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WHETHER FIRST DIRECTOR – REGULARIZATION MANDATORY

BACKGROUND:

Many professionals have been raising question on interpretation/ provisions relating to Regularization of First Director:-

Situation:

As per Act, Company can appoint first director by mention the name of directors in the Article of Association or in case of article don't give any name in that case subscriber of the MOA who are individual shall be deemed to be first Director.

❖ Whether first director appointed as per section 152(1) (by name in AOA or as subscriber of MOA) mandatory to regularize or not?

Let's first discuss the questions:

Various professional have the view that in position of appointment of First Director either through AOA or through subscriber sheet their term will be upto the date, they resign from the post or retirement by rotation. Other professional have the observation that tenure of first directors will be upto the First AGM of the Company, in first AGM Company have to regularize them with the consent of the shareholders. If they don't get regularized in the AGM then their tenure will be considered as finish at the end of the AGM.

Statutory Provisions Contained Under the Act:

Provisions of the Companies Act, 2013 to the extent relevant for our discussion, are stated as under (with necessary comments and modifications, wherever felt necessary).

As stated in Section 152(1) where no provision is made in the articles of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed.

As stated in Section 152(2) Save as otherwise expressly provided in this Act, every director shall be appointed by the company in general meeting.

Interpretation Note:

Therefore, as per the language of section 152 First Director can be appoint by AOA or by subscriber sheet. But as per Section 152(2) every director shall be appointed by the Company in General Meeting. First director are not appointed in General Meeting.

If we look at the language of Section 152(1) there are one sentence "deemed to be first directors of the company until the directors are duly appointed" and 152(2) apparent that director can be appoint barely by shareholders in general meeting. As a result, first director may hold office till directors are elected, in accordance with the provisions of section 152(2) at the first general meeting held after the incorporation but prior to the holding of the first annual general meeting

CONCLUSION:

Hence, taking into consideration the provisions of Section 152(1) & (2) one can opine that First director of the Company contain their tenure upto the date of first general meeting held by the Company subsequent to incorporation.

Thus, here one can opine that First Directors of the company are required to regularized in the first General meeting of the Company.

Any other opinion is also welcome for further clarity of the provision of the Companies Act.