



FACULTY OF JURIDICAL SCIENCES

Course : B.A.LL.B./BBALL.B IInd Semester

SUBJECT: COMPANY LAW
SUBJECT CODE: BAL 406/BBL 406

NAME OF FACULTY: Ms. Anjali Dixit
Assistant Professor

FACULTY OF JURIDICAL SCIENCES



LECTURE-27

APPOINTMENT AND QUALIFICATIONS OF DIRECTORS:

(continued)

APPOINTMENT OF DIRECTORS –Section 152

First Director

The first directors of most of the companies are named in their articles. If they are not so named in the articles of a company, then subscribers to the memorandum who are individuals shall be deemed

to be the first directors of the company until the directors are duly appointed.

In the case of a One Person Company, an individual being a member shall be deemed to be its first director until the director(s) are duly appointed by the member in accordance with the provisions of Section 152.

General provisions relating to appointment of directors

1. Except as provided in the Act, every director shall be appointed by the company in general meeting.
2. Director Identification Number is compulsory for appointment of director of a company.
3. Every person proposed to be appointed as a director shall furnish his Director Identification Number and a declaration that he is not disqualified to become a director under the Act.
4. A person appointed as a director shall on or before the appointment give his consent to hold the office

of director in physical form DIR-2 i.e. Consent to act as a director of a company. Company shall file Form DIR-12 (particulars of appointment of directors and KMP along with the form DIR-2 as an attachment within 30 days of the appointment of a director, necessary fee. {Rule8}

5. Articles of the Company may provide the provisions relating to retirement of the all directors. If there is no provision in the article, then not less than two-thirds of the total number of directors of a public company shall be persons whose period of office is liable to determination by retirement by rotation and eligible to be reappointed at annual general meeting. Further independent directors shall not be included for the computation of total number of directors. At the annual general meeting of a public company one-third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.

The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment.

At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto. If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the same day in the next week, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.

If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be deemed to have been re-appointed at the adjourned meeting, unless—

- (i) a resolution for the re-appointment of such director has been put to the meeting and lost; (ii) the retiring director has expressed his unwillingness to be so re-appointed; (iii) he is not qualified or is disqualified for appointment; (iv) a resolution, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or (v) section 162 i.e. appointment of directors to be voted individually is applicable to the case.

Punishment –Section 159

If any individual or director of a company, contravenes any of the provisions of section 152/155/156 such individual or director of the company shall be punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to Rs. 50,000 and where the contravention is a continuing one, with a further fine

which may extend to Rs. 500 for every day after the first day during which the contravention continues.

Appointment of Additional Director- Section 161 (1)

The board of directors can appoint additional directors, if such power is conferred on them by the articles of association. Such additional directors hold office only upto the date of next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier. A person who fails to get appointed as a director in a general meeting cannot be appointed as Additional Director.

Appointment of Alternate Director- Section 161 (2)

Section 161(2) of the Act allowed the followings:

- (i) The Board of Directors of a company must be authorised by its articles or by a resolution passed by the company in general meeting for appointment of alternate

director.

- (ii) The person in whose place the Alternate Director is being appointed should be absent for a period of not less than 3 months from India.
- (iii) The person to be appointed as the Alternate Director shall be the person other than the person holding any alternate directorship for any other Director in the Company.
- (iv) If it is proposed to appoint an Alternate Director to an Independent Director, it must be ensured that the proposed appointee also satisfies the criteria for Independent Directors.
- (v) 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.

- (vi) If the term of office of the original director is determined before he so returns to India, any provision for the automatic reappointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director

(To be continued)

MCQs

1. Director Identification Number is compulsory for appointment of director of a company.

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

2. If the term of office of the original director is determined before he so returns to India, any provision for the automatic reappointment of retiring directors in default of another appointment shall apply to the original, and not to the alternate director

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

3. The board of directors can appoint additional directors, if such power is conferred on them by the articles of association. Such additional directors hold office only upto the date of next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier.

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

4. The person in whose place the Alternate Director is being appointed should be absent for a period of not less than 1 months from India.

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

5.If any individual or director of a company, contravenes any of the provisions of section 152/155/156 such individual or director of the company shall be punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to Rs. 10,000

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

