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FACULTY OF JURIDICAL SCIENCES

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SUBJECT: COMPANY LAW
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FACULTY OF JURIDICAL SCIENCES



LECTURE-31

DUTIES OF DIRECTORS

(continued)

Vacation of office of director- Section 167

The office of a director shall become vacant in case—

(a) He incurs any of the disqualifications specified in section 164;

(b) He absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;

(c) He acts in contravention of the provisions of

section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;

(d) He fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested

(e) He becomes disqualified by an order of a court or the Tribunal;

(f) He is convicted by a court of any offence, whether involving moral turpitude or otherwise and sentenced in respect thereof to imprisonment for not less than 6 months;

Provided that the office shall be vacated by the director even if he has filed an appeal against the order of such court;

(g) He is removed in pursuance of the provisions of this Act;

(h) He, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to

hold such office or other employment in that company.

If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified above, he shall be punishable with imprisonment for a term which may extend to 1 year or with fine which shall not be less than Rs. 1,00,000 but which may extend to Rs. 5,00,000 or with both.

Where all the directors of a company vacate their offices under any of the disqualifications specified above the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.

A private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified above. 14.

Resignation of director- Section 168 & Rule 15, 16

A director may resign from his office by giving notice in writing. The Board shall, on receipt of such notice within 30 days intimate the Registrar in Form DIR-12 and also place the fact of such resignation in the Directors' Report of subsequent general meeting of the company and post the information on its website. The director shall also forward a copy of resignation alongwith detailed reasons for the resignation to the Registrar in Form DIR-11 within 30 days from the date of resignation. The notice shall become effective 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. Provided that the director who has resigned shall be liable even after his resignation for the offences

which occurred during his tenure.

If all the directors of a company resign from their office or vacate their office, the promoter or in his absence the Central Government shall appoint the required number of directors to hold office till the directors are appointed by the company in General Meeting.

Removal of directors-

Section 169 A company may, remove a director except the director appointed by National Company Law Tribunal u/s 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard after passing the ordinary resolution.

Provided that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two thirds of the total number of directors according to the principle of proportional

representation.

A special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.

On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting.

Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,—

(a) in any notice of the resolution given to members of the company, state the fact of the representation having been made; and

(b) send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company), and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company' s default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting.

Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and

the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board, be filled by the appointment of another director in his place at the meeting at which he is removed, provided special notice of the intended appointment has been given under sub-section (2).

A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed. If the vacancy is not filled under sub-section (5), it may be filled as a casual vacancy in accordance with the provisions of this Act:

Provided that the director who was removed from office shall not be re-appointed as a director by the Board of Directors. Nothing in this section shall be

taken—

(a) as depriving a person removed under this section of any compensation or damages payable to him in respect of the termination of his appointment as director as per the terms of contract or terms of his appointment as director, or of any other appointment terminating with that as director; or

(b) as derogating from any power to remove a director under other provisions of this Act.

(To be continued)

MCQs

1. Section 169 A company may, remove a director except the director appointed by National Company Law Tribunal u/s 241, before the expiry of the period of his office after giving him a reasonable opportunity of being heard after passing the ordinary resolution.

- i. True
- ii. False
- iii. Can not say

iv. None of the above

2. Section 168 A company may, remove a director except the director appointed by National Company Law Tribunal u/s 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard after passing the ordinary resolution.

i. True

ii. False

iii. Can not say

iv. None of the above

3. A director may resign from his office by giving notice in writing. The Board shall, on receipt of such notice within 60 days intimate the Registrar in Form DIR-12 and also place the fact of such resignation in the Directors' Report of subsequent general meeting of the company and post the information on its website.

i. True

ii. False

iii. Can not say

iv. None of the above

4. A director may resign from his office by giving

notice in writing. The Board shall, on receipt of such notice within 30 days intimate the Registrar in Form DIR-11 and also place the fact of such resignation in the Directors' Report of subsequent general meeting of the company and post the information on its website.

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

5. If all the directors of a company resign from their office or vacate their office, the promoter or in his absence the Central Government shall appoint the required number of directors to hold office till the directors are appointed by the company in General Meeting.

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

