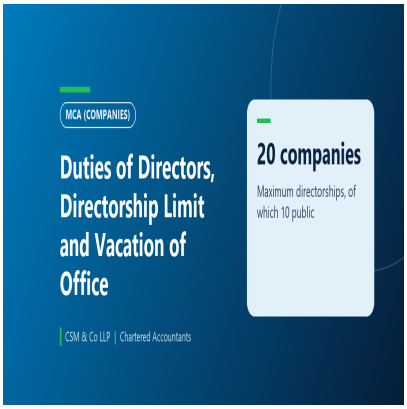

Duties of Directors, Directorship Limit and Vacation of Office: Sections 165 to 168 of the Companies Act, 2013

Description

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Quick summary

- A person cannot be a director in more than 20 companies at the same time, and not more than 10 of them public companies. Dormant companies are not counted towards the 20, and a private company that is a holding or subsidiary of a public company counts as public for the limit of 10.
- Section 166 sets the duties of a director: act within the articles, in good faith, with due care and independent judgment, avoid conflicts, no undue gain, no assignment of office. A breach is punishable with a fine of Rs 1 lakh to Rs 5 lakh.
- The office becomes vacant on disqualification, absence from all Board meetings for twelve months, breach of the interest disclosure rules, conviction with at least six months imprisonment, removal, and others.
- A director resigns by written notice; resignation takes effect from the date the company receives the notice or the date in the notice, whichever is later.

Directors run a company on behalf of its members, so the Companies Act, 2013 caps how many boards one person can sit on, lists the duties that every director owes, and says when the office ends. This post covers sections 165 to 168.

How many directorships (section 165)

- No person can hold office as a director, **including an alternate directorship**, in more than **20 companies** at the same time.
- Of these, not more than **10** can be **public companies**. For this limit, a **private company that is a holding or subsidiary of a public company** is counted as a public company.
- A directorship in a **dormant company** is not counted for the limit of 20.
- The members of a company can, by **special resolution**, set a lower number of companies in which a director of that company may act as director.
- **Penalty:** a person who accepts an appointment in violation of the section is liable to Rs 2,000 for each day after the first during which the violation continues, up to a maximum of **Rs 2 lakh**.

Duties of a director (section 166)

1. Act in accordance with the **articles** of the company.
2. Act in **good faith** to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and the protection of the environment.
3. Exercise duties with **due and reasonable care, skill and diligence**, and **independent judgment**.
4. Do not get into a situation where there is, or may be, a direct or indirect interest that conflicts with the interest of the company.
5. Do not achieve or attempt to achieve any **undue gain or advantage** for yourself or your relatives, partners or associates. A director found guilty of undue gain must pay the company an amount equal to the gain.
6. Do not **assign your office**; any assignment is void.

Penalty: a director who contravenes section 166 is punishable with a fine of **not less than Rs 1 lakh, which may extend to Rs 5 lakh**.

When the office becomes vacant (section 167)

The office of a director becomes vacant if he:

- incurs any disqualification under section 164 (where the disqualification arises from default in filing financial statements or repaying deposits under section 164(2), the office is vacated in all companies other than the company in default);
- **absents himself from all Board meetings held during twelve months**, with or without leave of absence;
- acts in contravention of section 184 on contracts in which he is interested, or fails to disclose his interest;
- is disqualified by an order of a court or the Tribunal;
- is convicted by a court of any offence, whether or not involving moral turpitude, and sentenced to **imprisonment for not less than six months**. The office is not vacated for 30 days from the conviction or order, and not until an appeal or petition filed within that time (and any further appeal filed within seven days) is disposed of;
- is removed under the Act; or
- was appointed a director by virtue of an office or employment in the holding, subsidiary or associate company, and **ceases to hold that office or employment**.

A person who goes on acting as a director when he knows that the office has fallen vacant is punishable with a fine of **Rs 1 lakh to Rs 5 lakh**. A private company can add other grounds for vacation in its articles. If all directors vacate, the promoter, or in his absence the Central Government, appoints the required number of directors until the company appoints others in general meeting.

Resignation (section 168)

- A director resigns by **written notice to the company**. The Board takes note, and the company informs the Registrar in the prescribed manner, time and form, and places the fact of resignation in the directors' report laid at the next general meeting.
- The director may also forward a copy of the resignation with detailed reasons to the Registrar **within 30 days** of the resignation.
- The resignation takes effect from the date on which the notice is received by the company, or the date specified in the notice, **whichever is later**.
- A director who has resigned remains liable for offences that occurred during his tenure.
- If all directors resign, the promoter, or the Central Government in his absence, appoints directors until the company appoints them in general meeting.

A short checklist for a director

1. Keep a list of the directorships you hold, and count public companies (and private subsidiaries of public companies) separately.
2. Attend at least one Board meeting in every twelve months, since absence from all meetings vacates the office.
3. Disclose your interest in contracts and arrangements as section 184 requires.
4. Read the articles, and record the reasons and information on which you rely when you decide.
5. When you resign, send written notice, keep proof of receipt, and file your own copy with reasons with the Registrar within 30 days if you want the reasons on record.

Points to check

- This post follows the Companies Act as published on India Code, including amendments up to the footnotes in that edition. Rules on appointment, disclosure forms and filing times are in separate rules and forms, which this post does not reproduce.
- For listed companies, SEBI's listing regulations impose further limits on directorships and on independent directors.

Frequently asked questions

How many companies can a person be a director of?

Not more than 20 companies at the same time, including alternate directorships, and not more than 10 public companies. A dormant company is not counted for the limit of 20. A private company that is a holding or subsidiary of a public company counts as a public company for the limit of 10.

What is the penalty for holding too many directorships?

A person who accepts an appointment in violation of section 165 is liable to a penalty of Rs 2,000 for each day after the first during which the violation continues, up to a maximum of Rs 2 lakh.

Can a company have a lower limit?

Yes. Members may, by special resolution, specify a lesser number of companies in which a director of that company may act as director.

What are the main duties of a director?

To act in accordance with the articles, in good faith to promote the objects of the company for the benefit of its members as a whole and in the best interests of the company, its employees, shareholders, the community and the environment; to use due and reasonable care, skill and diligence and independent judgment; to avoid conflicts of interest; not to make undue gain; and not to assign the office.

What is the penalty for breach of directors' duties?

A fine of not less than Rs 1 lakh, which may extend to Rs 5 lakh. A director who makes an undue gain must also pay the company an amount equal to the gain.

When does a director's office become vacant?

On disqualification under section 164, absence from all Board meetings held in twelve months, breach of the rules on interest in contracts, disqualification by a court or Tribunal, conviction with imprisonment of at least six months, removal under the Act, or ceasing to hold the office in the holding, subsidiary or associate company by virtue of which he was appointed.

How does a director resign?

By written notice to the company. The Board takes note, the company informs the Registrar, and the director may also forward a copy with reasons to the Registrar within 30 days. The resignation takes effect on the date of receipt or the date given in the notice, whichever is later.

Official sources

- India Code: The Companies Act, 2013 (sections 165 to 168)
- Ministry of Corporate Affairs

Related reading

- Board Meetings under Sections 173 to 175 of the Companies Act, 2013: Number, Notice, Quorum and Resolution by Circulation
- Appointment of Auditor under Section 139 of the Companies Act, 2013: Term, Rotation, First Auditor, Casual Vacancy and Removal

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