



Managing a Company



Company Officers

- Directors
- Managers
- Secretary

Director

■ Who is a Director?

“Director” includes-

- a person occupying the position of director of the company, by whatever name called ;
- a person in accordance with whose directions or instructions a person is accustomed to act ;
- a person in accordance with whose directions or instructions the board of the company may be required or is accustomed to act ; and
- a person who exercises or who is entitled to exercise or who controls or who is entitled to control the exercise of powers which would be required to be exercised by the board ; and
- person to whom a power or duty of the board has been directly delegated by the board with that person's consent

Classification of directors

- Executive and Non-executive directors
- Shadow Director
- Managing Director

No. of directors – Sec 201

- Minimum - A company shall have at least one director.
- *Public company* should have at least two directors.
- Maximum- no is not given in the CA
- The minimum no can be increased by Articles but cannot be reduced.

Qualifications of Directors – Sec 202

- Any person who is not disqualified below can be appointed as a director of a company.
- Disqualified persons-
a person who is -
 - (a) under eighteen years of age;
 - (b) an undischarged insolvent;
 - (c) prohibited from being a director under the Companies Act, No. 17 of 1982
 - (d) prohibited from being a director of a company under CA No.7 of 2007
 - (e) has been adjudged to be of unsound mind;
 - (f) not a natural person;
 - (g) does not comply with any qualifications for directors contained in the articles of that company.

Appointment of Directors – Sec 203

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**Appointment of
first directors**

**Appointment of
subsequent directors**

Remuneration and other benefits – Sec 216

- If authorized by the articles or by an ordinary resolution, the board of a company can approve-
 1. the payment of any remuneration or other benefits to a director for services as a director or in any other capacity;
 2. the payment by the company to a director or former director, of *compensation for loss of office*;
 3. the entering into of a contract to do any one of the things stated above

Director ceasing to hold office/ Vacation of Office – Sec 207

- The office of director of a company should be vacated if the director-
 - (a) resigns from his office
 - (b) is removed from office – Sec 206
 - (c) becomes disqualified from being a director
 - (d) dies
 - (e) vacates office according to Sec 210 (age limit)
 - (f) vacates office according to the Articles of the company.

Powers of Directors

Section 184- Subject to the provisions contained in the articles of a company-

- (a) the business and affairs of a company should be *managed* by or under the direction or supervision of the *board* of the company;
- (b) the *board* of a company *should have all the powers necessary* for managing and for directing and supervising the management of, the business and affairs of the company.

Delegation of powers

- Although there was no express provisions under earlier law to delegate powers of directors *new Act provides* for that.
- **Section 186-**
Subject to the restrictions in the Articles of the company the board can delegate its powers to
 - *A committee of directors*
 - *A director*
 - *An employee of the company*
 - *Any other person*

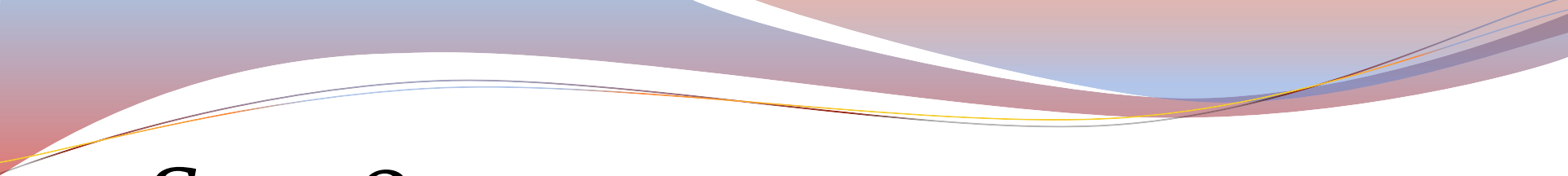
Other than powers mentioned in the 6th schedule.



Director's Duties

Section 187- Duty of directors to act in good faith and in the interests of company.

- A person exercising powers or performing duties as a director of a company shall act in **good faith**, and in what that person believes to be in the interests of the company.
- A director of a company which is a wholly owned subsidiary of another company may, if expressly permitted to do so by the company's articles, act in a manner which he believes is in the interest of that other company even though it may not be in the interests of the company of which he is a director.

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- Sec 187 -
 - Charterbrige Corp ltd. V. Lloyds Bank Ltd
 - Neptune Ltd v. Fitzgearld
 - Howard Smith Ltd. v. Ampol Petroleum Ltd.

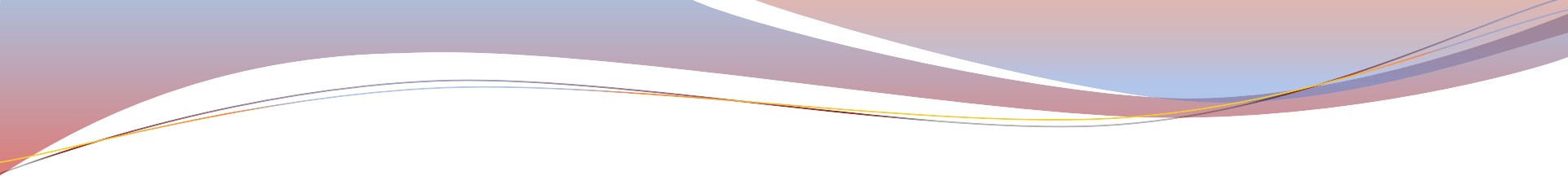
- **Sec 188 - Directors to comply with Act and company's articles**

A director of a company should not act or agree to the company acting, in a manner that contravenes any provisions of this Act, or the provisions contained in the articles of the company.

- **Sec 189 -Directors standard of care and skills.**

A person exercising powers or performing duties as a director of a company-

- (a) should not act in a manner which is reckless or grossly negligent; and
- (b) should exercise the degree of skill and care that may reasonably be expected of a person of his knowledge and experience.

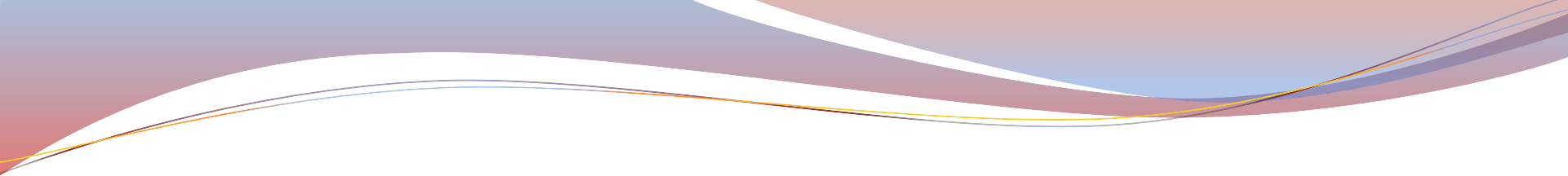
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- **Sec 189 –**
 - **Dorchester Finance co. Ltd v. Stebbin**
 - **Re City Equitable Fire Insurance Co.**

Sec 190- Use of information and advice.

- A director of a company can rely on reports, statements, and financial data and other information prepared or supplied, and on professional or expert advice given by an employee of the company; a professional adviser or expert any other director or committee of directors.

This should apply to a director, if, and only if, the director-

- (a) acts in good faith;
- (b) makes proper inquiry where the need for inquiry is indicated by the circumstances; and
- (c) has no knowledge that such reliance is unwarranted.

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- **Section 191, 192, 193, 194 - Transactions where a director is interested.**
 - **Insider Dealing...?**
 - **Sec 192 -**
 - Arbdeen Rly co. v. Blackie Bros.