recently inserted making it important.		

Q1. M/s Iqbal Sons Ltd. issued shares of nominal value of Rs 10 per share, out of which Rs. 5 was payable on application and balance Rs. 5 was payable on call. The call money was invited by the Board of Directors but some shareholders, including a non-executive director failed to pay the same within the prescribed period. Explain the status of director who defaulted in paying call money.

[May 2005]

Ans.

Law	As per section 164(1)(f) of the Companies Act, 2013, a person shall be disqualified from becoming a director if he fails to pay a call on the shares of the company held by him within 6 months from the last date fixed for the payment of the call. As per section 167 of the Companies Act, 2013, the office of a director shall become vacant, if he incurs any disqualification specified in section 164.
Facts of the case	In the given case, a non-executive director has failed to pay a call on the shares of the company.
Conclusion	If the call is not paid for 6 months from the last date fixed for the payment of the call, he shall vacate the office of director held by him. The vacation of office shall be automatic i.e. the non-executive director shall forthwith (i.e. immediately on expiry of 6 months from last date of payment of call) vacate the office of director held by him. Also, in such a case, he shall be disqualified from being appointed or reappointed as a director.

Q2. Mr. A is a director of ABC Ltd. which failed to repay matured deposits from 1st April, 2018 onwards and the default continues. But ABC Ltd. is regular in filing annual accounts and annual returns. Mr. A is also a director of PQR Ltd. and XYZ Ltd.

Answer the following questions with reference to the relevant provisions of the Companies Act, 2013.

- Whether Mr. A is disqualified and if so, whether he is required to vacate his office of director in PQR Ltd. and XYZ Ltd.
- Is it possible for the Board of Directors of DEF Ltd. to appoint Mr. A as an additional director at the board meeting to be held on 15th May, 2019?
- Would your answer differ if Mr. A ceased to a director of ABC Ltd. by resignation on 1st March, 2019?

[May 2002; May 2003]

Ans.

Law	As per section 164(2), a director of a company shall be disqualified from being reappointed as a director in that company or appointed as a director in any other company, if the company of which he is already a director fails to repay its deposits or interest thereon on the due date and such failure continues for 1 year or more. Such disqualification shall remain in force for a period of 5 years. As per section 167, if a director who becomes disqualified under section 164(2) is also a director in any other company, then his office of director in all such other companies shall become vacant, but his office of director in the defaulting company shall not become vacant.
Facts of the case	In the given case ABC Ltd. has failed to repay its deposits on the due date (viz. 1.4.2018) and such default has continued for more than 1 year (viz. beyond 31.3.2019).

Conclusion	<p>Therefore –</p> <ol style="list-style-type: none"> i. Mr. A is disqualified for appointment or reappointment as a director for a period of 5 years. Mr. A cannot continue as director in PQR Ltd. and XYZ Ltd. after 31.3.19. (However, he can continue as a director in ABC Ltd. for his term.) ii. No, it is not possible for the Board of Directors of DEF Ltd. to appoint Mr. A as an additional director in view of his disqualification. iii. Disqualification contained in section 164(2) can apply to a person only if such person was a director as on the date when such disqualification was first attracted. Therefore, if Mr. A has ceased to be a director of ABC Ltd by resignation on 1st March, 2015, he would have escaped the disqualification specified under section 164(2) and accordingly the office of director of Mr. A in PQR Ltd. and XYZ Ltd. would not become vacant and DEF Ltd. could appoint Mr. A as an additional director on 15.5.19.
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Q3. Mr. Dhruv is a Director of M/s. LT Limited and XT Limited respectively. M/s. LT Limited did not file its financial statements for the year ended 31st March, 2016, 2017 & 2018 respectively with the Registrar of Companies (ROC) as mandated under the Companies Act, 2013. M/s. LT Limited also did not pay interest on loans taken from a public financial institution from 1st April, 2017 and also failed to repay matured deposits taken from public on due dates from 1st April, 2017 onwards.

Answer the legality of the following in the light of the relevant provision of the Companies Act, 2013:

- i. Whether Mr. Dhruv is disqualified under Companies Act, 2013 and if so, whether he can continue as a Director in M/s LT Limited? Further can he also seek reappointment when he retires by rotation at the AGM of M/s. XT limited scheduled to be held in September, 2019?
- ii. Mr. Dhruv is proposed to be appointed as an Additional Director of M/s. MN Limited in June 2019. Is he eligible to be appointed as an Additional Director in M/s. MN Limited? Decide.

[May 2013; May 2019]

Ans.

Law	<p>As per section 164(2) of the Companies Act, 2013, no person who is or has been a director of a company which—</p> <ol style="list-style-type: none"> (a) has not filed financial statements or annual returns for any continuous period of 3 financial years or (b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for 1 year or more <p>shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of 5 years from the date on which the said company fails to do so.</p> <p>As per section 167(1)(a), the office of a director shall become vacant in case he incurs any of the disqualifications specified in section 164.</p> <p>Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section.</p> <p><u>Non-payment of interest on loans taken from public financial institutions is not u/s 164(2).</u></p>
Conclusion	<p>Thus, in the light of the said provisions of the Act and the facts of the question:</p> <ol style="list-style-type: none"> i. Yes, Mr. Dhruv is disqualified under the Companies Act, 2013, as M/s LT Limited did not file financial statements for a period of three years. Also, the M/s LT Limited has defaulted in the repayment of matured deposits taken from public since 1st April, 2017 (i.e. the default has continued for more than one year). <p>Mr. Dhruv can continue as a director in M/s LT Limited as proviso to section 167(1)(a) provides that where the director incurs disqualification under section 164(2), the office of the director shall become vacant in all the companies, other than the company which is in default under that sub-section. Whereas he has to vacate the office of director in M/s XT Limited.</p>

	<p>Mr. Dhruv cannot be reappointed (in the AGM to be held in September 2019) as director in M/s. XT Limited.</p>
ii.	<p>Mr. Dhruv cannot be appointed as an Additional Director of M/s MN Limited because as per section 164(2), he is not eligible to be appointed in other company for a period of five years from the date of such default.</p>

Q4. Mr. John is a director of MNC Ltd. which accepted deposits from public. The financial position of MNC Ltd. turned very bad and it failed to repay the deposits which fell due for payment on 10th April, 2017 and such a repayment has not been made till 5th May, 2018. Another company JKL Ltd. wants to appoint the said Mr. John as its director at its AGM to held on 6th May, 2018. You are required to state with reference to the provisions of Companies Act, 2013 whether Mr. John can be appointed as a director JKL Ltd.

[May 2008]

Hints.

Sec 164(2)	<p>No, Mr. John cannot be appointed as a director as he shall be disqualified u/s 164(2) because the default in repayment of deposits is for more than 1 year.</p>
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Q5. Mr. Ramanathan is a director of Fraudulent Ltd., Honest Ltd. and Regular Ltd. For the financial year ended on 31st March, 2014 two irregularities were discovered against Fraudulent Ltd. did not file its financial statements for the year ended 31.3.2014 and failed to pay interest on loans taken from a financial institution for the last 3 years. On 1st June, 2015 Mr. Ramanathan is proposed to be appointed as additional director of Goodwill Ltd., which company has sort as declaration from Mr. Ramanathan and he also submitted the declaration stating that the disqualification specified in section 164 of the Companies Act, 2013 is not attracted in his case. Decide under the provisions of Companies Act, 2013 –

- i. Whether the declaration submitted by Mr. Ramanathan to Goodwill Ltd. is in order?
- ii. Whether Mr. Ramanathan can continue as a director in Honest Ltd. and Regular Ltd?

[June 2009; May 2010]

Hints.

Sec 164(2)	<p>Non filing of financial statements for just 1 year or non-payment of interest on loan from financial institution is not relevant for the purpose of section 164(2). Hence,</p> <ol style="list-style-type: none"> i. The declaration submitted by Mr. Ramanathan to Goodwill Ltd. is in order and valid. ii. Mr. Ramanathan can continue as a director in all companies in which he is director including Fraudulent Ltd., Honest Ltd. and Regular Ltd.
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Q6. Mr. Vikram, director of M/s Tubelight Ltd. has made default in filing annual accounts and annual returns with Registrar of Companies for continuous period of 3 financial years ending on 31st March, 2018. Examine the validity of the following under the Companies Act, 2013.

- i. Whether Mr. Vikram can continue as director of M/s Tubelight Ltd. (defaulting company) and also M/s Greenlight Ltd., where he is also a director? Also, state whether he can be reappointed as director in M/s Tubelight Ltd.
- ii. What would be your answer in case Mr. Vikram is a nominee director of a public financial institution?
- iii. What would be your answer in case the defaulting company is a Private Limited Company?

[November 2017]

Hints.

Sec 164(2) & Sec 167	<ol style="list-style-type: none"> i. Mr. Vikram can continue as director of M/s Tubelight Ltd. (defaulting company), but not in M/s Greenlight Ltd (other company). He shall not be eligible to be reappointed as director in M/s Tubelight Ltd. in view of his disqualification. ii. In case, Mr. Vikram is a nominee director of a Public Financial Institution, then section 164 shall not be applicable to him. [Clarification on prosecutions filed or internal adjudication proceedings initiated against Independent Directors, non-promoters and non-KMP non-executive directors] iii. The answer would remain the same in case of a Private Limited Company as well, as sections 164(2) and 167 equally apply to private companies as well.
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Q7. State with reference to the relevant provisions of the Companies Act, 2013 whether the following persons can be appointed as directors of a public company:

- i. Mr. A, who has huge personal liabilities far in excess of his assets and properties, has applied to the court for adjudicating him as an insolvent and such application is pending.
- ii. Mr. B, who was caught red-handed in a shop listing case two years ago, was convicted by a court and sentenced to imprisonment for a period of 8 weeks.
- iii. Mr. C, a former bank executive, was convicted by a court 8 years ago for embezzlement of funds and sentenced to imprisonment for a period of 1 year.
- iv. Mr. D is director of DLT Ltd., which has not filed its annual returns for 3 continuous financial years.

[May 2004]

Hints.

Sec 164	<ol style="list-style-type: none"> i. Disqualified as application made himself [Sec 164(1)(c)] ii. Not disqualified as imprisoned for less than 6 months [Sec 164(1)(d)] iii. No longer disqualified as more than 5 years have elapsed after the imprisonment period [Sec 164(1)(d)] iv. Disqualified due to consecutive non filing of annual returns for 3 consecutive years [Sec 164(2)(a)]
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Q8. State with reference to the provisions of the Companies Act, 2013 whether the following persons can be appointed as directors of a company:

- i. Mr. L, who has not paid calls in respect of share of a company held by him and five months have passed from the last day fixed for the payment of call
- ii. Mr. G is a director of LDT Ltd., which has not filed the annual return pertaining to the annual general meeting held for the financial years 2015-16, 2016-17 and 2017-18

[November 2016]

Hints.

Sec 164	<ol style="list-style-type: none"> i. Not disqualified as less than 6 months have elapsed from the last date fixed for the payment of call [Sec 164(1)(f)] ii. Disqualified under section 164(2)(a) as non filing for 3 consecutive years
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Q9. In the General Meeting of X Ltd., held on 2.5.18 Mr. A was appointed as a director. On that day, he was not holding any equity shares in X Ltd. As per the articles of association of X Ltd., the share qualification is the holding of 500 shares. On 15.6.18 Mr. A applied for 1000 equity shares in X Ltd. and the shares were allotted on 10.7.18. Discuss as to whether Mr. A's office of director shall be vacated.

[November 2000, May 2003, November 2008]

Ans.

Sec 164 & Sec 167	<p>The grounds of disqualification of a director are contained in section 164 and the grounds of vacation of office of a director are contained in section 167. None of these sections requires holding of any shares in order to become a director, or to continue as a director. Thus, no person shall be disqualified for directorship on the ground that he does not hold any share in the company. Similarly, no director of a company shall have to vacate his office of director on the ground that he did not acquire certain shares in the company.</p> <p>Also, as per Sec 164(3) & Sec 167(4), only a private company can specify additional grounds for disqualification or vacation, as the case may be. Since, X Ltd. is not a private company, such option shall not be available to it.</p> <p>Accordingly, the office of director of Mr. A shall not become vacant.</p>
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Q10. Mr. 'K' is a small shareholder director in M/s KGP Tyres Limited from 1st April 2018 and in M/s VSR Cotton Mills Limited from 1st April 2019, in compliance with the relevant provisions of the Companies Act, 2013. M/s KGP Tyres Limited has not paid interest on the public deposits due from 1st July 2018. In the light of the information given above, examine the following under the provisions of the Companies Act, 2013.

(i) Whether the office of Mr. 'K', small shareholder director, shall become vacant in M/s KGP Tyres Limited and M/s VSR Cotton Mills Limited?

(ii) If yes, state the period from which the office of the directorship shall become vacant.

[November 2019]

Ans.

Law	<p>According to Rule - 7, Companies (Appointment and Qualification of Directors) Rules, 2014, a person shall not be appointed as small shareholders' director of a company, if the person is not eligible for appointment in terms of section 164. Also, a person appointed as small shareholders' director shall vacate the office if the director incurs any of the disqualifications specified in section 164.</p> <p>According to Section 167(1)(a), the office of a director shall become vacant in case he incurs any of the disqualification specified in section 164. Provided that when he incurs disqualification under section 164(2), the office of the director shall become vacant in all companies, other than the company which is in default under that sub section.</p> <p>According to proviso of section 164(2) of the Companies Act, 2013, where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.</p>
Facts of the Case	<p>From 1st July, 2018 and disqualification under section 164(2)(b) of the Companies Act, 2013 occurs on a person who is or has been a director of a company which has failed to repay the deposits accepted by it or pay interest thereon and such failure to pay or redeem continues for one year or more.</p>
Conclusion	<p>(i) Yes, the office of Mr. K shall become vacant in M/s VSR Cotton Mills Limited as he has become disqualified under section 164(2)(b) from 1st July 2019 but not in M/s KGP Tyres Limited.</p> <p>(ii) Mr. K's office of the directorship shall become vacant from 1st July, 2019.</p>

Note – Alternate answer is possible considering the “Clarification on prosecutions filed or internal adjudication proceedings initiated against Independent Directors, non-promoters and non-KMP non-executive directors”.

Q11. Ms. Jai Shvitha is a qualified Chartered Accountant and is known for her in-depth knowledge of Corporate and Economic Laws. She is a Woman Director in PQR Ltd. Due to her tight pre-occupation, she could not attend any Board Meetings of the Company held for a period of 12 months though she has taken leave of absence. Despite the fact that though under Section 167(1)(b) of the Companies Act, 2013 her office of directorship gets vacated, nevertheless, due to her professional competency:

(i) The Board of PQR Ltd. wants to keep Ms. Jai Shvitha's Directorship in the Company and hence proposes to waive the event of absence and/or condone her absence from attending Board meetings.

(ii) Ms. Jai Shvitha also wants to keep the Directorship in PQR Ltd. In the light of the relevant provisions of the Companies Act, 2013, analyse the above situations and advise the Board on the course of action that they can adopt.

[January 2021]

Ans.

Law	<p>Section 167 of the Companies Act, 2013 contains provisions detailing out as to when the office of a director shall become vacant. As soon as, any such event occurs, the director is required to demit the office of director of the company. According to Section 167 (1), the office of a director shall become vacant in case where he absents himself from all the meetings of the Board of Directors held during a period of 12 months with or without seeking leave of absence of the Board.</p>
Conclusion	<p>(1) Ms. Jai Shvitha is required to vacate the office of director in PQR Limited. The proposal of Board of PQR Limited to waive the event of absence or condone her absence from attending meeting is not permissible.</p> <p>(2) Ms. Jai Shvitha desires to keep the directorship in PQR Limited is also not tenable. However, the board is advised to co-opt her as an additional director in the subsequent board meeting as there is no prohibition in the Act for such co-option and reappointment.</p>

Q12. The Petitioners were directors in NPP Limited. Due to default in NPP Limited under section 164(2)(a) of the Companies Act, 2013 on the account of non-filing of financial statements for continuous period of three financial years, the said Petitioners were disqualified to be as director in one or the other companies. They came for the legal counselling against their holding of disqualifications as directors in order to challenge before the Tribunal. Following were the position of the petitioners: One of the petitioner, Mr. X, was also holding directorship in GPS Ltd. and CDM Ltd. Whereas the petitioner, Mr. Y was appointed one month before in NPP Ltd.. Whereas Petitioner, Mr. Z, was within a year of commission of default, offered directorship by RSM Ltd.

Advise, in the light of the given facts, the following legal issues:

- (a) On the validity of attracting of disqualification of Petitioners in NPP Ltd. and vacation of their directorship.
- (b) What will be consequences of default caused in NPP Ltd. on the holding of Mr. X's directorship in GPS Ltd. and CDM Ltd.
- (c) On the validity of offered directorship to Mr. Z by RSM Ltd.
- (d) Legal position of Mr. Y who was appointed one month before, in NPP Ltd.

[MTP March 2021]

Ans.

Law	<p>As per the section 164 (2) of the Companies Act, 2013, no person who is or has been a director of a company which—</p> <p>(a) has not filed financial statements or annual returns for any continuous period of three financial years; or</p> <p>(b) has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more,</p> <p>-shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.</p> <p>Provided that where a person is appointed as a director of a company which is in default of clause (a) or clause (b), he shall not incur the disqualification for a period of six months from the date of his appointment.</p> <p>Further section 167 (1) of the Companies Act, 2013 states that the office of a director shall become vacant in case he incurs any of the disqualifications specified in section 164. Provided that where he incurs disqualification under sub-section (2) of section 164, the office of the director shall become vacant in all the companies, other than the company which is in default.</p>
Conclusion	<p>Accordingly following are the answers to the questions:</p> <p>(a) In the given case, the petitioners have incurred disqualification under sub-section (2) of section 164, and falling under section 167, whereby the office of the directors shall become vacant in all the companies, except in the defaulted company. The petitioners, being disqualified under section 164(2) have to vacate the directorship in all the other companies except in NPP Ltd.</p> <p>(b) On the basis of the section 167(1), Mr. X has to vacate directorship in GPS Ltd. and CDM Ltd.</p> <p>(c) Offer of directorship to Mr. Z by RSM Ltd. was within a year of commission of default, so it's not valid. As per section 164(2), disqualified director shall not be eligible to be appointed in other company for a period of five years from the date on which the said company committed the default.</p> <p>(d) Petitioner, Mr. Y was appointed one month before in NPP Ltd. which is in default, he shall not incur the disqualification for a period of six months from the date of his appointment as he is freshly appointed.</p>

1.2 Types of Director [Sec 161]

Expected Question Type	Frequency in Past exams	Importance Level
Applicative	High	High
Appointing authority and tenure of types of directors is tested in exams many times. Other points such as whether the director after tenure would be considered as retiring or not are also important.		

Q13. One of the items to be considered at the annual general meeting of a public company is the reappointment of a director who has been appointed as an additional director at a Board meeting. State the statutory requirements under the Companies Act, 2013.

[November 1996, November 2008]

Hints.

Sec 161(1) & Sec 160	Additional director is “not a retiring director”. Thus, appointment of additional director after term ends as a regular director & requires compliance with Sec 160.
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Q14. M, who was appointed as additional director at the Board meeting held on 31st May, 2014 continues to be in his office on the ground that the annual general meeting for the financial year 2013-14 was not held as required under the Act. Whether continuation of M in the office is valid? Will your answer be different if M was also appointed as managing director for a period of 5 years with effect from 1st June 2014 at the same Board meeting?

[May 1996]

Ans.

Law	<p>As per section 161(1) of the Companies Act, 2013, an additional director holds office upto the date of next AGM or the last date on which AGM should have been held whichever is earlier. Thus, additional director vacates his office on the last day on which the AGM ought to have been held as per provisions of section 96 of the Companies Act, 2013 and cannot continue in office thereafter on the ground that the meeting was not called or could not be held within the time prescribed under section 96.</p> <p>A managing director must be a director of a company. Therefore, if a managing director ceases to be a director, he automatically ceases to be a managing director. Accordingly, where an additional director who is also appointed as a managing director, vacates the office of the additional director at the AGM, the office of the managing the director also ceases simultaneously with the cessation of the office of additional director. However, if the additional director is elected as a regular director at the AGM (by complying with the provisions of section 160 of the Companies Act, 2013) and thereby he continues as a director, he shall continue as a managing director also for a period for which he has been appointed as a managing director.</p>
Conclusion	<p>Thus, in the given case –</p> <ul style="list-style-type: none"> • M would vacate the office a director on the last date on which the AGM ought to have been held as per section 96. • Only a director can be appointed as a managing director. Since, M vacates the office of additional director, the office of managing director is also vacated, as he is not re-elected as a regular director at the AGM. He shall vacate the office of managing director irrespective of the fact that his appointment as managing director was made for a period of 5 years.

Q15. Prince Ltd. desires to appoint an additional director on its Board of Directors. The Articles of the company confer upon the board to exercise the power to appoint such a director. As such M is appointed as an additional director. In the light of the provisions of the Companies Act, 2013 examine:

- Whether M can continue as director if the AGM of the company is not held within the stipulated period?
- Can the power of appointing additional director be exercised by the AGM?
- As the Company Secretary of the Company what checks would you make after M is appointed as an additional director?

[May 2010]

Hints.

Sec 161(1)	<ol style="list-style-type: none"> No, as term ends on due date AGM ought to have been held [Refer earlier question] The power to appoint additional director is expressly conferred on the Board of Directors by section 161(1) of the Companies Act, 2013. Accordingly, it is not possible for the members to
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	<p>exercise this power. Thus, additional director cannot be appointed in the AGM of any other general meeting.</p> <p>However, in some exceptional cases like, when there is a deadlock in the board or where all directors become interested, the power to appoint additional directors may be exercised by the members. [Barron vs. Potter]</p> <p>iii. The Company Secretary of the company should apply the following checks:</p> <ol style="list-style-type: none"> a. That, Mr. M is not disqualified as per the provision of section 164 and other applicable provisions of the Companies Act, 2013 b. That, Mr. M holds a valid Director Identification Number before he is appointed as an additional director c. That, before appointment, Mr. M furnished to the company his DIN and a declaration that he is not disqualified to become a director under this Act d. That, Mr. M has furnished to the company his consent to act as a director in Form DIR-2 e. That, the consent filed by Mr. M with the company is filed by the company with the Registrar in Form DIR-12 within 30 days of appointment of Mr. M f. That, the particulars of Mr. M along with the details of his shareholding are entered in to the register of directors and key managerial personnel maintained as per provisions of section 170
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Q16. Queens Ltd. is a company listed at Bombay Stock Exchange. Company's Articles empower the Board of Directors to appoint additional director. The Board of Directors, therefore, appoints Mr. K as the additional director. It may, however, be pointed out that earlier, the proposal to appoint Mr. K on the company's board was rejected by the members at the company's AGM. Examining the provisions of the Companies Act, 2013, answer the following:

- i. Whether Mr. K's appointment as additional director by the Board of Directors is valid?
- ii. Whether the company's AGM can appoint Mr. K as the additional director when the proposal to appoint comes before the meeting for the first time?
- iii. In case the AGM of the company is not held within the stipulated time, decide whether Mr. K who was appointed by the board as additional director, for the first time, can continue to act as director?

[May 2015]

Hints.

Sec 161(1)	<ol style="list-style-type: none"> i. As per section 161(1), a person who fails to get appointed as director in an AGM, cannot be appointed as an additional director. Since, earlier the proposal to appoint Mr. K as a director of the company was rejected by the members at the company's AGM, Mr. K cannot be appointed as an additional director. ii. No, however exceptions exist [Refer earlier question] iii. No [Refer earlier question]
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Q17. Mr. Abhi was appointed as an additional director of Pioneer Ltd. on 14th March, 2016. The AGM of the company was scheduled to be held on 29th September, 2016 but due to heavy rains and floods all records of the company were destroyed. In order to rebuild the records, the company approached the Registrar of Companies for extension of time for holding the AGM till 30th December, 2016. In the light of the Companies Act, 2013 advice Mr. Abhi, who was appointed as additional director during the year.

[May 2017]

Ans.

Law	<p>As per section 161(1) of the Companies Act, 2013, an additional director holds office upto the date of next AGM or the last date on which AGM should have been held whichever is earlier.</p> <p>As per section 96, the Registrar may, for any special reason, grant extension of time (not exceeding 3 months).</p>
Conclusion	<p>Assuming that the Registrar granted the extension of time for holding the AGM till 30th December, 2016, the additional director shall have a right to continue in office upto 30th December, 2016 (i.e. upto the due date of the AGM including the extension granted by the Registrar).</p> <p>Mr. Abhi is entitled to continue in office as additional director upto 30th December, 2016. If for reason AGM is not held upto 30th December, 2016, Mr. Abhi shall have to vacate his office on 30th December, 2016.</p>

Q18. Mr. Single, a director of XYZ Ltd. goes to Singapore for a period of 6 months. The board appoints Mr. Replacement in his place as an alternate director. Mr. Replacement was also holding directorship in XYZ Ltd. Identify the nature of appointment of Mr. Replacement in XYZ Ltd. an alternate director.

[MTP August 2018]

Hints.

Sec 161(2)	Mr. Replacement cannot be appointed as an alternate director for any other director of XYZ Ltd. as he himself holds a directorship in the same company.
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Q19. Referring to the provisions of the Companies Act, 2013, examine the validity of the following: The Board of Directors of AJD Ltd. appoint Mr. N as an alternate director for period of 2 months against a director who has proceeded abroad only for a period of 6 months. Articles of association of the company are silent.

[November 2014]

Hints.

Sec 161(2)	The appointment of Mr. N as an alternate director is not valid since the board, in the given case, is not authorized to appoint the alternate director by the Articles or by a resolution passed in general meeting. Also, the board is not authorized to appoint an alternate director for any fixed period (2 months in the given case) since the term of office of alternate director has been fixed by the Act, viz. section 161(2), which is upto the date when the original director returns back to India.
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Q20. Mr. Q, a director of PQR Ltd. proceeding on a long foreign tour, appointed Mr. Y as an alternate director to act for him during his absence. The Articles of the company provide for the appointment of an alternate director. Mr. Q claims that he has right to appoint an alternate director. Examine the given case in the light of provisions of the Companies Act, 2013.

[May 2002, May 2017]

Ans.

Law	<p>As per section 161(2) the board is empowered to appoint an alternate director in place of a director during his absence for a period of not less than 3 months from India. The board can appoint an alternate director only if it is authorized by the Articles or by a resolution passed at a General Meeting.</p> <p>As per section 166(6), no director shall assign his office to any other person, and if a director, in contravention assigns his office, such assignment shall be void.</p>
Conclusion	<p>In the present case, the Board of Directors of PQR Ltd. may appoint Mr. Y or any other person as an alternate director for Mr. Q since PQR Ltd. is authorized by the articles to appoint the alternate director, provided the duration of foreign tour of Mr. Q is not less than 3 months.</p> <p>However, if the appointment of Mr. Y as an alternate director is made by Mr. Q, it would amount to assignment of office which is prohibited under section 166(6) and therefore, the appointment of Mr. Y as an alternate director would be void. Further, an alternate director is appointed by the Board of Directors and not by the director in whose place he is appointed. Therefore, in the present case Mr. Q has no power to nominate a person to act as an alternate director in his place and the appointment of Mr. Y is not in order.</p>

Q21. Referring to the provisions of the Companies Act, 2013, examine the validity of the following: Mr. P who is not qualified to be appointed as an independent director is appointed by the Board of Directors of XYZ Company Ltd., for an independent director, as an alternate director.

[November 2014]

Ans.

Law	As per section 161(2), the board may appoint an alternate director for a director (termed as an original director) during the absence of the original director from India for a period of 3 months or more. It also provides that a person can be appointed as an alternate director for an independent director only if he is qualified to be appointed as an independent director as per section 149(6).
Conclusion	In the given case, the appointment of Mr. P as an alternate director for an independent director is not valid, since Mr. P is not qualified to be appointed as an independent director.

Q22. X, an employee of ABC Ltd. was appointed as an alternate director. In the meantime, the original director returned and wanted to attend the board meeting. Advice.

[CS Final June 1996, CS Final December 1999]

Ans.

Law	As per section 161(2), an alternate director shall vacate his office when the original director returns back to India, irrespective of the fact as to whether the original director attends the board meeting or not. Thus, after an original director comes back to India, only he can attend the board meetings. The alternate director would automatically cease to be director.
Conclusion	In the given case, the contention of the original director is correct and he is entitled to attend the board meeting.

Q.23 The Board of Directors of the UN Ltd., which is a MNC, comprising of directors who are Indian as well as of Foreign Nationals, Mr. X, who is a Director on the Board is very often on business tour abroad. He approached you, being legal expert of the Company, to know the regulatory provisions of the Companies Act, 2013 relating to appointment of Alternate Directors.

Examine the following situations and advise, Mr. X suitably as per the provisions of the Companies Act, 2013.

- (i) Number of directors for which a person, say Mr. Y can be appointed as an Alternate Director.
- (ii) If Mr. Y is appointed as an alternate director in place of a director whose term is indefinite, then, what will be the tenure of Mr. Y?

[July 2021]

Ans.

(i)	<p>According to Section 161(2) of the Companies Act, 2013, the Board of Directors of a company may, if so authorized by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of not less than three months from India.</p> <p>Further, section 165 provides that no person shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time.</p> <p>However, the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.</p> <p>Hence, in the instant case, Mr. Y can be appointed as an alternate director for only one director in the same company but shall not hold office as a director, including alternate directorship in maximum twenty different companies.</p>
(ii)	<p>According to second proviso to section 161(2), 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.</p> <p>Third proviso says that if the term of office of the original director is determined before he so returns to India, any provision for the automatic reappointment of the retiring directors in default of another appointment shall apply to the original and not to the alternate director.</p> <p>Hence, in the instant case, the alternate director shall hold office till the time original director returns to India. In this case, Y will hold office till the time original director returns to India.</p>

Q24. Referring to the provisions of Companies Act, 2013, examine the validity of the following:

The Board of Directors of Sakthi Ltd. decides to appoint on its Board, Mr. Ravi as a nominee director upon the request of a bank which has extended a long term financial assistance to the company. The Articles of Association of the company do not confer upon the board any such power. Also, there is no formal agreement between the company and the bank for any such nomination.

[November 2014, May 2017]

Ans.

Law	As per Section 161(3) of the Companies Act, 2013, 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 if any agreement. The provisions of section 161(3) are subject to any provisions contained in the articles of the company.
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Facts of the case	In the given case, no agreement has been entered into between PQR Ltd. and the bank providing the financial assistance w.r.t. appointment of nominee director. Also, no provision contained in any law for the time being in force authorises the appointment of nominee director. Further, the articles of the company do not confer any power on the board to appoint the nominee directors.
Conclusion	Thus, the appointment of Mr. Ravi as a nominee director is not valid.

Q25. The Board of Directors of XYZ Ltd. appointed Mr. A as director in the casual vacancy caused by resignation of Mr. X. Mr. A is proposed to be reappointed as a director at the AGM, when he vacates his office. Examine with reference to the relevant provisions of Companies Act, 2013, whether Mr. A can be considered as a 'retiring director' and state the legal requirements to be fulfilled to give effect to the proposed appointment of Mr. A as a director at the AGM.

[November 2003]

Hints.

Sec 161(4)	Mr. A shall not be considered as a retiring director. Accordingly, his appointment shall need compliance with section 160.
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Q26. The Board of Directors of Tours Ltd., in terms of articles of the company, filled up the casual vacancy caused by the resignation of Mr. Philip (who was appointed in a duly held general meeting) by appointing Mr. Max as a director on 1st May, 2019. Unfortunately, Mr. Max expired on 10th May, 2019 after working for a period of about 10 days as a director. The board now intends to fill up the casual vacancy by appointing Mrs. Nini (wife of late Mr. Max) in the forthcoming meeting of the board. Referring to and analyzing the provisions of Companies Act, 2013, advice the board whether it can do so.

[June 2009; May 2019]

Hints.

Sec 161(4)	The death of Mr. Max has also resulted in casual vacancy. However, this casual vacancy cannot be filled up by the board, since Mr. Max was not appointed in a general meeting. He was appointed by the appoint (even though ratification of appointment may be required by the General Meeting).
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Q27. Mr. Sachin was appointed as an additional director of Conservative Finance Ltd. w.e.f. 1st October, 2014 in a casual vacancy by way of a circular resolution passed by the board of directors. The next AGM of the company was due on 31st March, 2015, but the same was not held due to delay in the finalization of the accounts. Some of the shareholders of the company have questioned the validity of the appointment of Mr. Sachin and his continuation as additional director beyond 31st March, 2015. Advice the company on the complaints made by the shareholders.

[May 2010]

Hints.

Sec 161(1) & 161(4)	On combined reading of section 161(1) & section 161(4), it can be inferred that it is not possible to fill a casual vacancy by appointing an additional director. Also, resolution for appointing a director for filling casual vacancy needs to be passed at a board meeting and cannot be passed by circular resolution. Hence, the appointment of Mr. Sachin is in contravention of the Act and therefore is invalid. Mr. Sachin cannot continue as a director after the date of AGM, since his very appointment is void ab initio.
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Q28. M/s Bright Motors Pvt. Ltd. at the AGM held on 30.09.2016 appointed Mr. Anmol as a non-executive director on the board of the company for a period of 3 years. On 2nd October, 2017, Mr. Anmol suffered severe heart failure and expired. The Board of Directors of the company on 16th October, 2017, appointed Mr. Prateek to fill the casual vacancy so created. The appointment of Mr. Prateek was made for a term of 3 years by the board. Subsequently at the AGM held on 29.09.2018 Mr. Prateek's appointment was not proposed or approved as the board was of the view that it was not required. But the CFO of the company is of the opinion that the Board of Directors have contravened the provisions of the Companies Act, 2013 in respect of non-approval of appointment of Mr. Prateek and his office tenure. Decide.

[May 2019]

Hints.

Sec 161(4)	As per section 161(4), the appointment of a director filling a casual vacancy requires passing of the resolution in the board meeting and subsequent approval by the members in the immediately next general meeting. However, the appointment of Mr. Prateek was not approved in the next general meeting.
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	The tenure of the office of a director filling a casual vacancy shall be upto the date upto which the director in whose place he is appointed would have held office if it had not been vacated. Accordingly, the tenure of Mr. Prateek would be only upto 29 th September, 2019 (i.e. tenure of the original director) and not for 3 years from 16 th October, 2017.
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Q29. You are the CFO and in-charge of legal compliances of large multi-national company in India. The Board of Directors of the Company are broad based and comprise of competent directors who are Indian as well as Foreign Nationals. Mr. "X", who is a Director (Business Development) on the Board is very often on business tour abroad. He approached you and wants to know from you the regulatory provisions of the Companies Act, 2013 relating to appointment of Alternate Directors. Analyse the following situations and advise suitably, Mr. X referring to the provisions of the Companies Act, 2013.

- To how many directors can a person be appointed as an alternate director and how many votes does he have in one Board Meeting.
- If the original director joins the Board Meeting through video conferencing without returning to India, then, can the alternate director appointed in his place attend the same board meeting? If yes, whose presence and vote will be counted?
- In case of private company, where an alternate director is appointed in place of a non-executive director whose term is indefinite, then, what will be the tenure of such alternate director, provide the original director does not return to India for a longer period say 3-4 years?
- Can an Executive Director/Whole Time Director/Managing Director appoint alternate directors?

[Nov 2019]

Ans.

(a)	<p>According to Section 161(2) of the Companies Act, 2013, the Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of not less than three months from India.</p> <p>According to section 165, no person shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time. However, the maximum number of public companies in which a person can be appointed as a director shall not exceed ten. Hence, in the instant case, a person can be appointed as an alternate director for only one director in the same company but maximum twenty different companies. An alternate director will have only one vote as he can hold alternate directorship for one director only in the same company.</p>
(b)	<p>The office of alternate director is separate from the attendance of the original director in the Board Meeting and as per section 161(2) of the Companies Act, 2013, an alternate director is appointed to hold the office of original director during his absence from India. Accordingly, as far as attendance in Board Meeting by the original director is concerned, an alternate director may continue to hold office even if the original director joins the meeting by video conferencing, but the original director will be deemed to have joined only as a invitee and the attendance of the alternate director shall be counted for the purpose of the Board Meeting. This is specific only with respect to matters which shall not be dealt with through video conferencing. In such matters where video conferencing is allowed, voting of original director will be counted.</p>
(c)	<p>According to second proviso to section 161(2), 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.</p> <p>Third proviso says that if the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.</p> <p>Hence, in the instant case, the alternate director shall hold office till the time original director returns to India, even if the period is as long as 3-4 years.</p>
(d)	<p>As per section 161(2), the Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of not less than three months from India. From the above provision, it is clear that an alternate director can be appointed for any director. Hence, an alternate director can be appointed for Executive director/ Whole time Directors / Managing Director however, not by them but by the board of directors.</p>

Q30. The Board of Directors of the Universal Ltd. which is an MNC comprised of directors who were Indian as well as of Foreign Nationals. Mr. “X”, who is a Director on the Board is very often on business tour abroad. He approached you being legal expert of the company to know from you the regulatory provisions of the Companies Act, 2013 relating to appointment of Alternate Directors. Examine the following situations and advise suitably, Mr. X referring to the provisions of the Companies Act, 2013.

- Number of directors for which a person can be appointed as an alternate director.
- Where an alternate director is appointed in place of a director whose term is indefinite, then, what will be the tenure of such alternate director?
- Can an Executive Director/Whole Time Director/Managing Director appoint alternate directors?

[RTP November 2020]

Ans.

Sec 161(2)	<p>According to Section 161(2) of the Companies Act, 2013, the Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of not less than three months from India.</p> <p>According to section 165, no person shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time. However, the maximum number of public companies in which a person can be appointed as a director shall not exceed ten.</p> <p>Hence, in the instant case, a person can be appointed as an alternate director for only one director in the same company but maximum twenty different companies.</p>
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Q31. Evaluate the following cases of appointment of Director(s), with reference to the relevant provisions of the Companies Act, 2013:

- Ms. Nisha was appointed a director of LMN Limited on 10th October, 2020 in place of Ms. Rachna, who resigned from her office on 31st May, 2020 six months before expiry of term of her office. LMN Limited had its Board meeting on 31st July 2020. Whether appointment of Ms. Nisha is valid?
- The Board of Directors of a Company appointed Mr. Sarvesh as an additional director on 30th July, 2020. Mr. Sarvesh continued to hold his office till 15th October, 2020. The Company had its annual general meeting on 15th October, 2020 which should have held on 30th September, 2020, Whether Mr. Sarvesh can hold office till 15th October, 2020?

[Nov 2020]

Ans.

(i)	<p>As per Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014 along with Second proviso to section 149(1), any intermittent vacancy of a woman director 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.</p> <p>In the instant case, Ms. Rachna has resigned on 31st May 2020 and the immediate board meeting of LMN Ltd. was held on 31st July, 2020. Ms. Nisha was appointed on 10th October 2020. The intermittent vacancy of women director shall be filled by 31st July, 2020 (immediate Board meeting) or by 1st September, 2020 (three months from the date of vacancy of Ms. Rachna) whichever is later.</p> <p>Hence, appointment of Ms. Nisha is not valid.</p>
(ii)	<p>As per section 161(1) of the Companies Act, 2013, Additional director shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.</p> <p>In the instant case, Mr. Sarvesh, the additional director shall hold office upto next AGM i.e. 30th October 2020 or the last date on which the AGM should have been held i.e. 30th September, whichever is earlier. But Mr. Sarvesh continued to hold office till 15th October, 2020 which is not valid. He should hold office till 30th September, 2020.</p>

1.3 Small Shareholder Director – SSD [Sec 151]

Expected Question Type	Frequency in Past exams	Importance Level
Applicative	High	Moderate
Procedure, tenure and number of SSD directorships has been tested previously multiple times. Recommend reading thoroughly Section and Rule from main text/ revision notes.		

Q32. Some of the small shareholders of M/s Progressive Industries Ltd. approach you for advice regarding appointment of one of them as a director of the company. Explain the meaning of the small shareholder and the legal position regarding appointment of a director by such small shareholders.

[November 2001]

Hints.

Sec 151	<p>Sec 151 is applicable to listed companies. It provides that a listed company may have 1 director elected by such small shareholders in prescribed manner. Rule 7 of Companies (Appointment & Qualification of Directors) Rules, 2014 provides that a listed company may upon notice of not less than 1000 shareholders or 1/0th of total number of such shareholders, whichever is lower have a SSD. “Small Shareholder means a shareholder holding shares of nominal value of not more than Rs. 20,000.</p> <p>The small shareholders intending to propose a person as a candidate for the post of SSD shall leave a notice of their intention with the company at least 14 days before the general meeting. The notice shall be accompanied by a statement signed by the person whose name is being proposed for the post of SSD stating (a) DIN; (b) he is not disqualified to act as director; (c) his consent to act as a director.</p>
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Q33. Some small shareholders of TRG Ltd., a company listed with Mumbai Stock Exchange, want to appoint Mr. Raj, who is holding 1,000 equity shares of Rs. 10 each of the company as a director as their representative on the Board of Directors of the said company. You are required to state the relevant provisions of the Companies Act, 2013 in respect of such proposal to appoint Mr. Raj as a small Shareholders’ director.

Also state whether Mr. Raj can be appointed as a Small Shareholder’s Director if he is already a Small Shareholders’ Director in two other companies.

[November 2004, November 2005]

Hints.

Sec 151	<p>A person cannot be a Small Shareholder Director in more than 2 companies at the same time. It shall need to be ensured that the second company in which he is appointed as a SSD shall not be in a business which is competing or is in conflict with the business of the first company.</p> <p>Hence, Mr. Raj cannot be appointed as a small shareholder director in TRG Ltd. if he is already a Small Shareholders’ Director in two other companies.</p>
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Q34. The Board of Directors of M/s ABC Ltd., an unlisted company having a paid-up capital of Rs. 6 crores consisting of equity share capital of Rs. 5 crores and preference share capital of Rs. 1 crore seeks your advice on the following: Is it necessary for the company to appoint a director to represent the ‘Small Shareholders’?

[May 2004, November 2008]

Hints.

Sec 151	The provisions of SSD are applicable only to listed companies. Thus, it is not necessary for ABC Ltd., an unlisted company to appoint a director to represent the small shareholders.
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Q35. M/s. Neemuch Pharma Ltd. is a company listed with Malhargarh Stock Exchange. Some small shareholders of the said company want to appoint Mr. Avadhesh as a Director as their representative on the Board of Directors of the said company. Mr. Avadhesh is holding 1000 equity shares Rs. 10 each in the said company. State the provisions of the Companies Act, 2013 in relation to the proposal to appoint Mr. Avadhesh as a Small Shareholder’s Director.

[November 2011; RTP November 2015]

Hints.

Sec 151	There are no eligibility criteria in terms of shareholding in the company for being appointed as a small shareholder director. Thus, Mr. Avadhesh shall not be debarred from being appointed as SSD merely due to holding 1000 equity shares in the said company.
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Q36. DD Ltd. is a listed company and it has been served with notice for appointment of small shareholder's director. Referring to the provisions of Companies Act, 2013, advise on the following:

- i. Define the expression 'small shareholder' and specify the number of small shareholders who may serve notice on the company for director representing them.
- ii. Is it possible to appoint a person, who does not hold any share in the company, as small shareholder's director?
- iii. What is the tenure of small shareholder's director and whether he can be re-appointed as such, after expiry of his tenure? Also state whether he can be appointed as an officer of the company on expiry of his tenure as small shareholder's director.

[May 2016; May 2019]

Hints.

Sec 151	<ol style="list-style-type: none"> i. Refer Earlier Question ii. There are no eligibility criteria in terms of shareholding in the company for being appointed as a small shareholder director. iii. Tenure of SSD – Not liable to Rotation; Maximum tenure of 3 consecutive years; Cannot be reappointed. SSD should not be associated with the company in any capacity, directly or indirectly for 3 years from the date he ceases to hold office as an SSD. Hence, he cannot be appointed as an officer of the company on expiry of his tenure as SSD for a period of minimum 3 years.
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Q37. Referring to the provisions of the Companies Act, 2013, examine the following:

Mr. Intelligent, was appointed as a small shareholder's director of XYZ Ltd., which is in the business of Oil refining. Subsequently, A Ltd. and B Ltd. have also appointed him as small shareholder's director. Is the appointment valid?

[November 2016]

Hints.

Sec 151	<p>A person cannot be a Small Shareholder Director in more than 2 companies at the same time. It shall need to be ensured that the second company in which he is appointed as a SSD shall not be in a business which is competing or is in conflict with the business of the first company.</p> <p>Hence, Mr. Intelligent cannot be appointed as a small shareholder director in A Ltd. & B Ltd. both. He can accept in only 1 of them as he is already a SSD of XYZ Ltd. However, Mr. Intelligent should ensure that the second company (A Ltd. or B Ltd.) shall not be in a business which is competing or is in conflict with the business of XYZ Ltd.</p>
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Q38. ABC Ltd. a listed company having 5,000 small shareholders, upon receiving notice from 400 for such small shareholders has refused to appoint a small shareholder's director under section 151 of the Companies Act, 2013. Examine the validity of refusal of the company.

[RTP May 2016]

Hints.

Sec 151	<p>A notice shall be required to be given to the company by at least 1000 small shareholders or 1/10th of the number of shareholders (i.e. 1/10th of 5000 shareholders = 500 small shareholders). The notice given by 400 small shareholders does not satisfy the eligibility requirement. Therefore, it is not mandatory for ABC Ltd. to appoint SSD and it can validly refuse to act on such notice.</p>
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Q39. The Board of Directors of M/s. Diya Steels and Aluminum Ltd., a listed company having a paid up equity share capital of Rs. 15 crores and preference share capital of R. 1 crore and 1100 small shareholders holding equity shares, seeks your advice on the following:

- i. Is it mandatory for the company to appoint a director to represent small shareholders?
- ii. If the company decides to appoint such a director, the procedure to be followed by the company for such appointment and the tenure for which such appointment can be made.
- iii. Whether such a director be considered as an independent director?
- iv. When does a person appointed as a small shareholders director vacate his office?

Advice suitably in the light of the provisions of the Companies Act, 2013 and the rules framed thereunder.

[November 2018]

Hints.

Sec 151	<p>i. Section 151 writes the word 'May'. Hence it is optional for M/s. Diya Steel and Aluminum Ltd. to appoint a small shareholder director as it has not received any notice from the eligible small shareholders requiring it to appoint the SSD</p> <p>ii. Refer Earlier Question</p> <p>iii. SSD shall be consider as an independent director if he meets criteria as per section 149(6) & gives declaration of his independence as per section 149(7)</p> <p>iv. The office of SSD shall become vacant if:</p> <ol style="list-style-type: none"> He incurs any of the disqualifications specified in section 164 Any of the grounds contained in section 167 becomes applicable on him He ceases to meet the criteria of independence as provided in section 149(6) Removal of small shareholder director under section 169 is also possible and shall need to vacation of office. At the time of voting on such resolution, every equity shareholder shall have a right to vote irrespective of the fact as to whether he is small shareholder or not
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Q40. Eighty-two shareholders of Perish Limited, a listed Company holding shares of nominal value of ` 19,000 each proposed Mr. Babulal as a Director on the Board. The paid-up share capital of Perish Limited is ` 6.2 Crore (6,20,000 equity shares of ` 100 each). The Company has 800 such shareholders, who are holding shares of nominal value of ` 19,000 or less. Examine with reference to relevant provisions of the Companies Act 2013, whether Mr. Babulal can be appointed as a Director of Perish Limited?

[Nov 2020]

Ans.

Law	<p>According to Section 151 of the Companies Act, 2013 and Rule 7 of the Companies(Appointment and Qualification of Directors) Rules, 2014, a listed company may, upon notice of not less than:</p> <ol style="list-style-type: none"> one thousand small shareholders; or one- tenth of the total number of such shareholders, <p>Whichever is lower, have a small shareholders' director elected by the small shareholders. The term "small shareholders" means a shareholder holding shares of nominal value of not more than ` 20,000 or such other sum as may be prescribed.</p>
Conclusion	<p>In the instant case, Perish Ltd. has 800 small shareholders out of which 82 small shareholders proposed Mr. Babulal as a director on the Board. Thus, it fulfills the requirement of one-tenth of the total number of such shareholders (800*1/10: 80). Hence, Mr. Babulal can be appointed as a director of Perish Ltd.</p>

1.4 Appointment of Director by Proportional Representation [Sec 163]

Expected Question Type	Frequency in Past exams	Importance Level
Simple	Never tested	Low
Overriding nature and 2/3 rd number should be remembered.		

Q41. Explain the methods of voting for appointing the directors by proportional representation.

Ans.

Sec 163	<p>i. Single Transferable Vote In 'single transferable vote', the names of all the candidates contesting the elections are entered in a ballot paper. Irrespective of his shareholding, every member is entitled to cast his vote in favour of one or more candidates in the order of his preference, viz. first preference vote, second preference vote, third preference vote, etc. A candidate who secures votes equal to 'quota' gets elected, and his surplus / unused votes are transferred to other candidate in accordance with the preference stated by the voting member.</p> <p>ii. Cumulative voting In this system, the number of votes to which each member is entitled to, is arrived at by multiplying the number of shares held by him by the number of directors to be elected. A member may cast all his votes in favour of one candidate only, or may distribute his votes among 2 or more candidates. Example: A company decided to elect 8 directors by proportional representation out of 15 candidates contesting the elections. Mr. A, a member has 1,000 shares. Mr. A shall be entitled to cast 8,000 votes. Mr. A may cast all his 8,000 votes in favour of any one candidate, or may distribute his 8,000 votes among 2 or more than 2 candidates.</p>
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Q42. A company has in its articles of association provided for appointment of not less than two-thirds of the total number of its directors according to the principle of proportional representation. Can the directors so appointed be removed by the company in general meeting?

[CS Final December 1995]

Hints.

Sec 163	Directors appointed under Sec 163 cannot be removed by merely following section 169. In fact, Sec 163 overrides the entire Companies Act, 2013.
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1.5 Rotation of Directors [Sec 152(6)] & Automatic Reappointment [Sec 152(7)]

Expected Question Type	Frequency in Past exams	Importance Level
Applicative & Practical	High	High
Very important section having numerous fine points. Recommend practicing all questions, especially for calculation. Sec 152(6) & Sec 152(7) should be read in detail from main book/ revision notes. Case law – B.R. Kundra v Motion Pictures Associations has been tested in the past on whether retiring directors can continue if AGM not held even on due date.		

Q43. A, B, C, D, E, F, G, H, I, J, K & L are directors at AL Ltd. Calculate the number of directors liable to retire at each AGM in the following alternative cases:

Question	Analysis	Total no. of directors	No. of rotational directors	No. of retiring directors
1. All the directors have been appointed by the shareholders in the General Meeting	It has been assumed that 2/3 rd of the total number of directors i.e. 8 are rotational and the balance 4 are non-rotational.	12	8	3
2. A & B are additional directors	Additional directors shall be counted for purpose of total number of directors, but shall be considered as non rotational.	12	8	3
3. A & B are nominees of LIC	Such nominee directors shall be excluded from the total number of directors.	10	7	2
4. A & B are nominees of HDFC Bank Ltd.	Such nominee directors shall not be excluded from the total number of directors.	12	8	3
5. A, B, C & D are independent directors.	Independent directors shall be excluded from total number of directors.	8	6	2
6. A is a managing director or a whole time director.	A MD or WTD shall be rotational or non-rotational depending on the terms of his appointment. He shall, however, always be counted in the total number of directors.	12	8	3
7. A & B were appointed to fill in the casual vacancies in place of Y & Z by the Board. Their appointments were subsequently approved by the general meeting. Y & Z were rotational directors. C & D are non-rotational directors. All other directors are rotational.	A & B are non-rotational as they are casual vacancy directors (appointed by the Board). They shall, however, be counted for total number of directors. A, B, C & D are, therefore, non-rotational directors. Rest all are rotational.	12	8	3

Q44. The Articles of Association of M/s XY Ltd. provide for 5 directors and all the 5 directors are in position. How many directors are liable to retire at the ensuing Annual General Meeting?

[November 1995]

Hints.

Sec 152(6)	In the present case, the company has 5 directors. As per sec 152(6), there should at least 4 (i.e. not less than $\frac{2}{3}$ rd of 5). Now, of such 4 rotational directors, $\frac{1}{3}$ rd i.e. 1 director shall retire from the office at the ensuing AGM.
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Q45. ABC Company Ltd. in its first General Meeting appointed 6 directors whose period of office is liable to be determined by rotation. Briefly explain the procedure and rules regarding retirement of these directors. Will it make any difference, if ABC Company Ltd. does not carry on business for profit?

[November 2002]

Hints.

Sec 152(6)	In the present case, the company has 6 rotational directors. Now, of such 6 rotational directors, $\frac{1}{3}$ rd i.e. 2 directors shall retire from the office at the ensuing AGM. No, it does not make any difference if ABC Company Ltd. does not carry on business for profit.
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Q46. A company has 11 directors on the board consisting of the following:

- i. Mr. Active, Mr. Archieve as nominees from 2 public financial institutions
- ii. Mr. First, Mr. Second, Mr. Third appointed at the second AGM
- iii. Mr. Fourth, Mr. Fifth appointed at the third AGM
- iv. Mr. Addition was appointed as additional director subsequent to third AGM
- v. Mr. Casual was appointed as director in place of Mr. Soul who died and was earlier appointed during the third AGM
- vi. Mr. Excellent was appointed as managing director for 5 years w.e.f. second AGM
- vii. Mr. One More was appointed as an additional director soon after Mr. Addition was appointed as an additional director

List out an order who shall be vacating the office at the fourth AGM of the company.

Hints.

Sec 152(6)	<ul style="list-style-type: none"> • For computation of total number of directors, Mr. Active and Mr. Archieve shall not be counted as they are nominees of public financial institutions. • Additional director as well as managing director shall be counted in the computation of total number of directors. • Therefore, total number of directors for purpose of section 152(6) = $11 - 2 = 9$. • At least $\frac{2}{3}$rd of 9 must be rotational i.e. 6. Mr. Addition, Mr. One More and Mr. Casual shall be non-rotational directors. Mr. First, Mr. Second, Mr. Third, Mr. Fourth, Mr. Fifth and Mr. Excellent shall be rotational directors. • Of these 6, $\frac{1}{3}$rd shall retire at the AGM i.e. 2 directors. • The directors who have served longest shall retire first. Mr. First, Mr. Second, Mr. Third and Mr. Excellent have served the longest. Since they been appointed on the same date, the 2 directors who shall retire shall be determined by agreement among these 4 directors. In case, no such agreement is reached, it shall be decided by draw of lots. • Mr. Addition & Mr. One More, being additional directors, shall vacate their offices on the date of 4th AGM.
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Q47. Explain the circumstances under which a director retiring at an AGM shall be deemed to have been reappointed even though, no appointment has been made.

[May 2003]

Hints.

Sec 152(7)	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, except in certain circumstances.
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Q48. Is it possible for a retiring director to continue in his office beyond the date of AGM which had to be adjourned due to disturbances at the meeting? Explain.

[May 1998]

Hints.

Sec 152(7)	The annual general meeting has been duly convened, i.e. the directors have fulfilled their obligation of converting the annual general meeting, and so the decision given in <i>B.R. Kundra v Motion Pictures Associations</i> shall not apply in this case. The present case shall be dealt with under section 152(7). Therefore, the provisions of Automatic reappointment shall apply.
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Q49. 2 out of 10 directors on the Board of XYZ Ltd. have retired by rotation at an AGM. These 2 vacancies or place of retiring directors is not filled up and the meeting has also not expressly resolved 'not to fill the vacancy'. Since the AGM could not complete its business, it is adjourned to a later date.

Neither place of retiring directors could be filled up at this adjourned meeting nor did the meeting expressly resolve, 'not to fill the vacancy'.

Analyse & apply relevant provisions of the Companies Act, 2013 and decide:

- i. Whether in such a situation the retiring directors shall be deemed to have been reappointed at the adjourned meeting?
- ii. What will be your answer in case at the adjourned meeting, the resolutions for reappointment of these directors were lost?
- iii. Whether such directors can continue in case the directors do not call the AGM?

[May 2010; May 2019]

Hints.

Sec 152(7)	<ol style="list-style-type: none"> i. Refer earlier question [Automatic Reappointment of Director] ii. In case at adjourned meeting, the resolutions for reappointment of retiring directors were lost, there is no question of deemed appointment, they shall have to vacate their offices. iii. In case the AGM is not called, the directors liable to retire cannot continue beyond the last date the AGM ought to have been held, and so their offices shall be vacated.
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Q50. Annual General Meeting of Hero Ltd. has been scheduled in compliance with the requirements of the Companies Act, 2013. In this connection, it has some directors who are rotational and out of which some have been appointed long back, some have been appointed on a same day. Decide in this connection:

- i. Which of the directors shall be retiring by rotation be eligible for re-election?
- ii. In case two directors were appointed on the same day how would you decide their retirement by rotation?
- iii. In case the meeting could not decide how the vacancies caused by retirement to be dealt with, what shall be consequences?
- iv. What will be your answer, assuming that the matter could not be decided even at the adjourned meeting?

[May 2011]

Hints.

Sec 152(6) & 152(7)	<p>(i) & (ii) 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. [Sec 152(6)(d)]</p> <p>(iii) 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. [Sec 152(7)(a)]</p> <p>(iv) 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—</p> <ol style="list-style-type: none"> (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;
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	(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. [Sec 152(7)(b)]
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Q51. A & B were appointed as first directors on 4th April, 2014 in Sun Glass Ltd. Thereafter, C, D and E were appointed as directors on 6th July 2014 and F, G and H were also appointed as directors on 7th August 2014 in the company. In the AGM of the company held after above appointments, A & B were proposed to be retired by rotation and reappointed as directors.

At the AGM, resolutions for A's retirement and reappointment was passed. However, before the resolution for B could be taken up for consideration, the meeting was adjourned. In the adjourned meeting also, the said resolution could not be taken up and the meeting was ended without passing the resolution for B's appointment and retirement.

In the light of above and with reference to the relevant provisions of the Companies Act, 2013, answer the following:

- i. Whether proposals for retirement by rotation and reappointment of A & B only were sufficient?
- ii. What will be the status of B as a director in the company?

[November 2015]

Hints.

Sec 152(6) & 152(7)	<ol style="list-style-type: none"> i. Total number of directors = 8 Number of rotational directors = Not less than $\frac{2}{3}$rd of 8 (i.e. 6) Number of directors due to retire in the AGM = $\frac{1}{3}$rd of 6 (i.e. 2) Hence A & B are due to retire as they have been longest in office. Thus, the proposal to retire and reappoint only 2 directors (viz. Mr. A and Mr. B) is valid.
	<ol style="list-style-type: none"> ii. In the given case, the AGM was adjourned without filling the vacancy in place of Mr. B. Also, at the adjourned AGM, the vacancy in the place of Mr. B. Also, at the adjourned AGM, the vacancy in the place of Mr. B was not filled up. Neither the AGM nor the adjourned AGM resolved not to fill the vacancy. Since the given case does not fall under any of the 5 exceptional cases as stated above, Mr. B shall be deemed to be reappointed.

Q52. The promoters of M/s Frontline Ltd. a listed public company proposed to have the strength of the Board of Directors as 11. They also proposed to make the managing director and whole-time director as directors not liable to retire by rotation. Advice on the following matters as per provisions of the Companies Act, 2013:

- i. Maximum number of persons, who can be appointed as directors not liable to retire by rotation
- ii. How many of the remaining directors will have to retire by rotation every year at the AGM
- iii. For the purpose of increasing the strength, certain nominations were received to nominate candidates for contesting elections. One of the nominations was rejected by the director which was received after sending the notice of AGM and that to after the working hours of the last day on which nomination should have been received.
- iv. Can the Board of Directors increase the strength of company's directors to 18 from 11 by appointing additional directors through passing single resolution

[November 2002; May 2018]

Hints.

Sec 152(6), 160 & 149(1)	<ol style="list-style-type: none"> i. At least 8 directors shall be rotational directors ($\frac{2}{3}$rd of 11 is 7.33; taken as 8 since not less than $\frac{2}{3}$rd of total directors shall be rotational directors). Accordingly, only 3 directors can be appointed as non-rotational directors. Therefore, it is permissible to appoint managing director and whole time director as non-rotational directors. ii. In case 3 directors are appointed as non-rotational directors, $\frac{1}{3}$rd of rotational directors shall retire at the ensuing annual general meeting, i.e. 3 directors ($\frac{1}{3}$rd of 8 is 2.67; nearest to 2.67 is 3). These 3 directors shall be eligible for reappointment. iii. In the instant case, one nomination was rejected by the directors as it was received after sending the notice of AGM and that to after the working hours of the last day on which nomination should have been received i.e. 14th Day. Hence, the contention of the directors is valid. [Sec 160] iv. The Board of Directors is not empowered to increase the number of directors beyond 15 a special resolution shall be required for such in accordance with section 149(1).
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Q53. GSTL Ltd., a listed company, has total number of 20 directors on its board. Following is the composition given as under:

6 directors are independent directors as per the provisions of the Companies Act, 2013,

3 directors are nominee directors appointed by State Bank of India (the financial institution from whom GSTL has taken financial assistance) and

2 directors are nominee directors appointed by Finance Limited to represent its interest (a financial institution with whom the company has long-term lease agreement of land).

Advise Board of Director as to computation of total number of directors who are rotational directors and total number of directors who are liable to retire by rotation.

[MTP March 2021]

Ans.

Law	<p>As per Section 152(6) of the Companies Act, 2013, 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 be persons whose period of office is liable to determination by retirement of directors by rotation; and save as otherwise expressly provided in this Act, be appointed by the company in general meeting.</p> <p>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.</p> <p>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.</p> <p>Any person appointed as a nominee director being nominated by any institution in pursuance of the provisions of any law or any agreement (financial institution that has been created by the Act of Parliament) cannot be considered as a director liable to retire by rotation.</p>
Conclusion	<p>In the above question, Total number of Directors = 20 – 6 (Independent Directors) – 3 (Nominee Directors appointed by State Bank of India) = 11</p> <p>The nominee directors appointed by Finance Limited to represent its interest (a financial institution with whom the company has long-term lease agreement of land) are not deducted from total number of directors because Finance Limited is not the financial institution set up under the Act of Parliament.</p> <p>Total number of directors who are rotational directors = $11 \times \frac{2}{3} = 7.33 = 8$ (not less than $\frac{2}{3}$rd) Total number of directors to retire by rotation = $8 \times \frac{1}{3} = 2.6 = 3$ (nearest to $\frac{1}{3}$rd)</p> <p>Therefore, the total number of directors who are rotational directors and total number of directors who are liable to retire by rotation are 8 and 3 respectively.</p>

1.6 Right of persons other than retiring director to stand for directorship [Sec 160]

Expected Question Type	Frequency in Past exams	Importance Level
Applicative & Procedural	Low	High
Timeline and procedure must be read in detail from main book/ revision notes. Question relating to deposit has been tested in the past.		

Q54. Mr. D, proposes his candidature as a director in X Ltd. along with the deposit of 1 lac rupees. Later Mr. D failed to be appointed but received 30% of total votes. Mr. D asked X Ltd. to refund the deposit but the company denied to pay as he failed to be elected.

[MTP]

Ans.

Law	<p>Where a person who is not a retiring director serves a company a notice of his candidature proposing himself as a director, he is required to deposit a sum of Rs. 1 lakh with the company along with such notice. The amount deposited with the company shall be refunded, if the person proposed gets selected as a director or at least gets more than 25% of the total valid votes cast.</p>
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Facts of the case	In the given case Mr. D has deposited a sum of Rs. 1 lakh with the company but he failed to get elected as a director. However, Mr. D secured 30 % of the total valid votes i.e. more than 25%.
Conclusion	Therefore, Mr. D is entitled to refund of Rs. 1 lakh deposited with the company. Accordingly, the decision of the company not to refund Rs. 1 lakh to Mr. D is not valid.

1.7 Removal of director [Section 169]

Expected Question Type	Frequency in Past exams	Importance Level
Applicative & Procedural	Moderate	High
Timeline and procedure must be read in detail from main book/ revision notes. Nature of section being statutory right is also important. Case law – LIC vs Escorts has been tested multiple times on whether reason should be mentioned in special notice.		

Q55. Mr. X is named as a director for life in the articles of association of M/s. XYZ Pvt. Ltd. which was incorporated on 1st April, 1977. The articles of association of the company also provide that he cannot be removed by the members in general meeting. Some of the members want to remove 'X' by passing an ordinary resolution in general meeting. State with reference to the relevant provisions of the Companies Act, 2013, whether the proposed action is valid.

[November 1995; 1997]

Ans.

Law	Section 169 gives the statutory right to the shareholders to remove any director before expiry of his term by following the prescribed procedure. It applies to public companies as well as private companies. As per section 6, the provisions of the Act shall have an overriding effect on clauses contained in the memorandum, articles or any other agreement, if they are not in conformity with the provisions of the Act. The clause in the articles that director cannot be removed, violates the statutory right given to the shareholder, and is ultra vires the Act.
Facts of the case	In the present case the articles of the company provide that X shall be a director holding office for life and he shall not be removed by the members in general meeting.
Conclusion	In view of the overriding effect of section 6, this clause is repugnant to section 169 and is therefore void. Accordingly, the proposed action of removal of X by passing an ordinary resolution in general meeting is valid, subject to the compliance with section 169.

Q56. Mr. SDR, a shareholder in M/s. JKP Ltd. holding 50,000 equity shares of Rs. 10 each fully paid up, wants to give a special notice to the company for removal of Mr. EDM, a director of M/s. JKP Ltd. without stating any reason in the notice. You are required to state as per the provisions of Companies Act, 2013 and/or any decided case law whether Mr. SDR is entitled to do so.

[November 2007, May 2004]

Ans.

Law	Section 169 gives a statutory right to the members to remove the director before the expiry of his tenure of office. It requires that a special notice shall be given to the company where a director is proposed to be removed. As per 115, the notice to move the resolution for removal of director must be given to the company at least 14 days before the general meeting (excluding the day on which such notice is given and the day of the general meeting) and must be signed by member(s) holding not less than 1% of total voting power or paid up share capital of Rs. 5 lakhs. It was held in LIC v Escorts Ltd. that it is not necessary for a member to state grounds for a removal of a director at the time of calling the general meeting. As per the provisions of section 102 of the Companies Act, 2013, it is the duty of the Board to disclose in the explanatory statement all the material facts and necessary information that may enable the member to understand the meaning, scope and implications of the proposed business and take decision thereon. Thus, neither section 169 nor section 102 requires a member to disclose the reasons for the resolutions proposed at the meeting.
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Conclusion	In the present case, the paid up share capital held by Mr. SDR is Rs. 5 lakhs. Thus, he is eligible to give such notice. Also, in view of the above, non-disclosure of reasons for removal of director does not make the notice invalid. The notice is as per the requirements of Companies Act, 2013, and the company is required to act on such notice as per the provisions of section 169.
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Q57. The articles of association of the company provided that X will be a permanent director of the company so long as he holds one-third of the issued share capital. A shareholder sends a special notice to the company for removal of the director X in the general meeting by ordinary resolution. Can X be removed from the directorship?
[CS Final December 1997]

Hints.

Sec 169	Section 169 is a statutory right. It is possible to remove such director as well. [Refer earlier question]
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Q58. Adam, a 15% shareholder of a company and other shareholders have lost confidence in the Managing Director (MD) of the company. He is a director not liable to retire by rotation and was re-appointed as Managing Director for 5 years w.e.f. 1.4.2015 in the last AGM of the company.
Mr. Adam seeks your advice to remove the MD after following the procedure laid down under the Companies Act, 2013.

- i. Specify the steps to be taken by Mr. Adam and the company in this behalf;
- ii. Is it necessary to state reasons to support the resolution for his removal?

[November 2006]

Hints.

Sec 169	i. Section 169 is a statutory right. Hence, it is possible for a removal of a non-rotational managing director as well. For procedure, refer section 169 – Removal of Director.
LIC v Escorts Ltd.	ii. No reason is required. [Refer earlier question]

Q59. A, one of the shareholders of a company, filed a civil suit in a Court for removal of directors B, C and E. Is the suit maintainable?

[CS Final June 1996; CS Final June 1998]

Ans.

Sec 169	A Civil Court does not have jurisdiction to entertain a suit for removal of a director since the matter relates to the internal management of the company which is governed by the Companies Act, 2013 [Khetan Industries Pvt. Ltd v Manju Ravindra Prasad Khetan (1995) 16 CLA 169 (Bom)]. Section 169 has given to the shareholders necessary powers (subject to adequate safeguards) to remove a director and thus a Civil Court has no jurisdiction to entertain a suit for removal of a director.
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1.8 Resignation of director [Section 168]

Expected Question Type	Frequency in Past exams	Importance Level
Applicative & Procedural	Moderate	High
Timeline and procedure must be read in detail from main book/ revision notes. E-Forms are tested in exams. No requirement of any acceptance of resignation is a key point tested.		

Q60. Due to internal problems in the working of M/s. Infighting Detergents Ltd., Mr. Satya, the executive director, and Mr. Shivam, a director, have submitted their resignations and decided to disassociate themselves with the working of the company. Mr. Sundaram, the managing director, decides to refuse their resignations. Examine whether the managing director can compel Mr. Satyam and Mr. Shivam to continue as per the provision of the Companies Act, 2013.

[May 2001]

Ans.

Law	Section 168 of the Companies Act, 2013 lays down the provisions with respect to resignation of director. It does not grant any right to the managing director or to the Board of Directors to refuse the resignation of a director.
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	Section 168 expressly provides that the resignation of the director shall take effect from the date, if any specified by the director in the notice or the date on which the notice is received by the company, whichever is later.
Conclusion	In the present case, Mr. Sundaram, the managing director, cannot compel Mr. Satyam or Mr. Shivam to continue in office. Mr. Satyam and Mr. Shivam shall vacate their offices from the date specified in their respective notices or the respective dates of receipt of their notices of resignation by the company, whichever is later.

Q61. Mr. Raj, a director of PQR Ltd., submitted his resignation from the post of director to the Board of Directors on 30th June, 2014 and obtained a receipt thereof on the same day. The Board of Directors of PQR Ltd. neither accepted the resignation nor did it file any form with the register of companies. You are required to state whether Mr. Raj ceases to be a director of PQR Ltd. and if yes, since when?

[November 2004]

Ans.

Law	<p>As per section 168, a director who resigns may within 30 days of resignation, forward to the Registrar, a copy of his resignation in Form No. DIR-11 along with detailed reasons for the resignation.</p> <p>Also, section 168 casts a duty on the company to intimate the Registrar regarding the resignation by a director in Form No. DIR-12, within 30 days of receipt of resignation from the director.</p> <p>Section 168 does not require that the resignation of a director is to be accepted by the Board of Directors or any other person or authority. Also, section 168 does not grant any right to the managing director or to the Board of Directors to refuse the resignation of a director.</p> <p>Section 168 expressly provides that the resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.</p> <p>The effective date of resignation is not related to the date of filing of Form No. DIR-11 or Form No. DIR-12. Filing of Form No. DIR-11 or DIR-12 are only consequential acts i.e. filing is not an act to be complied with in order to make a resignation effective. Even if no form is filed with the registrar, the resignation shall take effect from –</p> <ol style="list-style-type: none"> i. The date on which the notice of resignation is received by the company; or ii. The date, if any, specified in the notice of resignation, whichever is later.
Conclusion	Assuming that the notice of resignation of Mr. Raj did not specify any date with effect from which the resignation shall take effect, Mr. Raj shall cease to be a director with effect from 30 th June, 2014, i.e. the date on which the notice of resignation is received by the company.

Q62. Vijay, a director resigns after giving due notice to the company and he forwards a copy of resignation in e-form DIR-11 to the Registrar of Companies (ROC) within the prescribed time. What would be the status of Vijay if the company fails to intimate about the resignation of Vijay to ROC?

[May 2017]

Hints.

Sec 168	Mr. Vijay has filed Form DIR-11 with the Registrar. But the company has failed to file Form DIR-12 with the Registrar. Non-filing of Form DIR-12 does not invalidate the resignation of Vijay. Mr. Vijay shall cease to be a director with effect from the date on which his resignation is received by the company or the date, if any, specified by Mr. Vijay in his resignation, whichever is later. [Refer earlier question]
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1.9 Number of Directors [Sec 149(1)]

Expected Question Type	Frequency in Past exams	Importance Level
Applicative	Moderate	High
Care should be taken for Government Companies and Sec 8 Companies. Statutory limit and limit because of Articles both should be evaluated for proper compliance.		

Q63. KMR Ltd., a listed public company, has 15 directors on its Board. The articles of associations of the said company provide for the maximum number of directors to be 15. Due to diversification and expansion of activities, the Board of Directors of the said company desires to increase the number of directors to 18. Decide with reference to the applicable provisions of Companies Act, 2013:

- i. Whether the Board of Directors can do so?
- ii. Will your answer differ if the said company would have been a Government Company?

[May 2019; November 2003; June 2009]

Hints.

Law	According to section 149(1) of the Companies Act, 2013 the minimum number of directors in the case of a public company is 3. The maximum number of directors shall be 15. The proviso to section 149(1) states that a company may appoint more than 15 directors after passing a special resolution.
Conclusion	<ol style="list-style-type: none"> i. Yes, the Board of Directors can do by following the below mentioned provisions: <ol style="list-style-type: none"> a. Pass a special resolution to alter its Articles of Association, so as to increase the maximum number of directors in the Articles from 15 to 18 (or more than 18) [Sec 14] b. Pass a special resolution approving the appointment of more than 15 directors i.e. 18 in this case [Section 149(1)] ii. In case of Government company, MCA has clarified the limit of maximum directors and their increase in limit by special resolution by special resolution shall not apply if such company has not defaulted in filing financial statements or annual returns. However, special resolution to amend articles shall still be required.

Q64. The Articles of Association of Rajasthan Toys Private Limited provide that the maximum number of Directors in the company shall be 10. Presently, the company is having 8 directors. The Board of directors of the said company desire to increase the number of directors to 16. Advise whether under the provisions of the Companies Act, 2013 the Board of Directors can do so.

[May 2010; Study Material]

Hints.

Sec 149(1)	Yes, the Board of Directors can do by following the below mentioned provisions: <ol style="list-style-type: none"> a. Pass a special resolution to alter its Articles of Association, so as to increase the maximum number of directors in the Articles from 10 to 16 (or more than 16) [Section 14] b. Pass a special resolution approving the appointment of more than 15 directors i.e. 16 in this case [Section 149(1)]
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1.10 Number of Directorships [Sec 165]

Expected Question Type	Frequency in Past exams	Importance Level
Applicative & Practical	High	High
Care should be taken for Private & Public Companies and Sec 8 & Dormant Companies. Also, alternative should be mentioned at the end that person may step down from existing companies to take up appointment in new companies, if seems more lucrative. Also, Sec 164(1)(i) and Sec 167 implications should be evaluated.		

Q.65 As on 31-3-2021, Mr. K. Muthusamy is holding directorship in 4 listed Companies, 4 unlisted Public Companies and 4 Private Limited Companies. He has obtained two Director Identification Number (DINs) allotted to him inadvertently. Out of the 12 directorships, he holds 10 with the DIN allotted to him first and the rest with the DIN allotted to him later. He wants to surrender one of his DINs, but to keep all his 12 Directorships. In the light of the relevant provisions of the Companies Act, 2013, examine the following:

- (i) Which DIN sourced by Mr. K. Muthusamy be surrendered?
- (ii) What procedure he needs to follow and what actions will be done by the Central Government in this regard?
- (iii) In what way can he keep all his 12 Directorships with one DIN?

[July 2021]

Ans.

(i)	Prohibition on obtaining more than one DIN: According to Section 165, no individual, who has already been allotted a DIN under section 154, shall apply for, obtain or possess another DIN. Mr. K. Muthusamy can hold the DIN which was allotted to him first and he can surrender the DIN which was allotted to him subsequently.
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(ii)	Rule 11 of the Companies (Appointment and Qualification of Directors) Rules, 2014 lays down the procedure for cancellation or surrender or deactivation and reactivation of DIN. Accordingly, the Central Government or Regional Director (Northern Region), Noida or any officer authorised by the Regional Director may, upon being satisfied on verification of particulars or documentary proof attached with the application received along with prescribed fee from any person, cancel or deactivate the DIN in case the DIN is found to be duplicated in respect of the same person provided the data related to both the DINs shall be merged with the validly retained number.
(iii)	To keep all the 12 directorships with one DIN: In compliance with Rule 11 by Mr. K Muthusamy, on surrender of 2nd DIN, data related to both the DINs shall be merged with the valid DIN. Thereby all 12 directorships shall migrate with DIN 1.

Q66. Mr. Raj is director in 10 public limited companies as on 30th July, 2014 and continues to be so till 24th September, 2014. The following companies appoint Mr. Raj as a director at their respective Annual General Meetings:

- i. MLP Ltd. (AGM held on 27/9/2014)
- ii. PAT Pvt. Ltd (AGM held on 25/9/2014)
- iii. Retail Traders Association, a Section 8 company (AGM held on 26/9/2014)
- iv. KMC Ltd. (AGM held on 29/9/2014)

You are required to state with reference to the relevant provision of the Companies Act, 2013 the options available to Mr. Raj in respect of accepting or not accepting the appointment of the above companies.

[November 2003; May 2008]

Hints. As per section 165,

MLP Ltd.	Already in 10 public limited companies	Cannot be appointed.
PAT Pvt. Ltd	The overall limit of 20 is available. As private limited company, ceiling of 10 does not have relevance.	Can be appointed
Retail Traders Association	The ceiling of directorships excludes section 8 companies.	Can be appointed
KMC Ltd.	Already in 10 public limited companies	Cannot be appointed.

- i. It is not clarified by the question about the status of directors after the 24th September, 2014. So, the answer has been given assuming that there is no change in existing directorships.
- ii. Alternatively, Mr. Raj may resign from his existing directorships in 2 public companies and accept the directorship in MLP Ltd. and KMC Ltd., or he may resign from his existing directorship in one public company and accept the directorship in either MLP limited or KMC limited.

Q67. Mr. Influential is already a director of 19 companies. Out of these 19 companies, 10 are public companies and 9 are private companies. Mr. Influential is being appointed as director of another company named Expensive Remedies Ltd. Advice Mr. Influential in regard to the following:

- i. Restriction on the number of directorships to be held by an individual and whether he can accept the new appointment in view thereof. What would be your answer if Mr. Influential was appointed as a director in ABC Pvt. Ltd. instead?
- ii. What are the companies to be excluded for the purpose of calculating the ceiling on the appointment of directors?

[November 2001]

Ans.

Sec 165	<p>i. As per section 165,</p> <ol style="list-style-type: none"> a. A person shall not hold office as a director in more than 20 companies. b. The number of public companies in which may be appointed as a director shall not exceed 10. In the present, Mr. Influential is proposed to be appointed as a director in Expensive Remedies Ltd. which is a public company. If Mr. Influential accepts this directorship, the directorships held by him in public companies shall be 11 which will exceed the maximum permissible number viz. 10. Accordingly, Mr. Influential cannot accept the directorship in Expensive Remedies Ltd. <p>However, if Mr. Influential was appointed as a director in ABC Pvt. Ltd. instead of Expensive Remedies Ltd., it would have been permissible for him to accept such directorship since accepting such directorship would not result in any contravention of section 165 as his directorships in public companies would have been 10 and his directorships in all companies, whether public or private would be 20.</p>
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|--|--|
| | ii. For reckoning the limit of directorship, directorship of a section 8 company (if such company has not committed any default in filing with the Registrar its financial statements or annual return). |
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Q68. Mr. Fortune is holding directorship in the following types of companies:

- i. 4 public companies
- ii. 10 private companies
- iii. 2 companies registered u/s 8 of the Companies Act, 2013

Mr. Fortune further received offer from 7 public companies, 6 private companies and 2 companies registered u/s 8 of the Companies Act, 2013. He wants to take up maximum permissible directorship. His order of preference is as follows:

- i. Public companies
- ii. Private companies (Not being holding or subsidiary of any public company)
- iii. Companies registered u/s 8 of the Companies Act, 2013.

Advice Mr. Fortune referring to the restriction provisions imposed in the Companies Act, 2013

[RTP November 2017; MTP March 2018]

Hints.

Sec 165	Mr. Fortune is already a director in 16 companies. However, for purpose of sec 165, his directorships shall be counted as 14, since 2 directorships held by him in Sec 8 companies shall be excluded. Therefore, Mr. Fortune can accept a maximum of 6 directorship in public companies. He cannot accept any further directorship offered to him in the private companies after accepting in public companies. However, he can still accept directorships in two sec 8 companies.
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Q69. Referring to the provisions of the Companies Act, 2013, examine the validity of the following appointment of Directors:

(A) Brown Limited, having a turnover of Rs. 60 crores in the financial year 2016-17 appoints Ms. Rose as the woman director on 1st March 2017. Ms. Rose already holds directorship in twelve companies including ten public companies. She is whole time Cost Accountant in practice.

(B) Ms. Jasmine holds directorship in eight public companies including managing directorship in two companies and directorship in six companies. In addition, she also holds alternate directorship in three companies and independent directorship in three subsidiary companies of Brown Limited.

[November 2018; RTP May 2018; MTP April 2018]

Hints.

Sec 165	<p>(A) Ms. Rose is already holding directorship in 12 companies including 10 public companies. As Ms. Rose is already a director in 10 public companies, her appointment in Brown Limited is not valid as it will lead to her directorship in 11 public companies. In this case, either she can choose between the companies in which she wishes to continue to hold the office of director or resign her office as director in the other remaining companies.</p> <p>(B) Ms. Jasmine is already holding directorship in 8 public companies and alternate directorship in 3 companies (assuming these companies as private) and independent directorship in 3 subsidiary companies of Brown Limited. Directorship in three subsidiary companies of Brown Limited will be considered as directorship in three more public companies. Hence, total holding of directorship by Ms. Jasmine in public companies amounts to 11 (8+3) which is invalid. In this case, either she can choose between the companies in which she wishes to continue to hold the office of director or resign her office as director in the other remaining companies.</p> <p><u>Assumption:</u> As nothing is mentioned that whether three companies in which Ms. Jasmine is holding alternate directorship are private or public, we are assuming that these companies are private in nature. Even if assumption that Ms. Jasmine is holding alternate directorship of a public company is taken, conclusion will not change.</p>
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Q70. Mr. 'R' holds directorship in 10 Public Companies and 11 Private Companies as on 31.05.2019. One of the above Private Company is a dormant Company. Apart from the dormant Company, on 30.06.2019 a Private Company (in which Mr. R is holding directorship) has become a subsidiary of a Public Company.

In the light of the provisions of the Companies Act, 2013 examine and decide:

(i) The validity of holding directorship of Mr. 'R' with reference to number of directorship as on 31.05.2019 and as on 30.06.2019.

(ii) Whether a Company has power to specify any lesser number of Companies in which a director of the Company may act as a director?

[November 2019]

Hints.

(i)	In the instant case, holding of directorship of Mr. R as on 31.05.2019 is valid as he is holding directorship in 10 public companies and in 11 private companies out of which one company is dormant company. So, maximum directorship he is holding in 20 companies. Holding of directorship of Mr. R as on 30.06.2019 is not valid, as on 30.06.2019 a private company (in which Mr. R is holding directorship) has become a subsidiary of a public company. Accordingly, it means that this private company shall deemed to be included in the limit of public companies and thereby increasing the number of public companies in which he is holding directorship to 11 and making it invalid.
(ii)	According to section 165(2), Subject to the provisions of sub-section (1), the members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as directors.

1.11 One Woman Director [Second Proviso to Sec 149(1)]

Expected Question Type	Frequency in Past exams	Importance Level
Limits & Procedural	Moderate	Moderate
Applicability of provision and Casual vacancy are important testing points.		

Q71. Examine the validity of the following appointment with reference to the provisions of the Companies Act, 2013:

The Board of Directors of MLP Ltd. appointed Ms. Neha as woman director in the board meeting held of 10th September, 2014. The said appointment was made to fill the vacancy of the woman director, which had occurred as a result of resignation of Ms. Sheila on 30th June, 2014. Will your answer differ if the board meeting of the company was held on 8th November, 2014?

[May 2015; November 2016]

Ans.

Law	As per Second Proviso to section 149(1), any vacancy in the office of one woman director shall be filled by the board at the earliest but not later than – a. Next board meeting or b. 3 months from the date of such vacancy, whichever is later
Conclusion	In the given case, vacancy in the office Ms. Sheila arose on 30 th June, 2014. The period of 3 months (from the date of vacancy) shall expire on 30 th September, 2014. The vacancy in the office of Ms. Sheila has been filled by the board by appointing Ms. Neha in the board meeting held on 10 th September, 2014. The said appointment has been made within a period of 3 months from the date of vacancy and so the appointment has been validly made. Even if the board meeting held on 10 th September, 2014 is not the first board meeting held after the vacancy arose, the appointment shall be valid, since the vacancy has been filled up within 3 months. If the vacancy is filled on 8 th November 2014 instead of 10 th September, 2014 the said appointment shall be valid only if the board meeting held on 8 th November, 2014 is the first board meeting held after the 30 th June, 2014.

Note-

- i. Sec 173(1) requires a company to hold at least 4 board meetings in every calendar year and the gap between any two consecutive board meetings shall not be more than 120 days. In the given question if 8th November, 2014 is the first board meeting held after the 30th June 2014 in such case there would be a contravention of the aforesaid sec 173(1). However, since the question asked requires answer to be given in respect of validity of appointment of Ms. Neha, one need not highlight such contravention.
- ii. As per ICAI the period of 3 months ends on 29th September, 2014. However, in line with sec 9 of the General Clauses Act, 1897, the date of vacancy i.e. 30th June, 2014 shall be excluded in counting of 3 months as the word mentioned is “from” the date of such vacancy. If such is done the answer turns out to be 30th September. Either ways the conclusion remains the same.

Q72. M Ltd. is an unlisted company engaged in FMCG Sector having 11 directors on its board. The company has paid share capital of 300 crores and a turnover of Rs. 500 crores. The provisions contained in the Companies Act, 2013 require the companies to have the following categories of directors on their Board:

- a. Woman director
- b. Independent director

Keeping in view of the provisions of the Companies Act, 2013 M Ltd. appointed the directors as required by the Act. State relevant provisions

[RTP May 2017]

Hints.

Second Proviso to sec 149(1)	<ol style="list-style-type: none"> i. M Ltd. is required to appoint at least one woman director since its paid up share capital is Rs. 300 crores (i.e. the criterion of paid up share of Rs. 100 crores or more is satisfied) and turnover is Rs. 500 crores (i.e. the criterion of turnover of Rs. 300 crores or more is satisfied). ii. M Ltd. is required to appoint at least two directors as independent directors since its paid up share capital is Rs. 300 crores (i.e. the criterion of paid up share of Rs. 10 crores or more is satisfied) and turnover is Rs. 500 crores (i.e. the criterion of turnover of Rs. 100 crores or more is satisfied).
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Q.73 XYZ Ltd. is a newly incorporated listed company formed on 01.01.2021. At present there are 10 directors and 1500 shareholders. Turnover as on 31.03.2021 is Rupees 320 crores.

(1) There are no women directors as on 31.03.2021 Discuss how far the company can continue its operation without any women directors on board.

(2) 150 Small shareholders of the company gave the notice to appoint a director representing them. Can they appoint Mr. A who is already a small shareholders director in 2 other companies. However those other companies are not in conflict with the business of XYZ Ltd. Would your answer be different if Mr. A has no other directorship? (3 Marks)

(3) Can XYZ Ltd. appoint another 6 more directors on board? Would your answer be different if XYZ Ltd. was a company where 52% of the paid up share capital was held by State Government?

[MTP Nov 2021]

Ans.

(1)	<p>As per the Rule 3 of the Companies (Appointment and Qualification of Directors) Rules 2014, following classes of companies shall appoint at least one woman director-</p> <ol style="list-style-type: none"> (i) every listed company; (ii) every other public company having – <ol style="list-style-type: none"> (a) paid-up share capital of one hundred crore rupees or more; or (b) turnover of three hundred crore rupees or more; <p>A company, which has been incorporated under the Act and is covered under provisions of second proviso to sub-section (1) of section 149 shall comply with such provisions within a period of six months from the date of its incorporation.</p> <p>In the given case, XYZ is a listed company and hence has to mandatorily have a woman director on Board. However, because the period of 6 months from date of commencement has not expired, it can continue its operation till 30th June, 2021 without a woman Director on board.</p>
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(2)	<p>According to Section 151 of the Companies Act, 2013, a listed company may have one director appointed by the small shareholders. Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014 prescribes requirements with respect to the appointment of small shareholder director through serving upon notice of not less than one thousand small shareholders or one-tenth of the total number of such shareholders, whichever is lower. Maximum number of directorship held by SSD – No person shall holds the position of small shareholder’s director in more than 2 companies at the same time. Also, the second company is which he is appointed should not be in a business which is conflicting or competing in nature.</p> <p>In the given case, number of shareholders who served the notice for appointment of SSD, is 150 (1/10th of 1500). The fact that other businesses are not in conflict or competing in nature is irrelevant as the limit of directorship in two companies have already exceeded. Hence Mr. A is not eligible.</p> <p>If Mr. A was not a small shareholder’s director in any other company, then Mr. A is eligible to become small shareholder’s director in XYZ Limited.</p>
(3)	<p>Section 149 of the Companies Act, 2013 requires every company to constitute a Board of Directors. According to which, maximum number of Directors shall be 15 which can be increased by passing a special resolution.</p> <p>If XYZ Ltd. appoints 6 more directors in the BoD, the maximum limit of 15 directors in a company will be exceeded. However, by passing a special resolution, XYZ Ltd. can appoint additional directors.</p> <p>However, if 52% of XYZ Ltd. was held by the State Government, it becomes a Government Company and as the provisions of the Act, a Government Company is exempted from the application of the Section 149(1)(b) requiring a company to have maximum fifteen directors. Subject to that, it has not defaulted in filing its Financial Statements under section 137 or Annual return under section 92 with the registrar</p>

1.12 Resident Director [Section 149(3)]

Expected Question Type	Frequency in Past exams	Importance Level
Simple	Never Tested	Low
Every company to have a resident director is a basic point. May be tested as a subpart.		

Q74. Royal Ltd. is a company listed at Madras Stock Exchange, incorporated on 1st January, 2015. The Board of directors of the company decides to appoint in its board woman director and resident director.

- i. Explaining the provisions of the Companies Act, 2013, state whether it is mandatory to appoint such directors in its board.
- ii. What would be your answer in case the company is a non listed company and the board decided not to have the woman director on the company’s board?
- iii. What shall be your answer in case the company in question is not listed in any of the Exchanges, the paid up share capital of the company is Rs. 50 crores and the turnover of the company is Rs. 200 crores. Decide whether the company is mandatorily required to appoint the woman director.

[RTP November 2016]

Hints.

Second Proviso to sec 149(1)	<ol style="list-style-type: none"> i. It is mandatory for Royal Ltd. to appoint at least one woman director since it is a listed company. It is also mandatory for Royal Ltd. to appoint at least one resident director since it is mandatory for every company. ii. In case Royal Ltd. is not a listed company, it would still be required to appoint a woman director if it satisfies any of the two aforesaid mentioned conditions for public companies. iii. In present case, Royal Ltd. is neither a listed company nor does it exceed the above mentioned limits for public companies hence it is not required to appoint one woman director.
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1.13 Independent Directors [Section 149]

Expected Question Type	Frequency in Past exams	Importance Level
Limits & Applicative	High	High
Applicability of provision, casual vacancy & tenure are important testing points. Criteria for independence hasn't been tested.		

Q75. XYZ Ltd. is an unlisted public company having a paid-up capital of twenty crore rupees as on 31st March, 2015 and a turnover of one hundred fifty crore rupees during the year ended 31st March, 2015. The total number of directors is thirteen.

Referring to the provisions of the Companies Act, 2013 answer the following:

- i. State the minimum number of independent directors that the company should appoint.
- ii. How many independent directors are to be appointed in case XYZ Ltd is a listed public company?

[May 2016]

Hints.

Sec 149(4)	<ol style="list-style-type: none"> i. XYZ Ltd. is an unlisted public company. But it exceeds the paid up share capital as well as turnover limit laid out for independent directors accordingly at least 2 independent directors shall need to be appointed. ii. If XYZ Ltd. is a listed company, then at least 1/3rd of the directors shall need to be independent i.e. 1/3rd of 13 = 5 (rounded up as 'at least').
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Q76. XYZ Ltd is an unlisted public company having a paid up capital of Rs 20 crore as on 31st March, 2017 and a turnover of Rs. 150 crores during the year ended 31st March, 2017. The total number of directors is 13.

Answer the following questions:

- i. Minimum number of directors to be appointed as independent directors in XYZ Ltd.
- ii. What will be the consequences if XYZ Ltd. ceases to fulfil any of the required conditions with respect to appointment of independent directors for 3 continuous years?
- iii. If XYZ Ltd. (unlisted public company) were a dormant company, what shall be the law relating to the appointment of independent directors?

[MTP March 2018]

Hints.

Sec 149(4)	<ol style="list-style-type: none"> i. XYZ Ltd. is an unlisted public company. But it exceeds the paid up share capital as well as turnover limit laid out for independent directors accordingly at least 2 independent directors shall need to be appointed. ii. If XYZ Ltd. ceases to fulfill all the 3 criteria for a continuous period of 3 years, then it shall not be required to appoint any independent director until such time as it meets any of the 3 criteria. iii. If XYZ Ltd. were a dormant company, then it shall not be required to appoint any independent director.
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Q77. Considering the regulatory provisions of the Companies Act, 2013 and the rules thereof regarding the appointment of independent directors on a company's board, state whether Z Ltd, a listed public company is required to appoint independent directors. Also state whether appointment of independent director is required in the following cases:

- i. The public company has a paid up share capital of Rs. 10 crores
- ii. What shall be your answer in case the company's paid up share capital is only Rs. 2 crores.
- iii. Whether a person who holds the positions of a Key Managerial Personnel in the same company can be appointed as an independent director?
- iv. In relation to mandatory women directors as required under the Companies Act, 2013 should such directors also be independent directors?

[November 2018]

Ans.

Sec 149(4)	According to section 149(4) of the Companies Act, 2013, every listed public company shall have at least one-third of the total number of directors as independent directors. Hence, Z limited, being a listed public company, shall have at least one-third of the total number of directors as independent directors.
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	<p>i. According to section 149(4) read with Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, the Public Companies inter alia having paid up share capital of 10 crore rupees or more, shall have at least 2 directors as independent directors. If the paid-up share capital of the public company is Rs. 10 crores, the company shall have at least 2 directors as independent directors.</p> <p>ii. If the paid-up share capital of the public company is Rs. 2 crores, the company is not required to have independent directors.</p>
Sec 149(6)	<p>iii. According to section 149(6), a person in order to be appointed as an independent director shall neither himself nor any of his relatives hold 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 3 financial years immediately preceding the financial year in which he is proposed to be appointed. Thus, a person who holds the position of a Key Managerial Personnel cannot be appointed as an Independent director.</p>
Second Proviso to section 149(1)	<p>iv. Second Proviso to section 149(1) read with Rule 3 of the Companies (Appointment and Qualification of Directors) Rules, 2014 states that the following class of companies shall appoint at least one women director –</p> <p>(1) every listed company (2) every other public company having paid-up share capital of 100 crores or more or turnover of 300 hundred crore or more</p> <p>From the above, it can be concluded that provisions make it mandatory to appoint a woman director in the condition prescribed above. However, it does not make it mandatory that the woman director should also be independent.</p>

Q78. The composition of the Board of Directors of a listed public company as on 31.03.2017 comprised of: (i) Mr. A, Director (ii) Mr. B, Director (iii) Mr. C, Director (iv) Mr. D, Director (v) Mrs. E, Independent Director (vi) Mr. F, Independent Director and (vii) Mr. G, Independent Director.
Mr. D & Mrs. E vacated their office of director on 15.04.2017.
You are required to examine with reference to the provisions of the Companies Act, 2013 and what course of action would you suggest which can be taken up by the company in this regard?
[May 2017]

Hints.

Second Proviso to section 149(1) & Sec 149(4)	<ul style="list-style-type: none"> • In the given case, because of vacation of office by Mr. D & Mrs. E: <ul style="list-style-type: none"> ○ Total number of directors have reduced to 5 ○ Number of independent directors have reduced to 2 ○ There is no women director in the company • Even after Mr. D & Mrs. E have vacated their offices, the company meets the requirement for at least 1/3rd independent directors (1/3rd of 5 i.e. rounded up to 2). • However, the company shall need to appoint one women director.
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Q79. VGP Ltd. is a listed public company with a paid up capital of Rs. 100 crores as on 31st March, 2018. Mrs. Jasmine, who was one of the promoters of PDS Ltd. (a Joint Venture Company of VGP Ltd.), was appointed as woman director on the Board of VGP Ltd. VGP Ltd. has the following proposals:

- i. To remove Mr. Z, an independent director who was re-appointed for a second term.
- ii. To appoint Mr. N, a nominee director in the board as an independent director.
- iii. To appoint Mrs. Jasmine as an independent-cum-woman director.

With reference to the relevant provisions of the Companies Act, 2013, examine:

- i. The validity the above proposals and the appointment of woman director already made.
- ii. Whether Mr. N, can be appointed as an independent director of PDS Ltd.?
- iii. Is an independent director entitled for stock option?

[November 2018]

Hints.

i.	<p>W.r.t proposal no. (1), it will be valid only on the compliance of the proviso given under section 169(1). According to the said proviso an independent director re-appointed for second term under section 149(10) shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard.</p> <p>W.r.t. proposal nos. (2), it will be invalid as per section 149(6). As per the stated section, in relation to a company, an independent director means a director other than a managing director or a whole-time director or a nominee director.</p> <p>W.r.t. proposal nos. (3), as per Section 2 (6) of the Act, associate company includes a joint venture company, therefore Mrs. Jasmine, a promoter of an associate company cannot be appointed as independent director.</p>
ii.	<p>As per the stated section, in relation to a company, an independent director means a director other than a managing director or a whole-time director or a nominee director. So, Mr. N cannot be appointed as an Independent Director of PDS Ltd.</p>
iii.	<p>As per section 149(9), notwithstanding anything contained in any other provision of this Act, but subject to the provisions of sections 197 and 198, an independent director shall not be entitled to any stock option.</p>

Q80. Mr. Person together with one of his relatives hold 3% of the total voting power of XYZ Ltd. the Board of Directors of the company appointed him as an independent director. Examine the validity of such appointment with reference to the provisions of the Companies Act, 2013.

[RTP May 2016]

Hints.

Sec 149(6)	<p>Section 149(6) does not permit a person to be appointed as an independent director if he along with his relatives hold 2% or more voting power of the company. Accordingly, Mr. Person cannot be appointed as an independent director in the company.</p>
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Q81. Can Mr. Khan appointed as an independent director on the board, be appointed in its subsidiary or its holding or its associate company?

[MTP October 2018]

Hints.

Sec 149(6)	<p>Section 149(6) does not restrict appointment of an independent director as an independent director or a director in the subsidiary or a holding or an associate company. Hence, Mr. Khan can be appointed as an independent director or director in the subsidiary or holding or associate company. Also, it shall not result in any vacation of his office of independent director in the company.</p>
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Q82. Mr. Azad, an independent director of X company, was appointed in the AGM for a period of 3 years. After the expiry of 3 years he was reappointed for a period of 5 years. Considering that though Mr. Azad has completed 2 tenures/terms but hasn't completed 10 years in total, therefore he may be appointed in the upcoming AGM for another 2 years to complete his total term of 10 years. In the light of the Companies Act, 2013, state the validity of reappointment of Mr. Azad for further term in the company.

[RTP November 2017]

Hints.

Sec 149	<p>As per section 149, no independent director shall hold office for more than 2 consecutive terms. A term can be for maximum 5 consecutive years. Mr. Azad has completed 2 consecutive terms. It is not material whether such terms were for less than 5 years. Accordingly, Mr. Azad can only be reappointed after a cooling period of 3 years. His further reappointment for 2 years is not valid.</p>
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Q83. Super Specialty Hospital Limited has a paid up share capital of ` 10 crores and annual turnover of ` 90 crores. There are 5 directors in its board. Two doctors Mr. ZA and Mr. AZ are appointed as independent directors. Mr. ZA was appointed for a period of 5 years on 1st August, 2015 while Mr. AZ was originally appointed for 3 years on 1st August, 2014 and was subsequently reappointed for 5 years on 1st August, 2017. Now, in August, 2019 the Company wants to remove both the independent directors. Referring to the relevant provisions of Companies Act, 2013, decide whether the company can do so.

[November 2019]

Ans.

(i)	<p>According to Section 149(4) of the Companies Act, 2013, read along with relevant rules, every Public Company having paid up share capital of ` 10 crore rupees or more shall have at least two directors as Independent Directors.</p> <p>Super Speciality Hospital Limited is having a paid up share capital of ` 10 crores, hence, it is required to have at least two directors as Independent Directors, which it has complied through the appointment of Mr. ZA and Mr. AZ.</p> <p>If the hospital removes both the directors in August, 2019, they have to appoint two other independent directors in order to comply with the requirement of law.</p>
(ii)	<p>According to Section 169(1), a Company may, by ordinary resolution, remove a director other than a director appointed by the Tribunal under Section 242 of the Act, before the expiry of the period of his office after giving him a reasonable opportunity of being heard.</p> <p>Mr. ZA was appointed on 1st August, 2015 for a term of 5 years. Thus, his period of service would have expired on 31st July, 2020. If Super Specialty Hospital wants to remove Mr. ZA in August, 2019 (i.e. before the expiry of his term), they would have to pass</p>
(iii)	<p>Section 149 also provides that an Independent Director shall hold office for a term up to five consecutive years on the Board of a Company, but shall be eligible for reappointment on passing of a special resolution by the Company and disclosure of such appointment in the Board's report.</p> <p>Thus, Mr. AZ's reappointment would have been done by passing a special resolution.</p>
(iv)	<p>Proviso to Section 169(1) provides that an Independent Director re-appointed for second term under Section 149(10) shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard.</p> <p>Mr. AZ's second term of appointment would have expired on 31st July, 2022. If Super Specialty Hospital wants to remove Mr. AZ in August, 2019 (i.e. before the expiry of his term), they would have to pass special resolution and after giving him a reasonable opportunity of being heard.</p>

Q84. Mr. Ramakant, the non-independent director of Superb Industries Limited (SIL) is planning to go abroad for 4 months for resolving of some family issues related to her daughter. The Board of Directors of SIL proposed to appoint Mr. Subh as an alternate director in the company in place of Mr. Ramakant.

Following were the legal issues in the given situation:

- (1) Mr. Subh does not satisfy the eligibility criteria to become Independent Director of SIL as given under section 149(6) of the Companies Act, 2013.
- (2) Mr. Ramakant returned to India within 2 months before the scheduled arrival.
- (3) Mr. Subh (in addition to Mr. Ramakant), to be included in the "total number of directors" used for calculating rotational directors under sec 152(6).

Examine in the given scenario, the aforementioned legal issues in the light of the Companies Act, 2013.

[MTP March 2021]

Ans.

Law	<p>As per Section 161(2) of the Companies Act, 2013, the Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, 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.</p> <p>Provided that no person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director under the provisions of this Act.</p> <p>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.</p> <p>Provided also that if the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.</p>
Conclusion	<p>In the above question, Mr. Ramakant was going abroad for personal cause of family issue related his daughter, does not effect on the appointment of alternate director. Even if Mr. Subh does not satisfy the eligibility criteria to become Independent Director of SIL, it does not affect on his appointment as Alternate Director because Mr. Ramakant, the original director is also not an Independent Director. Since Mr. Ramakant has returned to India within 2 months before</p>

	<p>his scheduled arrival, Mr. Subh shall vacate the office on return of Mr. Ramakant (Original Director) to India.</p> <p>Therefore, Mr. Subh can be appointed as alternate director of SIL and he shall vacate his office on returning of Mr. Ramakant to India. The alternate director, Mr. Subh, shall not be included in the “total number of directors” for the purpose of section 152(6), as alternate director is holding alternate directorship in place of the original director. Further as per the above provisos given under section 161(2), it is clearly stated that if the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director. For this very purpose, Mr. Subh, will not be included in the “total number of directors” as rotational director under section 152(6) of the Companies Act, 2013.</p>
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Q.85 ABC Ltd. is incorporated in December, 2010 under the Companies Act, 1956. For the year ended on 31st March, 2020 and 31st March, 2021, the financial and other relevant information of the company were as under:

Particulars		31.03.2020 (` in crores)	31.03.2021 (` in crores)
(a)	Paid-up capital	8	18#
(b)	Reserves	16	6
(c)	Turnover	75	98
(d)	Borrowings from Banks /FIs (The sanctioned limit is 60 crores rupees)	50	45
(e)	No. of directors	10	10

Part amount of the Reserves was capitalised, by issue of Bonus shares during the FY 2020-21

The Company Secretary apprised the Board, of requirement of appointment of Independent Director (ID). Few candidates were shortlisted, out of which 2 candidate were nominated and got approval of the shareholders in the General Meeting. The appointment of both the IDs were approved for a tenure of one year only.

Enumerate in the given situation, the following issues in the light of the Companies Act, 2013:

(A) Whether ABC Ltd. was required to appoint Independent Director (ID) based on the information as on 31st March, 2020.

(B) In the given case, the tenure of the appointment of both the IDs is for one year only. Comment upon the validity of the term of appointment of the Independent Directors.

[RTP Nov 2021]

Ans.

(A)	<p>As per Section 149 read with the Rule 4(1)(iii) of the Companies (Appointment and Qualifications of Directors) Rules, 2014, which provides that the following class or classes of companies shall have at least two directors as independent directors –</p> <p>(i) the Public Companies having paid-up share capital of ten crore rupees or more; or</p> <p>(ii) the Public Companies having turnover of one hundred crore rupees or more; or</p> <p>(iii) “the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees”.</p> <p>Here, the words used in the law is ‘exceeding 50 crore rupees’, whereas the banks borrowings in the given case is only ` 50 crore and not exceeding ` 50 crore. Hence, no need to appoint ID on the basis of information as on 31st March, 2020.</p> <p>Further, the words used in the said Rule is ‘Outstanding Loans’ and not the ‘Sanctioned limit’. The limit is ` 60 crore, but the outstanding loans is only ` 50 crore.</p> <p>Therefore, in line with the stated legal provision, there is no need to appoint Independent Directors as on 31/3/2020.</p>
(B)	<p>According to Section 149(10) read as ‘Subject to the provisions of section 152, an independent director shall hold office for a term up to five consecutive years on the Board of a company, and shall be eligible for re-appointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.</p>

Further, Vide MCA General Circular No. 14/ 2014 dated 9th June, 2014, under Para (iii) Section 149(10), it has been clarified that section 149(10) of the Act provides for a term of “upto five consecutive years” for an ID. As such while appointment of an ID for a term of less than five years would be permissible, appointment for any term (whether for five years or less) is to be treated as a one term under section 149(10).

Therefore, the tenure of the appointment of both the IDs for one year only, will be considered as valid.

1.14 Director Identification Number (DIN) [Sec 152(3) and Sec 153 to Sec 159]

Expected Question Type	Frequency in Past exams	Importance Level
Procedural	High	High
Documents required for making application, E-Forms and timelines are important from an exam perspective. Recommend detailed reading from main book/ notes.		

Q86. Mr. Vinay Kumar, applied for the first time for allotment of a Directors identification Number (DIN) on 1st November, 2016 as he is planning to incorporate a private limited company in Form No. DIN-3 under the Companies Act, 2013. The status of his DIN applications presently is showing as "Put Under Resubmission". He seeks your guidance as to whether his application has been rejected and is he required to obtain a fresh DIN. Advice.

[November 2017]

Ans.

Sec 154	<p>According to Section 154 of the Companies Act, 2013, the Central Government shall, within one month from the receipt of the application under section 153, allot a Director Identification Number (DIN) to the applicant in such manner as may be prescribed. According to Rule 10 of the Companies (Appointment and Qualifications of Directors) Rules, 2014 of the Companies Act, 2013, if the DIN application is put under Resubmission due to following reasons, one can submit additional documents for rectifying DIN application, within a period of 15 days from the date on which it is marked as Resubmission</p> <ul style="list-style-type: none"> (i) Proof of Identity/ residence is not enclosed or expired. (ii) Proof of Date of Birth is not enclosed. (iii) Supporting documents are not properly attested. (iv) Non-submission of affidavit (if required). <p>On resubmitting with the additional documents, same DIN will be approved, if documents are found in correct order as per marked in resubmission. So, accordingly the application of Mr. Vinay Kumar has not been rejected and does not require to obtain a fresh DIN.</p>
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Q87. Mr. X applied to the Central Government for allotment of Director Identification Number. What are the obligations of Mr. X and the companies in which he is appointed as a director, after “DIN” is allotted to him, under the Companies Act, 2013 and the rules made hereunder?

[November 2008]

Ans.

Sec 156	<p>Every existing director shall, within one month of the receipt of Director Identification Number from the Central Government, intimate his Director Identification Number to the company or all companies wherein he is a director.</p> <p>Rule 10A(1): Every director, functioning as a director in one or more companies on or before the 30th June, 2007 and who has not yet intimated his DIN to such company or companies shall, within 1 month of the receipt of Director Identification Number from the Central Government, intimate his Director Identification Number to the company or all companies wherein he is a director as per Form DIR-3B.</p>
Sec 157(1)	<p>Every company shall, within fifteen days of the receipt of intimation under section 156, furnish the Director Identification Number of all its directors to the Registrar or any other officer or authority as may be specified by the Central Government with such fees as may be prescribed or with such additional fees as may be prescribed and every such intimation shall be furnished in such form and manner as may be prescribed.</p>

	Rule 10A(2): The intimation by the company of Director Identification Number of its directors under section 157 of the Act shall be furnished in Form DIR-3C within fifteen days of receipt of intimation under section 156.
Sec 158	Every person or company, while furnishing any return, information or particulars as are required to be furnished under this Act, shall mention the Director Identification Number in such return, information or particulars in case such return, information or particulars relate to the director or contain any reference of any director.

Q88. What is Director Identification Number (DIN)? Mr. Mohan, a newly appointed director of RST Limited applied for DIN. Advise him about the documents to be submitted for this purpose.

[November 2013]

Ans.

Sec 152(3) and Sec 153 to Sec 159	<p>"Director Identification Number" (DIN) means an identification number allotted by the Central Government to any individual, intending to be appointed as director or to any existing director of a company, for the purpose of his identification as a director of a company:</p> <p>The applicant shall download Form DIR-3 from the portal, fill in the required particulars sought therein, verify and sign the form and after attaching copies of the following documents, scan and file the entire set of documents electronically-</p> <ul style="list-style-type: none"> (i) photograph; (ii) proof of identity; (iii) proof of residence; (iv) board resolution proposing his appointment as director in an existing company (v) Specimen signature duly verified.
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Q89. Some changes in the particulars of the director, who has already obtained a DIN have taken place. Now the director wants to incorporate the changes in his DIN in the database maintained by the Central Government in this regard. Describe the procedure to be followed by the director.

[May 2015; May 2017]

Hints.

Sec 152(3) and Sec 153 to Sec 159	<p>(1) According to Companies (Appointment and Qualification of Directors) Rules, 2014, every individual who has been allotted a DIN under these rules shall, in the event of any change in his particulars as stated in Form DIR-3, intimate such change(s) to the Central Government within a period of thirty days of such changes(s) in form DIR – 6 in the following manner, namely:</p> <ul style="list-style-type: none"> (i) The applicant shall download Form DIR – 6 from the portal, fill in the relevant changes, verify the Form (DIR-7) and attach duly scanned copy of the proof of the changed particulars and submit electronically.; (ii) The form shall be digitally signed by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice; (iii) The applicant shall submit the Form DIR -6. <p>(2) The Central Government, upon being satisfied, after verification of such changed particulars from the enclosed proofs, shall incorporate the said changes and inform the applicant by way of a letter by post or electronically or in any other mode confirming the effect of such change in the electronic database maintained by the Ministry.</p> <p>(3) The DIN cell of the Ministry shall also intimate the change(s) in the particulars of the director submitted to it in Form DIR-6 to the concerned Registrar(s) under whose jurisdiction the registered office of the company(s) in which such individual is a director is situated.</p> <p>(4) The concerned individual shall also intimate the change(s) in his particulars to the company or companies in which he is a director within 15 days of such change.</p>
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Q90. Mr. Thangavel is a Director in 7 Companies with a DIN (Director Identification Number) allotted to him. Again, another DIN was inadvertently allotted to him which was never used for filing any document with any Authority. He desires to surrender the second DIN and keep all his directorship with the first DIN. Advise him the procedure to be followed under the provisions of the Companies Act, 2013 and the Rules made thereunder for surrendering the second DIN inadvertently obtained by him.

[November 2019]

Hints.

Surrender of DIN	According to Rule 11 of the Companies (Appointment and Qualification of Directors) Rules, 2014: The Central Government or Regional Director (Northern Region), Noida or any officer authorised by the Regional Director may, upon being satisfied on verification of particulars or documentary proof attached with the application received along with fee as specified from any person, cancel or deactivate the DIN in case on an application made in Form DIR-5 by the DIN holder to surrender his DIN along with declaration that the said DIN has never been used for filing of any document with any authority, the Central Government may deactivate such DIN. Provided that before deactivation of any DIN in such case, the Central Government shall verify e-records.
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1.15 Appointment of Directors to be Voted Individually [Sec 162]

Expected Question Type	Frequency in Past exams	Importance Level
Applicative	Low	Moderate
Both options viz. appointing individually or after taking a “no votes cast against” approval should be mentioned. Care should be taken to mention ordinary resolution required for appointed after authorized by a “no votes cast against” approval.		

Q91. Mr. Bond and Mr. James were appointed as directors of Jamesbond Ltd. at the AGM held on 30th September, 2017 by a single resolution. State the relevant provisions of the Companies Act, 2013 and identify is it possible to appoint the above directors by a single resolution.

[May 2018]

Ans.

Law	According to Section 162 of the Companies Act, 2013, at a general meeting of a Company, a motion for the appointment of two or more persons as Directors of the Company 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. A resolution moved in contravention of above shall be void, whether or not any objection was taken when it was moved. A motion for approving a person for appointment, or for nominating a person for appointment as a director, shall be treated as a motion for his appointment.
Conclusion	In the instant case, it is not possible to appoint Mr. Bond and Mr. James as Directors of James Bond Ltd. by a single resolution.

Q92. XYZ Company Ltd. in its AGM appointed all its directors by passing one single resolution. No objection was made to the resolution. Examine the validity of appointment of directors explaining the relevant provisions of the Companies Act, 2013. Will it make any difference, is XYZ Company Ltd. were a private Company?

[November 1998; May 2003]

Hints.

Sec 162	As per section 162, appointment is not valid. However, if XYZ Company Ltd. were a private company, not defaulting in filing with the registrar its financial statements under section 137 or annual return under section 92, then section 162 shall not be applicable.
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Q93. In ABC Ltd. three directors were to be appointed. The item was included in agenda for the AGM scheduled on 30th September, 2014, under the category of 'Ordinary Business'. All the three persons as proposed by the Board of Directors were elected as directors of the company by passing a 'single resolution' avoiding the repetition (multiplicity) of resolution. After the three directors joined the board, certain members objected to their appointment and the resolution. Examine the provisions of Companies Act, 2013 and decide whether the contention of the members shall be tenable and whether both the appointment of directors and the 'single resolution' passed at the company's AGM shall be void.

[November 2010]

Hints.

Sec 162	As per section 162, the contention of the members is correct. The single resolution so passed for appointments is void.
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1.16 Duties of directors [Sec 166]

Expected Question Type	Frequency in Past exams	Importance Level
Simple	Low	Low
Only testable point relevant is disallowance for Assignment of Office.		

Q94. X was appointed as a director for life by the articles of association of a private company incorporated on 1st June, 2014. The articles also empowered X to appoint a successor. X, by will, appointed G to succeed him after his death. Can G succeed X as director after the death of X?

[November 1995]

Ans.

Law	As per section 166, no director shall assign his office to any other person. If he does the assignment shall be void. In the given case the articles of a company empowered its director to appoint a successor. The director appointed, by his will, G to succeed him as a director after his death. The court observed that the director is prohibited from assigning his office. The word 'his' used in section 166 indicates that the prohibition applies only when an office is held by a director is assigned to any other person. When a director dies, the office held by him becomes vacant and therefore, such office cannot be assigned to any other person. Therefore, appointment of new person in such office does not amount to an assignment within the meaning of section 166 [Oriental Metal Pressing Pvt. Ltd. v B.K. Thakoor (1961)].
Conclusion	Accordingly, it can be said that appointment of G is valid and it does not amount to an assignment of office by X.