

Concept of Additional Director

Provisions related to appointment of Additional director (Section 260):-

Although Directors are appointed by the shareholders in the General Meeting but section 260 authorize Board to appoint additional directors. Section 260 applies to all companies whether public or private.

The Provisions applicable to additional directors are as follows:-

1. Conditions for appointment:-

- Articles of the company **must** authorize the board to appoint additional director.
- Additional directors together with the other directors shall not exceed the maximum strength fixed for the board by the article.

2. Relaxations in the appointment :-

- Section 260 overrides the section 259. Therefore in no case, the approval of GG is required for appointment of an AD.
- AD can also be appointed by passing a resolution by circulation.
- The power of the board to appoint an AD is not affected by the fact that:-
 - ✓ The strength of the board fallen below the statutory minimum.
 - ✓ The strength of the board fallen below the quorum prescribed by the articles.
- For the purpose of section 255 the AD shall not be included in the total no of directors.

3. Term of office of the directors :-

- He holds office upto the date of next AGM
- Here the important point is that use of the *upto the date of next AGM* not *upto the conclusion of next AGM*.
- It means whether the AGM is held or not the AD will retire on the date on which AGM should have been held.

4. Position of an AD :-

- The AD has same rights, powers, duties and liabilities as any other directors.

Procedure for appointment of additional director:-

1. Check the Articles of Association of the Company to see whether they authorize the Board of directors of the Company to Appoint Additional Director. If not, alter the Articles of Association accordingly.
2. Obtain a written consent [Section 264(1)] from the person who is to be appointed as an AD.
3. Ensure that the person who is to be appointed as AD must have [Director Identification Number] before being appointed as director under Section 266A.
4. Convene Board Meeting after giving notice to all the directors [Section 286] to discuss besides others the following matters. To consider and approve the appointment of additional director. (Section 260)

5. Inform the Stock Exchange with which shares of the company are listed about the date of this meeting prior to the board meeting. [Clause 19 of the Standard Listing Agreement]
6. Inform the said Stock Exchange within 15 minutes of the board Meeting, of the outcome of the meeting by letter or fax.
7. Pass the necessary Resolution for the appointment of Additional Director to hold the office up to the date of Annual General Meeting. (Section 260, First Proviso)
8. Check that such Director makes intimation within twenty days of his appointment to the other companies in which he is already a director, Managing Director, manager, Secretary. [Section 305(1)].
9. File e-form no 32 with the concerned ROC within 30 days from the date of Appointment.
10. Pay the requisite fee at the prescribed rates.
11. Make necessary entries in the Register of Directors and in the Register of Director's Shareholding. [Section 303(1) & 307].
12. Check that the number of directors including the Additional Director does not exceed the maximum strength fixed for the Board by Articles of Association of the Company. (Section 260, Second Proviso)
13. Notify the Stock Exchange with which shares of the Company are listed about the change in the company directors [Clause 30(a) of the Standard Listing Agreement]

Consent letter of director to act as director of the Company

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Date :

To

The Board of Directors

[Name of the Company]

[Address of the Company]

Sub:- Consent to become Director of the Company

I, the undersigned, hereby give my consent to act as a Director of the Company pursuant to the provisions of Section 264(2)/266(1)(a) of the Companies Act, 1956. I, hereby further certify that I have not been disqualified to act as a Director under section 267 and/or 274 of the Companies Act, 1956

Signature _____

Name _____

Address _____

Board Resolution - Appointment of Additional Director

TYPE OF MEETING	BOARD MEETING
TYPE OF RESOLUTION	SIMPLE MAJORITY

**CERTIFIED TRUE COPY OF THE RESOLUTION PASSED AT THE MEETING OF THE BOARD OF DIRECTORS OF
(NAME OF THE COMPANY) HELD AT THE REGISTERED OFFICE OF THE COMPANY AT (ADDRESS) ON (DATE)
AT (TIME)**

The Chairman informed the Board that to broaden the existing Board, it is proposed to appoint (Name of the person whose appointment is proposed) as an Additional Director who will hold the office upto the date of ensuing Annual General Meeting. He further informed that (Name of the person whose appointment is proposed) vide his letter dated (date of consent) conveyed his consent to act as a director of the company.

The Board considered the same and passed the following resolution:

"RESOLVED THAT pursuant to the provisions of Section 260 and other applicable provisions (including any modification or re-enactment thereof), if any, of the Companies Act, 1956, (Name of the person whose appointment is proposed) be and is hereby appointed as an Additional Director on the Board of Directors of the Company who shall hold office upto the date of the ensuing Annual General Meeting of the Company".

"RESOLVED FURTHER THAT (Name of the person(s) authorized) be and are hereby severally authorized to do all the acts, deeds and things which are necessary to the appointment of aforesaid person as an additional director of the Company."

Procedure for regularization of additional director :-

1. In case of a Private Company which is not subsidiary of a Public Company, these provisions are not applicable and the appointment will be governed as per Articles of Association of the Company.
2. Notice must be given to the Company regarding proposal for appointment of a person as a director not less than 14 days before the General Meeting.
3. Ensure that the aforesaid notice is not given by a person who is a retiring director. The notice must be given by a member of the company with a deposit of Rs. 500/- per candidate which will be refunded in case

the candidate is elected. Alternatively, the person proposed to be appointed as director may himself give notice of his candidature as aforesaid.

4. There is no prescribed form for this.

5. Inform all the members about the aforesaid candidature not later than 7 days before the meeting either by individual notices or by advertisement of this fact in at least two newspapers circulating in the place where the registered office of the company is situated, of which one must be in English and the other in regional language of that place, both the newspapers must have wide circulation. (Section 257 Provisos)

6. In case of listed companies forward three copies of this notice to the stock exchange with which the shares of your company are listed. [Clause 31(c) of the Standard Listing Agreement]

7. Hold and convene a General Meeting and pass an Ordinary resolution, [Section 189(1)] if the Articles of Association of your company require passing of Special resolution for such appointment, then pass a special resolution with three-fourth majority [Section 189(2)].

8. In case of listed companies send 3 copies of the notice and a copy of the proceeding of the General meeting to the Stock Exchange with which the shares of your company are listed. [Clause 31(c) & (d) of the Standard Listing Agreement]

9. Such Director need to make a intimation with in twenty days to the other companies in which he is already a director, Managing Director, manager, Secretary. (Section 305).

10. File e-form no 32 with the concerned ROC within 30 days from the date of Appointment.

11. Pay the requisite fee at the prescribed rates.

12. Make necessary entries in the Register of Directors and in the Register of Director's Shareholding. [Section 303(1) & 307].

13. Notify the Stock Exchange with which shares of the Company are listed about the change in the company directors. [Clause 30(a) of the Standard Listing Agreement]

Thanks

CA Manish Malu