

Prepared by:

CS Ankur Garg

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

Procedure for appointment of Alternate Director

Dear Professional Colleagues,

Some time back I shared a write up containing 'Procedure for appointment of Additional Director' under Companies Act, 2013. Statutory provision for appointment of Additional Director is given in Section 161(1) of Companies Act, 2013. Now through this write up we'll discuss the provisions regarding appointment of Alternate Director [Section 161(2)]. Kindly check the link below for procedure related to appointment of Additional Director' under Companies Act, 2013:

[Procedure for Appointment of Additional Director in CA 2013](#)

Legal Provisions related to appointment of Alternate Director [Section 161(2)]

Legal Provisions related to Appointment of Alternate Director are given in Section 161(2) of the Companies Act, 2013, which is reproduced for your quick reference:

Section 161(2): Alternate Director

Section 161 (2): The Board of Directors of a company may, if so authorised by its articles or by a resolution passed by the company in general meeting, appoint a person, not being a person holding any alternate directorship for any other director in the company, to act as an alternate director for a director during his absence for a period of not less than three months from India:

Provided that no person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director under the provisions of this Act:

Provided further that an alternate director shall not hold office for a period longer than that permissible to the director in whose place he has been appointed and shall vacate the office if and when the director in whose place he has been appointed returns to India:

Provided also that if the term of office of the original director is determined before he so returns to India, any provision for the automatic re-appointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director.

Main notable points regarding appointment of Alternate Director

Please find below few relevant points to understand the concept of Alternate Director:

1. The Board may appoint an alternate director if authorized:
 - a. by the Articles of Association of the Company; or
 - b. by a resolution passed by the company in general meeting.
2. Proposed Alternate Director should not be a person holding any alternate directorship for any other director in the company.

Prepared by:

CS Ankur Garg

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

3. Board can appoint Alternate Director to act as an alternate director for a director during his absence for a period of not less than three months **from India**. Earlier in Companies Act 1956 it was absence for at least three months from the state in which Board meetings are ordinarily held.
4. The original director and the alternate director can remain on the Board so long as the above position continues and there is no need of approval by the company in general meeting. But whenever the "original" director returns to the country (India) in question, the alternate director automatically vacates his office and he may be appointed again when the original director leaves that country (India).
5. The return of the original director to the state will be enough for the cessation of office of the alternate director whether or not the original director attends a Board meeting e-form **DIR.12** shall be filed electronically with the Registrar in respect of vacation of office and appointment on every occasion.
6. This appointment may be made at a meeting of the Board or by a circular resolution. The Articles of a private company may provide for the appointment of an alternate director.

Secretarial Procedure for appointment of Alternate Director

Please find below the **procedure** for appointment of Alternate Director in Board Meeting as per Companies Act, 2013:

1. Check whether Articles of the Company contain power/authorisation to appoint Alternate Director read with Section 161(2) of the Companies Act, 2013. If not, then alter the Articles of the company to have enabling clause for appointment of Alternate Director. Alternatively call General meeting and pass a resolution authorising board to appoint Alternate Director.
2. Collect DIN number of the proposed alternate director u/s 153 read with from DIR-3 and DIR-4.
3. Collect following Documents/Consent/Declaration from the proposed alternate 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.
 - 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.

Prepared by:

CS Ankur Garg

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

4. Hold a board meeting to pass Board Resolution for appointment of Alternate Director u/s 161(2) of Companies Act, 2013.
5. File form **DIR.12** with ROC as return of appointment of Alternate Director within 30 days of passing board resolution for appointment.
6. Also check the management hierarchy of your company to check such Alternate Director comes under the category of “**one level below KMP**”. If yes then also file form **MGT.14** with board resolution for appointment

To know more about filing of **MGT.14** with concerned ROC regarding appointment or removal of “**one level below KMP**”, kindly refer my article available at the link below:

[List of Resolutions to be filed with ROC in form MGT.14](#)

7. Make necessary entries in the Register of Directors along with their Shareholding, if any, maintained u/s 170 of Companies Act, 2013.

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

Form **MBP.1** given by the Alternate 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 Alternate 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.

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 Alternate 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 Alternate 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.

Prepared by:

CS Ankur Garg

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

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 Alternate director. Board resolution for appointment of Alternate director can also be passed by circulation.

SECRETARIAL PRACTICE / DRAFTING

Board Resolution for Appointment of Alternate Director

"RESOLVED THAT pursuant to Section 161(2) of the Companies Act, 2013 and other applicable provisions (including any modification or re-enactment thereof), if any, of the Companies Act, 2013, Mr. Sanyam Goel, be and is hereby appointed as alternate Director to Mr. Jaspal Singh, during his absence from India and that he shall vacate such office when the original Director, Mr. Jaspal Singh, returns to India, pursuant to article 105 of the Articles of Association of the Company.

FURTHER RESOLVED THAT for the purpose of giving effect to this resolution, Mr. Manoj Agarwal, Director of the Company be and is hereby authorised, on behalf of the Company, to do all acts, deeds, matters and things as deem necessary, proper or desirable and to sign and execute all necessary documents, applications and returns for the purpose of giving effect to the aforesaid resolution along with filing of necessary E-form as return of appointment with the Registrar of Companies, NCT of Delhi and Haryana."

Disclaimer:

This write up is intended to start academic discussion on few significant interpretations under Companies Act, 2013. It is not intended to be a professional advice and should not be relied upon for real time professional facts. Readers are advised to refer relevant provision of law before applying or accepting any of the point mentioned above. Author accepts no responsibility whatsoever and will not be liable for any losses, claims or damages which may arise because of the contents of this write up.

I am hopeful that this write up would be of some help w.r.t. your professional working and endeavors under Companies Act, 2013. Kindly share your opinion.

Thanks

CS Ankur Garg

[Connect through Facebook](#)

Sept. 26, 2014