

[2014] 120 CLA (Mag.) 9

## Practical aspects – Number of directorships

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*There has been extensive and far reaching changes in the provisions relating to number of directorships that a person can hold in accordance with the erstwhile Companies Act, 1956 and the provisions in the Companies Act, 2013 along with the recent amendment in the clause 49 of the Listing Agreement. The author has analysed these provisions with some practical examples to help the readers understand its impact.*

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### Introduction

1. The number of companies in which a person can be a director has always been a sensitive topic even in the erstwhile Companies Act, 1956 ('1956 Act'). The underlying principle is to put a cap on the number of companies in which a person can be director to enable that person to focus and give quality time to each of the companies. The provisions contained in the Companies Act, 2013 ('2013 Act') and the revised clause 49 of the Listing Agreement ensure that the time and effort of a director is not diluted over a large number of companies.

### Provisions under the 1956 Act

2. In accordance with the provisions of section 275, a person can hold office as director in not more than 15 companies at the same time. Section 278, provides for the exclusion of the following companies in reckoning the number of these 15 directorships :

- ▶ Private company which is not a subsidiary of a public company
- ▶ Private company which is not a holding company of a public company
- ▶ Unlimited company
- ▶ Section 25 company
- ▶ Company in which such person is only an alternate director

Following are some case studies to understand these provisions :

Sl. No.	Case Study 1 Mr. A is director in :	Case Study 2 Mr. A is director in :	Case Study 3 Mr. A is director in :	Case Study 4 Mr. A is director in :
1.	10 public cos.	8 public cos.	7 public cos.	12 public cos.

2.	4 private cos. which are subsidiaries of public cos.	6 private cos. which are subsidiaries of public cos.	4 cos. incorporated under section 25.	3 cos. incorporated under section 25.
3.	3 cos. incorporated under section 25.	alternate director in 2 private cos.	1 unlimited co.	alternate director in 2 private cos.
4.	7 private cos.	10 private cos.	7 private cos.	16 private cos.
Effective number of directorships of Mr. A	14	14	7	12

**Provisions under the 2013 Act**

3. Sub-section (1) of section 165 states that a person shall hold office as a director in not more than twenty companies. Detailed provisions of section 165 are as follows :

- ▶ Twenty directorships includes alternate directorships
- ▶ Person can be a director in maximum 10 public companies
- ▶ In reckoning the limit of public companies, following directorships shall be included
- ▶ Private company which is a holding company of a public company
- ▶ Private company which is a subsidiary of a public company
- ▶ A person can be a director in maximum 10 private companies.

Accordingly, the directorships in the following shall be considered/counted while reckoning the cap of twenty directorships (which were excluded under the 1956 Act) :

- ▶ Private company
- ▶ Unlimited company
- ▶ Section 8 company

Following are some case studies to understand these provisions :

Sl. No.	Case Study 1 A is director in :	Case Study 2 A is director in :	Case Study 3 A is director in :	Case Study 4 A is director in :
1.	4 public cos.	6 public cos.	8 public cos.	7 public cos.
2.	3 private cos. which are subsidiary of public co.	2 private cos. which are subsidiary of public Co.	3 private cos. which are subsidiary of public co.	2 public cos. in which Mr. A is an alternate director
3.	3 private cos. which are holding co. of public co.	1 private cos. which are holding co. of public co.	3 private cos. which are holding co. of public co.	3 private cos. which are holding co. of public co.
4.	2 company formed under section 8 (private company)	2 private cos. in which Mr. A is an alternate director	8 private cos.	1 company formed under section 8 (private co.)

5.	3 private cos. in which Mr. A is an alternate director	6 private cos.	—	2 private cos. in which Mr. A is an alternate director
6.	4 private cos.	—	—	7 private cos.
<i>Effective number of directorships of Mr. A &amp; compliance of section 165 of CA, 2013.</i>	10 public cos. & 9 private cos. Therefore, compliance of section 165	9 public cos. & 8 private cos. Therefore, compliance of section 165	14 public cos. & 8 private cos. Therefore, not compliance of section 165 number of directorships in public cos.)	12 public cos. & 10 private cos. Therefore, not compliance of section 165 number of directorships in public cos.)

Pursuant to the provisions of sub-section (3) of section 165, any person holding office as director in companies more than the prescribed limits, immediately before the commencement of the 2013 Act shall, within a period of 1 year from such commencement, —

- (i) choose not more than the specified limit of those companies, as companies in which he wishes to continue to hold the office of director ;
- (ii) resign his office as director in the other remaining companies ; and
- (iii) intimate the choice made by him to each of the companies in which he was holding the office of director before such commencement and to the Registrar of Companies in respect of each such company.

Section 165 has been made effective from 1st April, 2014 *vide* Notification issued by Ministry of Corporate Affairs on 26th March, 2014.

### Independent directors

4. In accordance with the provisions of section 149 and rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, following class or classes of companies shall have at least two directors as IDs :

- ▶ Public companies having paid up share capital of Rs. 10 crores or more,
- ▶ Public companies having turnover of Rs. 100 crore or more,
- ▶ Public companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding Rs. 50 crore.

The criteria for a person to be an ID have been defined in sub-section (6) of section 149. Therefore, ID is now required to be appointed by following types on companies :

- ▶ Listed companies
- ▶ Unlisted public companies

### Clause 49 of the Listing Agreement

5. SEBI issued a Circular on 17th April, 2014 with respect to revision of clauses 35B and 49 of the Equity Listing Agreement. As per revised clause 49, —

- (i) a person shall not serve as an ID in more than seven listed companies ;
- (ii) any person who is serving as a whole-time director ('WTD') in any listed company shall serve as an ID in not more than 3 Listed Companies.

Sections 149 and 165 and clause 49 of the Listing Agreement can be interpreted as follows :

- ▶ A person can be an ID in seven listed companies (maximum)
- ▶ Therefore, the same person can be an director (ID or not) in maximum three unlisted companies (since a person can be a director in maximum 10 public companies [section 165])
- ▶ WTD of a listed company can be an independent director in three listed companies
- ▶ WTD of a listed company can be a director (ID or not) in seven unlisted companies (since a person can be a director in maximum 10 public companies [section 165])
- ▶ WTD of a listed company can be a director in following combination also :
  - ▶ ID – in three listed companies (maximum)
  - ▶ ID or non ID – in six unlisted public company other than the company in which he is WTD.

Following are some case studies to understand the provision under the 2013 Act and clause 49 of the listing agreement :

Sl. No.	Case Study 1 A is director in :	Case Study 2 A is director in :	Case Study 3 A is director in :	Case Study 4 A is director in :
1.	6 unlisted public cos.	4 unlisted public cos.	1 unlisted public Co. – whole-time director	1 listed public co. – WTD
2.	1 private co. which is a subsidiary of public co.	2 private cos. which is a subsidiary of public cos.	5 listed cos. – as ID.	4 listed public co. – ID
3.	1 private co. which is a holding co. of public co.	2 private cos. which is a holding co. of public cos.	2 unlisted public cos. in which Mr. A is an alternate director	4 unlisted public Co. – non-executive director.
4.	2 listed cos. – as ID.	2 listed cos. – as ID.	2 private cos. which is a subsidiary of public cos.	2 unlisted public cos. in which Mr. A is an alternate director
5.	8 private cos.	2 private cos. in which Mr. A is an alternate director	2 private cos. which is a holding co. of public cos.	8 private cos.
6.	2 private cos. in which Mr. A is an alternate director	8 private cos.	8 private cos.	–
effective number of	In compliance with the	In compliance with the	In compliance with the	In compliance with the provisions of

<i>directorships of Mr. A &amp; compliance of section 165 &amp; Listing Agreement (Cl. 49)</i>	provisions of section 165 (10 public cos. & 10 private cos.) & clause 49 of the Listing Agreement.	provisions of section 165 (10 public cos. & 10 private cos.) & clause 49 of the Listing Agreement.	provisions of section 165 (Limit of private cos.) & clause 49 of the Listing Agreement.  But, not in compliance, with Number of Directorships in Public Companies.	section 165 (Limit of private cos.).  But, not in compliance, with section 165 (Limit of public cos.) & clause 49 of the listing agreement. <i>(discussed below)</i>
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*Explanation* to case study 4 :

- ▶ A is a whole time director in a listed public company. Therefore, he can be an ID in only three listed companies (in accordance with revised clause 49)
- ▶ A is a director in 11 public companies (counted in accordance with section 165. Therefore, he shall ensure compliance in accordance with sub-section (3) of section 165

**Conclusion**

6. The number of directorships held by a person and the type of companies where he is appointed as a director plays a very crucial role for companies intending to appoint directors. All the existing directorships of a person need to be considered before appointing a person as a director of the company. Further, since the exceptions available in the 1956 Act are not available in the 2013 Act, even the directorships of existing directors need to be reckoned afresh. It is necessary to check whether his directorship in the company would result in stepping over the statutory limit on number of directorships prescribed by the newly introduced 2013 Act and revised clause 49 of the Listing Agreement. This provision becomes more crucial because the legal and/or secretarial department of all types of companies have to consult their directors (existing or proposed appointee) on the number of directorships in companies – private company, unlisted public company and public listed company – as independent director taking into consideration the provisions of section 165 and revised clause 49 of the Listing Agreement. ❖❖