

DIRECTORS DUTY

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**A STATUS
OR
RESPONSIBILITY**

Private Limited Company is one of the most popular forms for carrying the business in India. It is formed under the Companies Act, 2013 (previously Companies Act, 1956). It is a separate legal entity distinct from its members (usually shareholders). Although the Company is owned by shareholders, day to day affairs and management is handled by the **Board of Directors**. Board of Directors acts as governing body of the Company.

Board of Directors is a **group of individuals** elected by the shareholders to manage the affairs of the Company. Individuals so elected by shareholders are known as **Directors**. Directors are appointed to act as representatives of the Company as well as of the shareholders. They establish management related policies and make decisions on major Company issues. They are directly accountable to the shareholders for carrying out the management responsibilities and provide a report to shareholders on the performance, future plans and strategies of the Company.

Being a Director of the Company, one should keep several things in mind. Understanding the roles and responsibilities should be the first task of Directors when appointed. They must ensure that the Company does everything that it is obliged to do by law and the decisions they make are in the best interest of the Company.

Companies Act, 2013 has also increased the responsibilities of Directors, irrespective of whether they belong to small private company or a listed one, as reporting compliances and penalties have been increased in this Act. Hence, this literature is prepared to guide and to make an understanding of such requirements to ensure taking correct steps and timely compliances without any levy of interest or penalty.

Directors- Appointment and Cessation

Who can be a Director?

Only an individual can be appointed as a Director. A corporate, association, firm or other body cannot be appointed as a Director. There is no specific qualification required to be a Director. However a person shall not be eligible for appointment as Director if:

- He is of unsound mind
- He is an undischarged insolvent
- He has applied to be an insolvent
- He has been convicted by a court of any offence (imprisoned for at least 6 months and 5 years has not elapsed)
- The Court or Tribunal has passed an order disqualifying him for appointment as Director
- He has not paid any calls in respect of any shares of the company held by him
- He has been convicted of the offence dealing with related party transactions in preceding 5 years

Appointment: It is generally up to the members to appoint the Directors in General Meeting. In some cases, Directors can be appointed in Board Meeting. For appointing as a Director, Director Identification Number (DIN) is required to be taken. When a Director is appointed, intimation in **Form DIR -12** to Registrar of Companies must be given within 30 days of appointment.

Cessation: Office of Directors can be vacated in various circumstances such as death, resignation, removal, disqualification etc. Regardless of manner of vacation, Registrar of Companies must be intimated in form DIR- 11 (by Director) and DIR-12 (by Company) within 30 days of cessation. **Office of Directors will also be vacated in case of non attending of board meetings for a period of one year**

Number of directorship: There is a limit for Directorship. A person can be a Director in maximum of **20 Companies**. (including alternate Directorship). However, the Maximum limit for appointment as Director in **Public Companies (including its holding or subsidiary company)** is **10** out of the aforesaid limit of 20 Companies. Further directorship in **foreign companies** is not included in the aforesaid limits.

Powers and Accountability

Powers

Powers of Directors to act on behalf of the Company are collective. Individual Director do not have authority to exercise the power unless specifically delegated. Directors' power may be defined by the Act, Memorandum and Articles of Association, by the members in the general meeting. The relationship between the Company and its Directors is of principal and agent. The Company is bound by the act of the Directors.

Accountability

Generally Directors are not liable for the debts of the Company. However they will be personally liable if they act outside their authority or in breach of their duties or in circumstances amounting to fraudulent or wrongful.

Duties and Responsibilities

Day to day affairs and management is handled by the **Board of Directors**. They are responsible for promoting the success of the company for the benefits of the members as a whole. Directors have a number of responsibilities under the Companies Act, 2013, non compliance of which give rise to the fine, disqualification or even imprisonment also. These are as follows:

1. Maintaining Books of Accounts

Maintenance of books of accounts would mean books maintained by the company to record the specified financial transaction. Every company is required to prepare books of accounts and other relevant books and papers for every financial year. It shall be prepared on

accrual basis and shall give a true and fair view of the affairs of the Company. These books may be kept in electronic mode.

Such books of accounts and other relevant papers are generally kept at the registered office. However these can be kept at any other place in India with the approval of Board of Directors and intimation in prescribed form will be given to Registrar of Companies within 7 days of such approval.

2. Board Meetings

Directors must ensure that board meeting are held on a regular basis and records are kept of decisions made thereat. Directors should meet at least **four times** in each calendar year (with a maximum gap of 120 days between two meetings). Further one meeting in each quarter shall be conducted. Board meeting can be held anywhere and at any time (on sunday as well).

The quorum for the Board Meeting shall be **at least 2 directors or 1/3rd of the total number of directors** whichever is higher. Quorum means the minimum number of Directors whose presence is necessary for holding the Meeting. The Notice for the date and purpose of the meeting should be given to each Director at least **7 days in advance** from the date of the meeting.

The discussions of the meeting need to be drafted and recorded in the form of "Minutes of Board Meeting" and maintained at the Registered Office of the Company. It is also required to disclose the number of meetings held during each financial year in Directors Report.

3. Shareholders Meetings

Shareholders' meetings can be called by the Directors or in certain circumstances by the shareholders. Every Company is required to hold an Annual General Meeting (AGM) of its shareholders once in every year. However extra ordinary General Meeting can be called whenever is required. It can be held only on a working day with in normal business hours (9 am to 6 pm).

AGM shall be conducted within a period of **six months** (with a maximum gap of 15 months between two such meetings) from the date of closing of the financial year. However first AGM will be held within **nine months** from the date of closing of first financial year. It shall be held at the registered office of the company or at some other place within the city in which the registered office of the company is situated.

Notice intimating the date, time and venue of the meeting shall be given at least **21 clear days in advance** of the Meeting. **Two members** personally present will be the quorum of the meeting.

The discussions of the meeting need to be drafted and recorded in the form of "Minutes of Annual General Meeting" and maintained at the Registered Office of the Company.

Company filings: Directors are also responsible for ensuring the filing of certain information with the Registrar of Companies in the prescribed forms and within the time limits as laid down in Companies Act, 2013

Company is required to file every year its **FINANCIAL STATEMENTS** along with Directors Report, Auditors Report and other documents to the Registrar of Companies within **30 days** of date of AGM.

The Company is required to file every year its **ANNUAL RETURN** disclosing details of its shareholders, directors etc. to the Registrar of Companies within **60 days** of date of AGM.

Besides annual filing, Company is also required to intimate the Registrar of Companies as and when any event takes place in the Company such as increase in authorized capital, allotment of shares etc.

4. Financial Statement and Statutory Audit

Directors are responsible for maintenance of financial statement which gives true and fair view of affairs of the Company. Financial statement consists of balance sheet, profit and loss account, cash flow statement and notes thereon. Such financial Statements are approved by Board and signed by Directors on its behalf.

These statements are audited by the statutory auditor appointed by the company in this regard. Purpose of a statutory audit is to determine whether the company is providing a fair and accurate representation of its financial position by examining information such as bank balances, book-keeping records and financial transactions etc.

Statutory Auditor is appointed in the **AGM** of the Company. However first Auditor is appointed by the **Board of Directors** in board meeting within **30 days** of incorporation of the Company. The tenure of Auditor is 5 consecutive years subject to the ratification by the members at every AGM.

5. Statutory Registers and Records

Company has to maintain various statutory registers and records as required by the Companies Act such as Register of Shares, Register of Members, Register of Directors & Key Managerial Personnel, Register of Debenture holders, Register of Contracts with related parties etc.

Besides, incorporation documents of the company, resolutions of the meetings, minutes of the meetings etc are also required to be preserved by the Company for such period as required by the Companies Act, 2013.

Directors are required to ensure that proper registers and records are maintained and completed as per the requirement.

6. Disclosure by Directors

Every Director of the Company is required to disclose his interest in other companies, bodies corporate, firms, association of Individuals

every year. This shall be done by giving a declaration in writing to the company in a specified format(**Form MBP 1**).

Every Director is also required to intimate his disqualification to the company every year in specified form(**Form DIR 8**).

7. Displaying Company's Identity

Directors must ensure that name, address of registered office and corporate identity number (CIN) along with telephone number, fax number, e-mail and website addresses, if any, are printed in all its business letters, bill heads, letters, papers and in all its notices and other official publications.

The Company's name and address should also be displayed outside of every office or place in which business of the company is carried on.

8. Charges

The Directors must ensure that particulars of any charge created by the company or attaching to the property acquired by the company are intimated in prescribed form to Registrar of Companies within 30 days of such creation or acquisition of property. Register of Charges will also be maintained at the registered office of the Company.

9. Other Statutory Duties

The Directors are also responsible for ensuring the compliances of other relevant legislations such as Income Tax Act, 1961, various labour laws and any other acts applicable to the Company.

Restrictions and Limitations

Directors should know the number of restrictions and limitations imposed by the **Companies Act 2013** on the transactions with the directors and other matters dealt with by the company. These are as follows:

1. Deposits

A private limited company cannot accept deposit from public. However it can accept deposit from its members.

It can accept deposit from its members to the extent of 100% of its paid up capital and free reserves. Intimation to Registrar is required to be given in prescribed manner.

2. Managerial Remuneration

There is no restriction in the Companies Act, 2013 for director's remuneration in the private company. Private company may fix any amount of remuneration without considering profits of the company. Remuneration should be fixed as per the provisions prescribed in Articles of Association. Remuneration can be in the form of sitting fees or in the form of monthly, quarterly or annual payment.

However there is limitation for public company. Section 197 and schedule V of Companies Act, 2013 provides maximum limit for the

managerial remuneration. Therefore a public company can give managerial remuneration subject to the fulfillment of aforesaid provisions.

3. Loan to or from Directors

Loan from Directors: A private company can accept loan from its **directors or their relatives** However person giving such loan is required to give a declaration to the company that loan amount is not given out of borrowed funds or deposits from other person.

If director gives the money out of borrowed funds, it would be treated as deposit and provisions of Deposit Rules would be applicable.

Loan to Directors: Generally companies are not allowed to give loan to and provide any guarantee or security in respect of loan taken by:

- Any Director or
- Any other person in whom directors are interested mentioned in section 185 of Companies Act, 2013

However some exemptions are given in respect of loan given to its managing directors/ whole time directors, loan given in the ordinary course of business, loan by holding Company to its wholly or subsidiary(WOS) and guarantee or security provided in respect of loan made to subsidiary company/ WOS.

Further **PRIVATE COMPANIES** which satisfy the following conditions can give loan/ provide guarantee or security.

- In whose share capital no other body corporate has invested
- Borrowings from banks or financial institutions or body corporate is **less than two times of paid up share capital or Rs. 50 crore, whichever is lower**
- No default in repayment of borrowings subsists at the time of making of such loan or providing any guarantee/ security

4. Limit on Donations

The Companies Act, 2013 also imposes certain limitations/ restrictions on the Board's power to contribute towards the various funds. The objective of such restrictions is to avoid the mis-utilization of shareholders fund and protect the interest of stakeholders. The Board must take care of such limitations while contributing towards the funds. Disclosure will also be made in the profit and loss account regarding such donations.

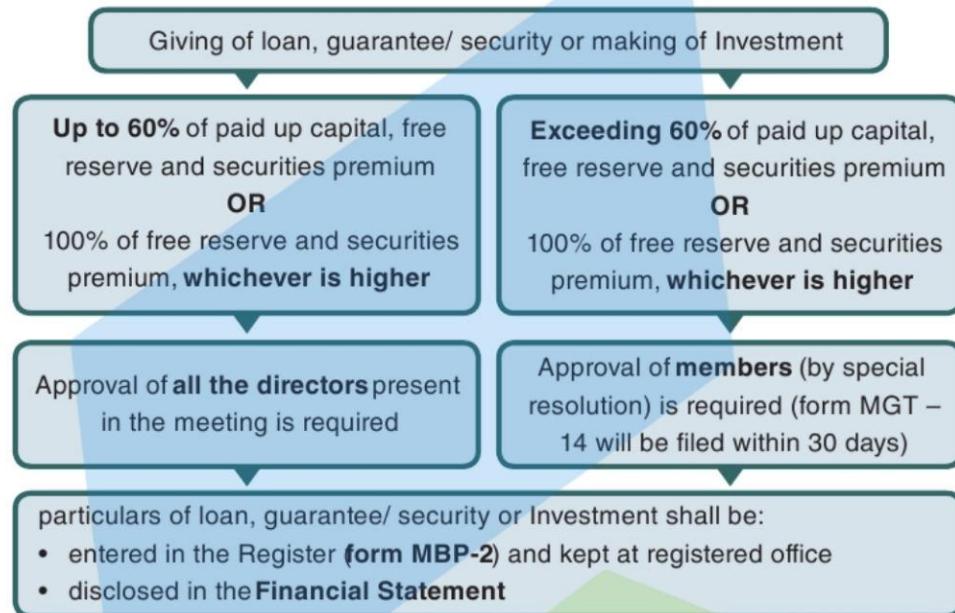
Board of Directors can contribute in the following funds:

- I. Charitable Fund (up to 5% of average net profit of 3 immediately preceding financial years)
- II. Political Contribution (up to 7.5% of average net profit of 3 immediately preceding financial years)
- III. National Defence Fund (no limit)

However contribution above the limit of 5 % to the **charitable fund** can be made with the permission of shareholders in the general meeting. Further a Company which has been in existence for less than 3 financial years are not allowed to contribute to **political party**.

5. Loans and Investment by Companies

Companies act provides some limitation and compliances required to be fulfilled for giving loan, providing any security or guarantee in respect of loan and making an investment in other body corporate. Directors must ensure that such compliances are duly completed at the time of giving loan and making investment.



However **approval of members by special resolution** is not required in case of:

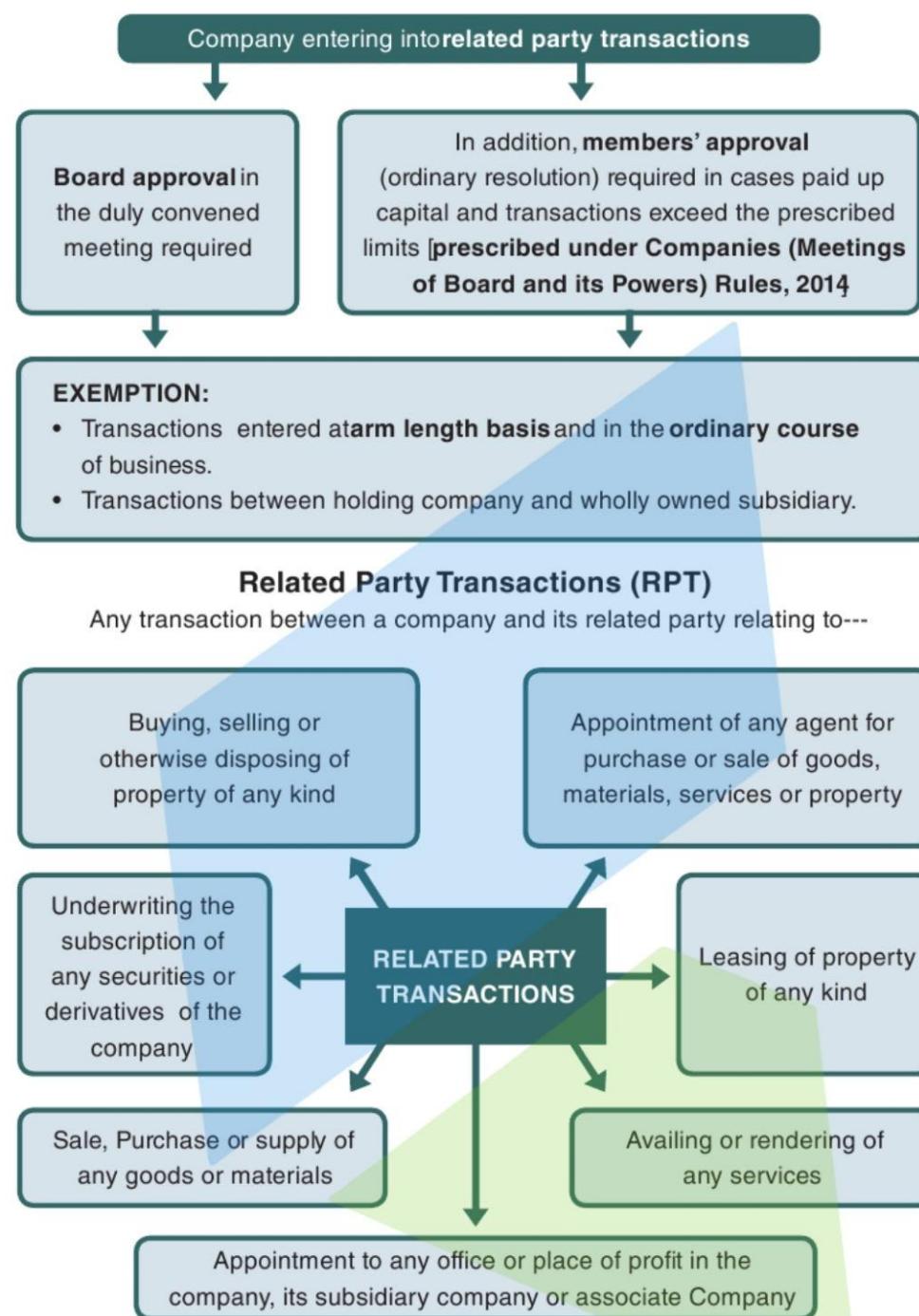
- Loan given or guarantee/ security provided by the company to its wholly owned subsidiary (WOS) or a joint venture (JV)
- Investment by holding company in its wholly owned subsidiary (WOS)

6. Appointment of Company Secretary

The Companies Act has also imposes a requirement on the companies to appoint a Company Secretary (CS) in the company. The Companies having **paid-up capital of Rs 5 crores or more** is required to appoint a whole time company secretary. Such company secretary can be appointed by Board of Directors of the Company. If paid up capital reaches the aforesaid limit, directors must ensure that CS has been appointed and intimation of such appointment is given to Registrar of Companies.

7. Related Party Transactions (RPT)

Directors are required to take care of the following provisions and disclosure requirement in case transactions are entered with the **related party**:



Related party is defined under the companies act, 2013. Generally directors, key managerial personnel and their relatives are covered in **related Party**. Specific firms, companies and bodies corporate are also covered in related party.

Disclosure Requirements

- Disclosure in Board's Report regarding related party transaction or contract
- Disclosure by interested director(in the prescribed form) in the board meeting regarding nature of his concern or interest
- Entry in register of contracts or arrangements maintained by the company in form **MBP-4**

ANNUAL COMPLIANCE CALENDAR

S. No.	Nature of event	Section	Compliances	
1.	Disclosure of Interest in other Entities (disclosure by director)	184	Form MBP-1	Disclosure in first meeting of the Board of Directors in each Financial Year
2.	Disclosure of Disqualification (disclosure by director)	164	Form DIR-8	Disclosure in first meeting of the Board of Directors in each Financial Year
3.	Filing of Annual Return	92	Form MGT-7	Filing within 60 days of holding of Annual General Meeting with the Registrar of Companies
4.	Certification of Annual Return by Company Secretary in Practice	92	Form MGT-8	Annual Return of the Company having paid up share capital of Rs. 10 Crore or more or turnover of Rs. 50 crore or more will be certified by Company Secretary in Practice
5.	Filing of Financial Statement including Consolidated Financial Statement	137	Form AOC-4	Filing within 30 days of holding of Annual General Meeting with the Registrar of Companies
6.	Appointment of Statutory Auditor	139	Form ADT-1	Appointment for 5 years subject to ratification in AGM every year.
7.	Holding Board Meetings	173 & SS-I		At least FOUR meetings every year and one meeting in each quarter (with the maximum gap of 120 days between two meetings)

8.	Holding Annual General Meeting	96 & SS-II		Within a period of six months from the date of closing of the Financial Year
9.	Notice of AGM	101 & SS-II		Will be circulated at least 21 clear days before the Annual General Meeting (Except in case of AGM is called on Shorter Notice)
10.	Circulation of Financial Statement & other relevant Documents	136		At least 21 clear days before the Annual General Meeting (Except in case of AGM is called on Shorter Notice)
11.	Preparation of Director' report	134		Mentioning of all the information required under section 134 and signed by the chairperson authorized by the Board and where he is not so authorized by at least 2 Directors
12.	Maintenance of Registers	88		Register of members, Register of Directors, Directors shareholding, register of debenture holders etc

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Compiled By:
TEAM AKG

It is our constant endeavour
to create effective and useful awareness.



202, Siddharth Chambers, Near IIT, Hauz Khas,
Kalu Sarai, (Adj. Azad Apts.) New Delhi-110016

Ph.: +91-11-41828992, 93,94,96

Email: info@akgadvisory.com

www.akgadvisory.com