



NEWSLETTER

September 2022

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dvmgopal & associates
Company Secretaries

BOARD OF DIRECTORS ROLES AND RESPONSIBILITIES

WHO ARE BOARD OF DIRECTORS?

- ✚ Board of Directors are essentially a panel of people who are elected or appointed who jointly oversee the activities of a Company.
- ✚ The board is responsible for protecting shareholders' interests, establishing policies for management, oversight of the organization, and making decisions about important issues a company or organization faces.
- ✚ **As per Section 2(34) of Companies Act, 2013: "Director"** means a director appointed to the Board of a Company.

Expectations from the Board:

Skillful & Expert

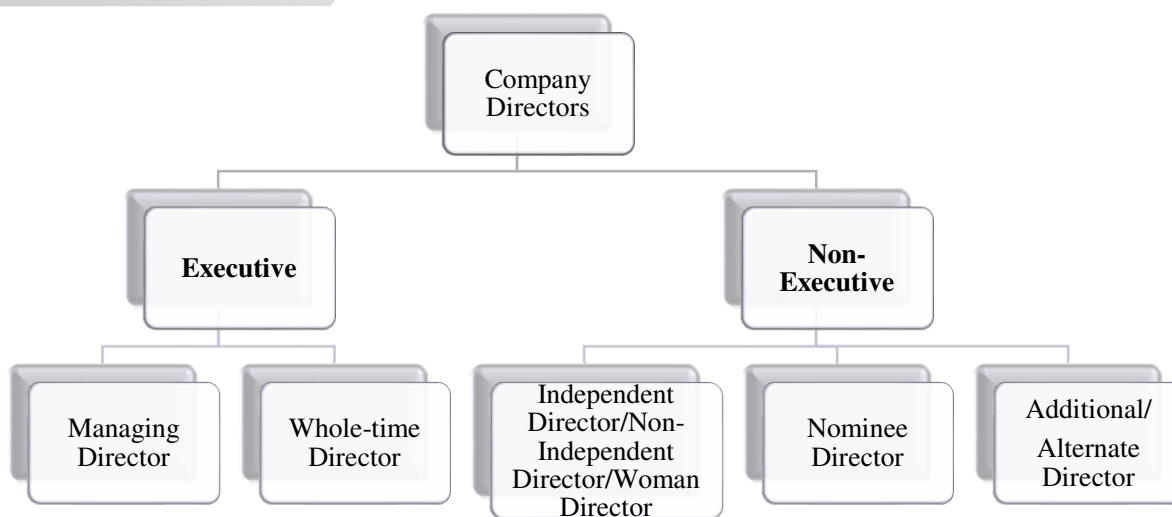
Ensure Governance

Be Independent & Accountable

Give Strategic Direction

Maintain Credibility and Legitimacy

TYPES OF DIRECTORS



FIDUCIARY RESPONSIBILITIES OF DIRECTORS

DUTY OF CARE

At all times, exercise due diligence and act with skill and competence.

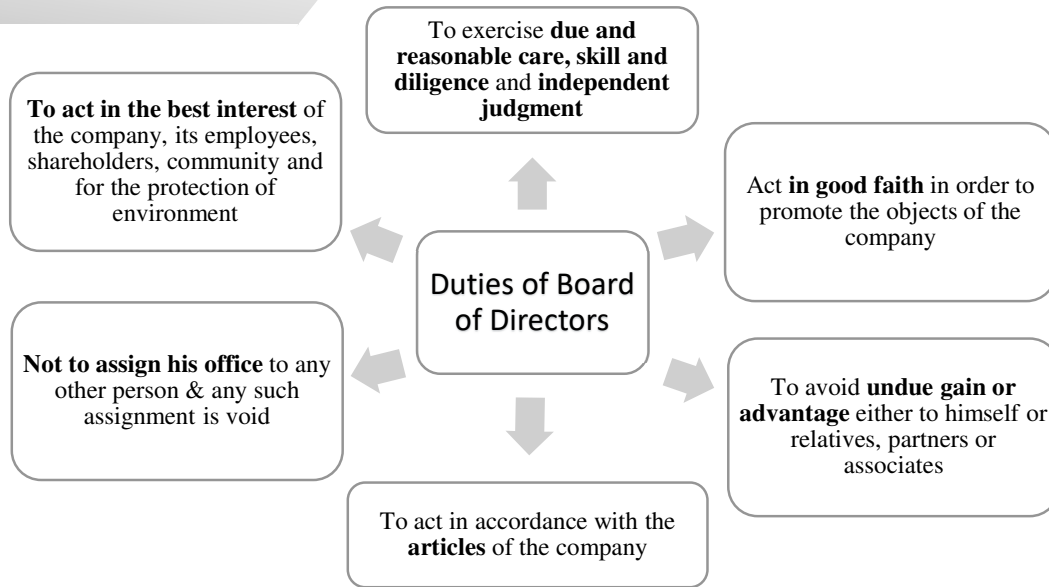
DUTY OF LOYALTY

At all times choosing the best interest of the organization above their own interest or that of other person or entity

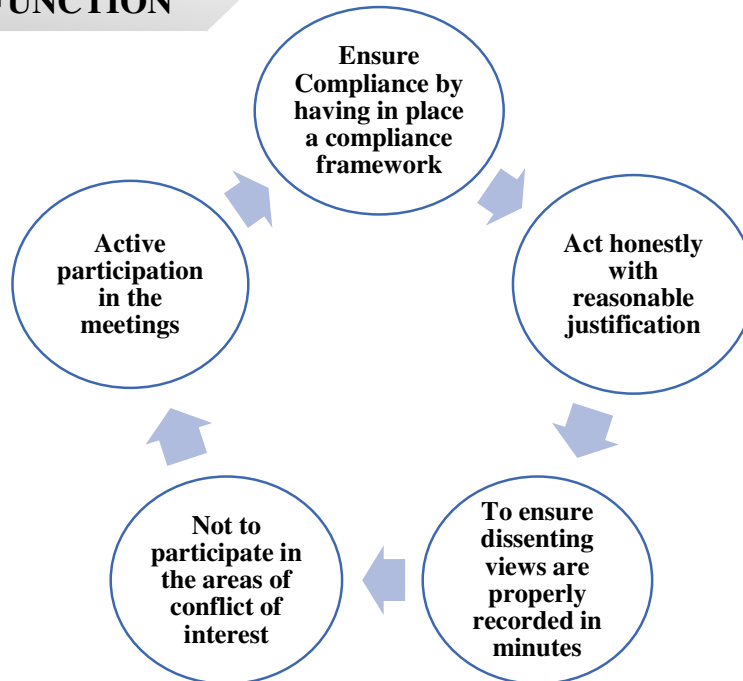
DUTY OF OBEDIENCE

Requires Board Members to comply with state, local and federal laws, as well as adhere to organizational guidelines

DUTIES OF DIRECTORS



DIRECTORS FUNCTION



DISCLOSURE OF INTEREST BY DIRECTOR

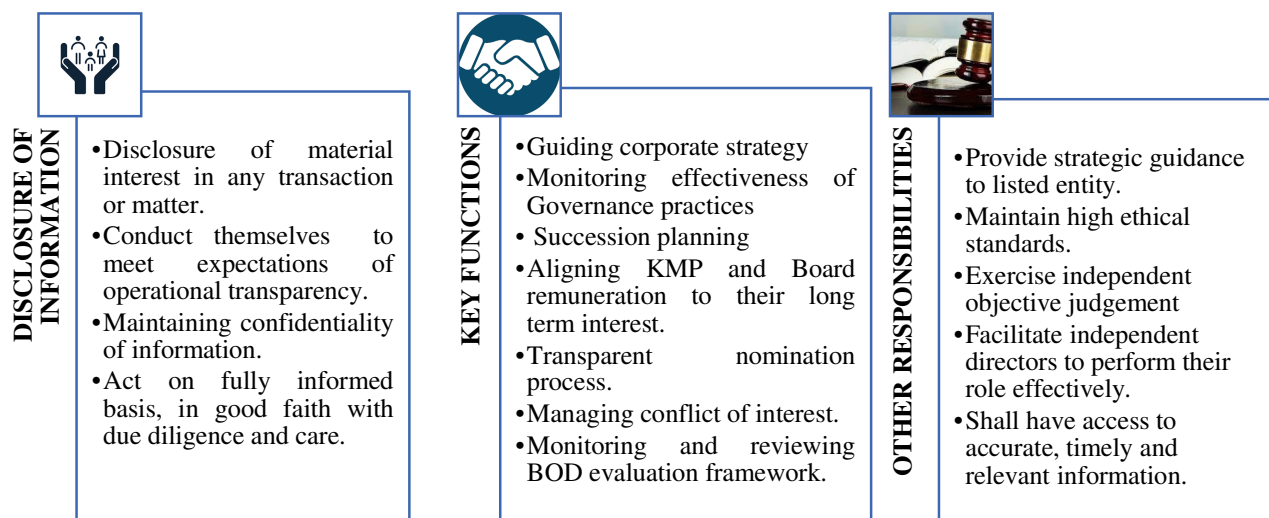
Disclosure of Interest (Section 184) –

- If every director of a company who is any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contact or arrangement entered into or to be entered into-
 - with a body corporate – in which such director or such director in association with any other director, holds more than 2% shareholding of that body corporate; or is a Promoter, Manager, CEO of that Body corporate.
 - with a firm or other entity in which, such director is a partner, owner or member, as the case may be.

shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting.

- If the director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board of Directors held after he becomes so concerned or interested.
- The disclosure has to be given:
 1. At the First Meeting of the Board in which he participates as a director and
 2. At the First Meeting of the Board in every Financial Year; or
 3. Whenever there is a change in the disclosures already made , then at the First Meeting held after such change.

GENERAL OBLIGATIONS



DIRECTOR RESPONSIBILITY STATEMENT

- ✚ In the preparation of the accounts for the financial year, the applicable **accounting standards have been followed** and that there are no material departures;
- ✚ The Directors had selected **such accounting policies** and have applied them consistently and made judgments and estimates that are reasonable and prudent **so as to give a true and fair view of the state of affairs of the Company** at the end of the financial year and of the Profit of the Company for the period;
- ✚ The Directors had taken proper and **sufficient care to the best of their knowledge and ability for the maintenance of adequate accounting records** in accordance with the provisions of the companies Act, 2013 for safeguarding the assets of the Company and for preventing and detecting fraud and other irregularities;
- ✚ The Directors had prepared the annual accounts on a **going concern basis**; and
- ✚ The Directors have **devised proper systems to ensure compliance with the provisions** of all applicable laws and that such **systems were adequate and operating effectively.**

OFFICER IN DEFAULT – Sec 2(60)

Whole Time Director OR

KMP (MD/CEO/Manager/WTD; CS; CFO) OR

If Co. has no KMP- Director or Directors specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified.
OR

Any Person under immediate authority of Board or is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default OR

Any Person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act or advise given in professional capacity. OR

Every Director aware of contravention by virtue of proceedings of Board etc.

LIABILITIES OF DIRECTORS

•Liability as 'officer in default'

•Disqualification & vacation of office as Directors

•Liabilities in case of Independent Directors and Non-executive Directors

•Liability for 'Fraud'

•Personal Liability – Contracting in their own names, Acting beyond the powers

OTHER LIABILITIES

- ✚ Liability for Illegal Acts
 - Director receiving secret commission or Bribe
 - Director's giving bribe
- ✚ Liability for negligence
- ✚ Vicarious Liability.

MCA Updates in The Companies Act, 2013 and Secretarial Standards

List of Updates

Companies (Incorporation) Second Amendment Rules, 2022

Companies (Incorporation) Third Amendment Rules 2022

MCA V3 Portal

Companies (Incorporation) Second Amendment Rules, 2022

The MCA has revised format of e-Form No. INC-9 to insert declaration on compliance with Government approval requirement under FEMA:

- Below new checkboxes are included in e-Form No. INC-9:- I am required to obtain the Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to subscription of shares and the same has been obtained, and is enclosed herewith. Or
- I am not required to obtain the Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to subscription of shares.

The MCA has inserted new declaration in e-Form No. INC-32 (SPICe+), in Part-B to insert declaration on compliance with Government approval requirement under FEMA:

In e-Form No. INC-32 (SPICe+), in Part-B, in Declaration, the following shall be inserted at the end, namely:-

“I, on behalf of the proposed directors, hereby declare that person seeking appointment is a national of a country which shares a land border with India, necessary security clearance from Ministry of Home Affairs, Government of India shall be attached with the consent. Yes No (if yes is opted, a copy of the security clearance is to be attached)”.

Companies (Incorporation) Third Amendment Rules 2022

In the Companies (Incorporation) Rules, 2014, after rule 25A, the following rule shall be inserted, namely:

"25B. Physical verification of the Registered Office of the company.-

- ✚ The Registrar, based upon the information or documents made available on MCA21, shall visit at the address of the registered office of the company and may cause the physical verification of the said registered office for the purposes of sub-section (9) of section 12, in presence of two independent witness of the locality in which the said registered office is situated and may also seek assistance of the local Police for such verification, if required.
- ✚ The Registrar shall carry the documents as filed on MCA 21 in support of the address of the registered office of the company for the purposes of physical verification and to check the authenticity of the same by cross verification with the copies of supporting documents of such address collected during the said physical verification, duly authenticated from the occupant of the property whereat the said registered office is situated.
- ✚ The Registrar shall take a photograph of the registered office of the company while causing physical verification of the same.
- ✚ The report of the physical verification shall be prepared in the following format as stated in the next slide.
- ✚ Where the registered office of the company is found to be not capable of receiving and acknowledging all communications and notices, the Registrar shall send a notice to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies and requesting them to send their representations along with copies of relevant documents, if any, within a period of thirty days from the date of the notice before taking further actions in accordance with the provisions of section 248 of the Act."



Report on Physical Verification of the Registered Office of the Company:

1. Name and CIN of the company:-
2. Latest address of the registered office of the company as per MCA21 record:-
3. Date of authorisation letter issued by the Registrar of Companies:-
4. Name of the Registrar of Companies:-
5. Date and Time of visit for physical verification of the registered office:-
6. Location details along with Landmark:-
7. Details of the person available, if any at the time of the visit-
 - (i) Name:-
 - (ii) Father's Name:-
 - (iii) Residential address:-
 - (iv) Relationship with the company, if applicable:-
8. Remarks if any:-
9. Documents attached:-
 - (i) Copy of the agreement/ownership/rent agreement/No Objection Certificate of the registered office of the company from owner / tenant/lessor-
 - (ii) Photograph of the registered office:-
 - (iii) Self Attested ID-Card of the person available, if any:-
 - (iv) Any other document(s):-

Date:

Place:

Signature

Name and Designation of the official with official address.

MCA V3 PORTAL

- The MCA is the process of upgrading the present version of the portal from Version 2 to Version 3. This is an enhanced version of the V2 portal and is presently only for Forms covered in Set 1 will be available in V3 portal..
- In the version 2, forms are required to be filled and uploaded in the portal while in V3 the forms are to be filled online. This enables user convenience including the ability to save a half filled form and file it later. Further in Version 2, there was only a My Workspace which had a list of notices from MCA and circulars issued by them . In Version 3, there is a personalized “My Application” feature which allows one to view all the forms filed by them till date along with the status of the forms such as pending for DSC upload, Under Processing, Pay fees, Resubmission etc.
- Set 1 forms covering 9 forms are being migrated to V3 while remaining Company forms are still in the V2 portal. This phased migration is done to enable smooth transition of the portal. Both Version2 and Version3 are now working seamlessly. Effective from 31st August 2022, Director KYC, Charge & Deposit forms for Company are required to be filed in Version 3 post log in on the MCA21 V3 Portal and other remaining company forms will be continued to be filed in the same manner as earlier in Version 2. You can download the other company forms from and proceed with the filing of the same as per previous process.
- Forms covered in Set 1 forms are:

CHG-1	CHG-4	CHG-6	CHG-8	CHG-9	DIR-3 KYC Eform	DIR-3 KYC web	DPT-3	DPT-4
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USER AND REGISTRATION

1. I am new user of MCA system. How can I register?

- New User refers to a person who does not have an existing User Account on MCA system in any version of MCA 21 (either V-1 or V-2). Thus, a ‘New User’ is the one who will be doing a fresh/new registration



on the MCA portal. If you are new to the MCA system, you can register yourself either as a 'Registered User' or 'Business user'

- Registered User profile is meant for any individual. In the LLP Module, such users have access to view and file only the RUN and FiLLiP forms.
- A Business User can be any of the following category:
 - Company/LLP: These Users have access to all forms and can file the forms for only the Company/LLP under which they get registered.
 - Director/Designated Partner: These Users have access to all forms and can file the forms for such Company/LLP with which they are associated as Director/ Designated Partner.
 - Manager/Secretary/Authorized Representative: These Users have access to all forms and can file the forms for such Company/LLP with which they are associated.
 - Officer in Default: These Users have access to all forms and can file the forms for such Company/LLP with which they are associated.
 - Professional: These Users have access to all forms and can file the forms for all Companies/LLPs.

2. If I am an existing user on Version-2. How do I register?

- For the existing Users of MCA fresh/new registration is not required. To login for LLP related filings, you are required to use your existing User ID and Password. After login, the system will identify the user's existing email ID which was used while user creation in V2 system and show all related history of filings in Application History section in the LLP Module. If the user attempts to register with a new Email ID which was not associated with the Old V2 system, then User will be registered as a completely New User and in this case, the Application History of the User will not be visible to the user. Please note that with one Email and PAN, only one user can be registered on the new system

3. Who can upgrade to Business User?

Any Registered User can upgrade to any category of the Business User. Any one of the following suitable categories can be selected while registering/upgrading:

- Company/LLP
- Director/Designated Partner
- Manager/Secretary/Authorized Representative
- Officer in Default .
- Professional

Compliance Calendar

Companies Act, 2013			
Compliance details	Form	Applicability	Due Date
Annual General Meeting (AGM)	Annually	Every Company other than a One Person Company	30/09/2022 (Mostly)
Intimation of Appointment of Cost Auditor to CG	Form CRA-2	Every company specified in item (A) and Item (B) of rule 3 of the Companies (Cost Records and Audit) Rules, 2014	27/09/2022 or 30 days of BM in which the appointment was made, whichever is earlier
KYC of the Director	DIR 3 KYC	Every person holding DIN	30/09/2022
FEMA			
Compliance details	Form	Applicability	Due Date
External Commercial Borrowings (ECB) - FEMA	Form ECB-2	All Companies having ECB	07/09/2022
Labour Laws			
Compliance details	Form	Applicability	Due Date
PF Payment	Monthly ECR	Entities registered with PF Authorities	15/09/2022
ESI Payment	Monthly ECR	Entities registered with ESIC Authorities	15/09/2022
INCOME TAX			
Compliance details	Form	Applicability	Due Date
TDS Payment	Challan 281	Non-government deductors	07/09/2022
Advance tax		Those taxpayers who has tax payable more than of Rs.10,000/-	
Tax Audit return	Form 3CA-3CD	corporate-assessee or non-corporate assessee (who is required to submit his/its return of income on October 31, 2022)	30/09/2022
GST			
Compliance details	Form	Applicability	Due Date
Return of outward supplies of taxable goods and/or services	GSTR 1	GST Taxpayers who have not opted for QRMP scheme	11/09/2022
Return of outward supplies of taxable goods and/or services	GSTR 1	GST Taxpayers who opted for QRMP scheme -Optional	13/09/2022
Summary Return of Outward and Inward Supplies along with payment of Tax	GSTR 3B	GST Taxpayers who have not opted for QRMP scheme	20/09/2022
GST Challan Payment if no sufficient ITC		GST Taxpayers who opted for QRMP scheme and not having sufficient ITC	25/09/2022
Summary Return of Outward taxable supplies and tax payable	GSTR 5 & 5A	Non Resident GST Taxpayers	20/09/2022
Return for details of ITC received and distribution	GSTR 6	Input Service Distributors	13/09/2022
Return for TDS under GST	GSTR 7	Government Authorities	10/09/2022
Return for Details of Supplies and the amount of tax collector	GSTR 8	E-commerce Operator	10/09/2022
Return for details of goods and services purchased in India	GSTR-11	Taxpayer claiming Refund & having UIN	28/09/2022