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**Topic: ROLE AND RESPONSIBILITIES
OF DIRECTORS**

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MEANING

A director is one of those person, who are responsible for directing, governing and controlling the policy or management of a company. All directors collectively are called as BOD. They are the brain of the organization who are responsible for all policy making and decision making activities.

POWER OR RIGHTS OF THE BOARD OF DIRECTORS

The power of BOD may be classified in three categories: (1) Statutory power (2) Managerial power (3) Other power.

* Statutory powers of Board

1. The power to make call on share in respect of unpaid money.
2. The power to issue debenture.
3. The power to invest in funds.
4. The power to borrow funds.
5. The power to make loans or give guarantee in respect of loans.
6. The power to approve the financial statements and board's report.
7. The power to diversify the business of the company.
8. The power to approve amalgamation, merger or reconstruction.
9. The power to take over a company or acquire a company or substantial stake in another company.

* Managerial powers of Board

1. Power to appoint the first aitor of the company.

2. Power to make political contribution.
3. Power to appoint additional directors, alternative directors.
4. Power to declare interim dividend.
5. Power to appoint or remove key managerial personnel(KMP).
6. Power to enter into contracts with third parties on behalf of the company.
7. Power to allot, forfeit and transfer shares of the company.
8. Power to appoint directors to fill up casual vacancy.
9. Power to recommend dividend for shareholders.
10. Power to frame policies for efficient conduct of the business of the company.
11. Power to control and supervise the work and functioning of the company officials.

*** Other powers or powers only with a resolution**

1. To sell or lease any asset of the company.
2. To borrow money in excess of paid up capital and free reserves.
3. To issue bonus shares and for reorganization of share capital.

DUTIES OF DIRECTORS

Duties of directors may be classified into two category:

1. Statutory duties of Directors
2. General duties of Directors

*** Statutory duties of Directors**

- It is the duty of directors to see that all money received from applicants for shares are deposited and kept deposited in a scheduled bank until the certificate to commence business is obtained.

- The directors should not make allotment of shares unless the amount of minimum subscription has been received by the issue of shares.
- The required number of directors should sign the copy of the annual return.
- The BOD should call the extraordinary general meetings on the requisition made by the specified number of members of the company.
- Where the company has neither a managing director nor a manager, then the directors of the company should keep proper books of account at its registered office.
- The BOD should lay before the company at its every general meetings the balance sheet and profit and loss account for the concerned financial year alongwith the director's report.
- The directors should approve every balance sheet and profit and loss account of the company.
- The BOD should appoint the first auditor of the company within 30 days of the date of registration.

*** General duties of directors**

- Duty of good faith
- Duty of reasonable care
- Duty to attend board meetings
- Duty not to delegate
- Duty to form policy and strategy of a company
- Duty to appoint their subordinate officer, managing director, manager, secretary and others

*** LIABILITIES OF DIRECTORS**

The liabilities of directors may be classified under the following heads:

- **Civil liabilities**
- **Criminal liabilities**

*** Civil liabilities of Directors**

- 1. Gross negligence- A director will be personally responsible for his gross negligence in the performance of his duties.**
- 2. Misfeasance- It means wilful misconduct or improper performance.**
- 3. Breach of trust- For example, they make secret profits or use company's profit for personal use.**
- 4. Ultra vires acts- They have power subject to companies act, MOA and AOA.**
- 5. For failure to repay application money if the minimum subscription is not received- If the money are not repaid within 15 days then the director will be liable for something.**
- 6. For fraudulent trading**
- 7. For breach of implied warranty of authority**

*** Criminal liabilities of Directors**

- 1. Issue of prospectus with untrue or misleading statement(sec 34)- Directors will be subject to imprisonment which may extend from 6 months to 10 years.**
- 2. Issue of share at a discount- This sec prohibits any company to issue share at a discount. The officer in default is held criminally liable and punishable with imprisonment a period upto 6 months or fine of 1 to 5 lakhs rupees or both.**
- 3. Buying back of shares by a company(sec 68)- In case of default by the company in complying with the provisions laid down by SEBI. So in that case imprisonment upto 3 years or fine of not less than 1 lakh rupees or both.**

- 4. Issue of debenture by the company(sec71)- Non compliance of such an order of tribunal shall make the officer in default liable for imprisonment for a period which may extend upto 3 years or fine of 2 to 5 lakhs or both.**
- 5. Filing of annual return by the company before ROC(sec92)- The annual return needs to be filed before ROC within 60 days from the date of AGM and in prescribed format. Failure to file the annual return may lead to fine 50 thousand to 5 lakhs and imprisonment upto 6 months or both.**
- 6. Preservation of minutes of meeting by the company(sec118)- The provision for punishment in case a person in charge is found guilty of tampering with the minutes. He shall be liable for a period extending upto 2 years or a fine between 25 thousand to 1 lakh or both.**
- 7. Maintenance of proper books of account by the company(sec128)- Default fails to comply with such provisions, he shall be criminally liable for imprisonment for 1 year or fine 50 thousand to 5 lakh or both.**
- 8. Financial statement should be in the prescribed form(sec129)- Default fails to comply with such provisions, he shall be criminally liable for imprisonment for 1 year or fine 50 thousand to 5 lakhs or both.**
- 9. Approval of financial statement by officials of the company(sec134)- Default fails to comply with such provisions, he shall be criminally liable for imprisonment for 3 years or fine 25 thousand to 5 lakhs or both.**
- 10. Vacation of office of the directors of the company(sec167)- If a person continues to hold the office of a director in the company even after having knowledge of vacation of office under him such person is punishable with imprisonment for 1 year or a fine between 1 to 5 lakhs or both.**
- 11. No advancement of loan to a director by the company(sec185)- Default fails to comply with such provisions he shall be criminally liable for imprisonment upto 6 months or fine between 5 lakhs to 25 lakhs or both.**

- 12. Penalty for false statement and destruction of documents(sec229)- This section provides for a penalty for furnishing false statement and destruction by any person bound to cooperate during an investigation. If the statement made by him turn out to be false he shall be liable for punishment under the sec 447.**
- 13. Penalty for fraud(sec447)- This section is related to commission of fraud by any person or wrongful loss to shareholders or wrongful gain to himself. Such person shall be liable for imprisonment for 6 months to 10 years or fine is equal to fraud amount and extend to 3 times of amount.**
- 14. Penalty for providing false evidence to authorities(sec449)- If any person intentionally provides false evidence then such person will be liable for imprisonment of at least 3 years to 10 years or fine upto 10 lakhs.**
