

## VACATION OF OFFICE

- Vacation of Office (VO) by a Director is pursuant Section 167 of Companies Act, 2013.
- VO by Director occurs in following cases-
  - He incurs any of the disqualifications specified in Section 164  
However, if he incurs default in Section 164(2), then there shall occur VO in all the companies except the one in which the default is incurred.
  - He absents himself from all the board meeting in 12 months with or without seeking leave of absence.
  - He acts in contravention of Section 184
    - entering into contracts or arrangements in which he is directly or indirectly interested
    - fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested
  - He becomes disqualified by an order of a court or the Tribunal
  - 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 six months

However, the office shall not be vacated -

Within 30 days , from the date of conviction or order of disqualification
---

If an appeal is referred within 30 days for aforesaid conviction, until expiry of 7 days from date of such appeal or petition is disposed of.
---

If any further appeal or petition is preferred against order or sentence within 7 days, until such further appeal or petition is disposed of.
---

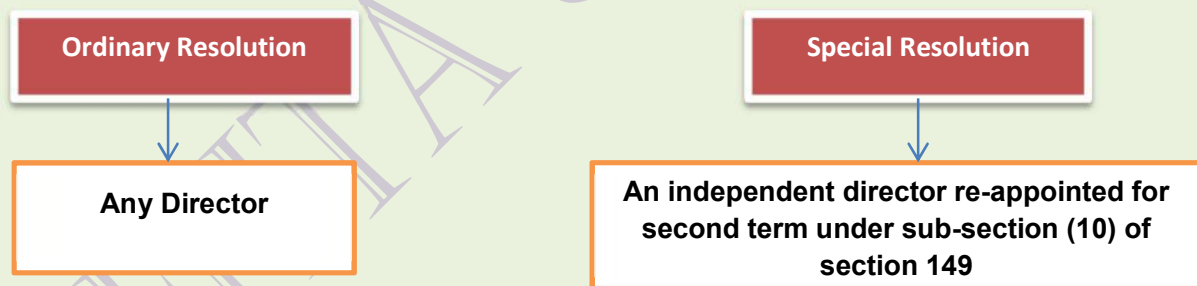
- He is removed in pursuance of the provisions of this Act;
  - He, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.
- A private company may include other grounds of VO in its article.
  - If all the directors vacate their office pursuant to sub-section (1), the promoters or, in his absence, Central Government shall appoint requisite number of directors who shall hold office till the directors are appointed by the Company in general meeting.
  - If any director continues to hold the office even after it has become vacate on account of sub-section (1), he shall be liable for a penalty of Rs. 1 lakh to a maximum of Rs. 5 lakhs.

## RESIGNATION OF DIRECTOR

- A director may resign by giving a notice to the Company pursuant to Section 168 of Companies Act 2013.
- The Company shall file Form DIR-12 within 30 days of receipt of notice and disclose the same in Board Report
- The Director may also file Form DIR-11 with Registrar within 30 days of resignation. In case of a foreign director, he may authorize any practicing Chartered Accountant or Company Secretary to file Form DIR-11.
- The resignation is effective from the date, whichever is later –
  - Notice is received by the company
  - Date mentioned by the Director
- The director who resigned shall be liable for the offence committed during his tenure.

## REMOVAL OF DIRECTOR

- Removal of Director is pursuant to Section 169 of Companies Act 2013
- A Company may remove a director before the expiry of his term by passing resolution after giving an opportunity of being heard-



- This section does not apply to company that has availed itself of the option given to it under section 163 to appoint more than 2/3rd of the total number of directors according to the principle of proportional representation.
- Process for Removal-
  - Special Notice is required to remove or to appoint other director in place of him
  - The aforesaid shall be sent to concerned director and heard at the meeting
  - If a director makes any representation, the copy shall be shared with members with notice, if time permits. If not then, the director be heard orally at the meeting.
  - However a copy of representation need not be sent or heard, if any aggrieved party makes an application to this effect and the Tribunal is satisfied that the provisions of

this section are being abused for defamatory purposes. He may order the director to bear the cost of such representation made by the company.

- The vacancy created by the director shall be fulfilled by appointment of other director in his place; otherwise it will amount to casual vacancy.

MEHTA & MEHTA