

Prepared by:

CS Ankur Garg

<https://www.facebook.com/#!/ankur.gargcs>

Procedure for appointment of Additional Director in CA 2013

Dear All,

As we are aware that Companies Act, 2013 is already in force from April 01, 2014, and every professional is trying his/her best to unlock and decode the provisions of Companies Act, 2013. In this regard an attempt has been made from my side to compile the procedure for appointment of Additional Director in Public Company/Private Company (Purely Private) taking the route of appointment of Director by Board.

Appointment of Additional Director Companies Act, 1956

Appointment of Director by Board as Additional Director is not a new concept and was also prevalent under Companies Act, 1956. In erstwhile Companies Act, 1956 the same was regulated by Section 260 read with Articles of the Company. Enabling clause in the Article of Association was mandatory to appoint Additional Director u/s 260. Further as per section 257 of the erstwhile Companies Act, 1956, such Additional Director was required to be regularized in General Meeting by shareholders through passing an Ordinary Resolution.

One notable point is that section 257 was not applicable to a Private Company (not subsidiary of a public company) in Companies Act, 1956. Hence, it was advisable to appoint Director through General Meeting as per section 255(2) of Companies Act, 1956. However now in Companies Act, 2013, section 160 (Corresponding to Section 257) is applicable to a Private Company.

1. Check whether Articles of the Company contain power/authorisation to appoint Additional Director read with Section 161(1) of the Companies Act, 2013. If Not, then alter the Articles of the company to have enabling clause for appointment of Additional Director.
2. Collect DIN number of the proposed director u/s 153 read with from **DIR-3** and **DIR-4**.
3. Collect following Documents/Consent/Declaration from the proposed director:
 - i. Consent in writing to act as Director in form **DIR-2** pursuant to Rule-8 of Companies (Appointment & Qualification of Directors) Rules, 2014.
 - ii. Intimation in Form **DIR-8** pursuant to Rule-14 in terms of Companies (Appointment & Qualification of Directors) Rules, 2014, to the effect that he/she is not disqualified u/s 164(2) of Companies Act, 2013.

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- iii. Disclosure of Interest in Form **MBP.1** pursuant to section 184(1) read with rule 9(1) of Companies (Meetings of Board and its Powers) Rules, 2014. Remember one thing MBP.1 should not be dated earlier than date of his/her appointment as Director.

However, if there is nothing to disclose on the part of new Director, then form **MBP.1** may be collected later as and when his interest created in specified entities.

4. Hold a board meeting to pass Board Resolution for appointment of Additional Director u/s 161 of Companies Act, 2013.
5. File form **DIR.12** with ROC as return of appointment of Additional Director within 30 days of passing board resolution for appointment.
6. Make necessary entries in the Register of Directors along with their Shareholding, if any, maintained u/s 170 of Companies Act, 2013.

Regularisation of Additional Director

Additional Director appointed by a Private Company Shall be regularized at the ensuing AGM u/s 160 of the Companies Act, 2013. In erstwhile Companies Act, 1956, corresponding section for Regularisation of Additional Director was Section 257 which was not applicable to a Private Company.

However, under Companies Act, 2013, section – 160 is available to Private Company for the purpose of Regularisation of Additional Director.

Board resolution for taking note of Disclosure of Interest and filing of form MGT.14

Form **MBP.1** given by the Additional Director, towards disclosure of interest u/s 184, should be taken note of by the Board of Directors through a separate Board Resolution. This Board Resolution should be passed in the **next board meeting** to complete the formalities for appointment of Additional Director.

As per section 179(3)(k) read with rule 8(5) of Companies (Meetings of Board and its Powers) Rules, 2014, taking note of the disclosure of director's interest and shareholding shall be done by the Board **only by means of resolutions** passed at meetings of the Board. Hence it is duty of the company to pass board resolution to take note of disclosure of interest by Director and file a copy of that board resolution in **MGT.14** within 30 days of passing board resolution as desired by section 117(3) of Companies Act, 2013.

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Few Notable Points

Request all the professionals to please take note of below mentioned points w.r.t. secretarial practice and relevant provisions:

1. Intimation by such Additional Director of such appointment to all other companies in which he/ she is already a Director (if any), would be required i.e., change in Disclosure of Interest u/s. 184 (1) in all other companies and subsequent compliance.
2. As per section 149(1)(b) a Company can have maximum 15 Directors. So Pass Special Resolution in case number of directors including proposed additional director will exceed 15 [Section 149(1)].
3. Amend Articles in case maximum number of Directors fixed in the Articles will exceed with this appointment.
4. If proposed appointee is whole-time KMP in any other company, Board resolution of that company will be required as per first proviso to section 203(3).
5. Issue letter of appointment to the director. Board resolution for appointment of additional director can also be passed by circulation.

I would request all professionals to please go through the procedure and relevant documentation listed and share your opinion, if any.

Regards

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