

NEWS LETTER

COMPANY LAW

AND

CORPORATE AFFAIRS COMMITTEE

THE MADRAS CHAMBER OF COMMERCE AND INDUSTRY

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Members who are interested in contributing Article to the newsletter may please send the same to bravics@gmail.com on or before 20th of the month to be published in that month newsletter.

ARTICLE

ALTERNATE DIRECTOR

INTRODUCTION:

The Companies Act 2013 has dealt with different kinds of directors and has also prescribed the manner of their appointment, tenure, function and rights. Basically all of them are directors, but the prefix to their name assumes significance and conveys their role and position. For example, Managing director, Whole time director, Independent director, Nominee director, Casual vacancy director, additional director and so on. One such category is Alternate director. This category was there under the Companies Act 1956, since repealed and has been of immense benefit for those directors who are residing abroad, but will not be able to come and attend all board meetings or other meetings and in which event, the Board will appoint an alternate to the original director. In this write up we will attempt to consolidate all the requirements under the Act and under Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR) in respect of Alternate director.

CHARGING SECTION:

Section 161(2) of the Act

Regulations 17A and 25 of LODR

ANALYSIS:

Section 161(2) of the Act which came in to force from 01.04.2014, and is reproduced below for immediate reference:

(2) The Board of Directors of a company may, if so authorized 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, or holding Directorship in the same 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.

Following points emerges out of the above legislative prescription:

- a) Board of directors of the company alone can appoint alternate director.
- b) Board is eligible to exercise the power to appoint an alternate director subject to the Articles of association of the company empowering them to do or the members of the company by a resolution authorizing the Board to exercise the power.
- c) Board cannot appoint a person as an alternate director if he is already a director of the company.
- d) Board cannot appoint a person as an alternate director if he is an alternate director of any other director in the same company.
- e) Board can exercise the power to appoint an alternate to a director during the absence of such director for a period of not less than 3 months from India.
- f) Alternate director can be appointed for an Independent director also provided that the alternate director to be appointed is also qualified to be appointed as an Independent director.

g) Tenure of office:

The person appointed as an alternate director shall not hold office for a period longer than that permissible to the director in whose place he was appointed as an alternate director.

h) Vacation of office:

If and when the director in whose place a person was appointed as an alternate director shall vacate office if and when the director returns to India.

- i) In case the term of office of the director in whose place an alternate director was appointed is determined before he returns to India, the automatic re-appointment provisions will apply only to the original director and not to the alternate director. (“Original Director” means a Director in whose place the Board has appointed any other individual as an Alternate Director- SS 1)

It is pertinent to note that an Alternate director is a director for all practical purpose, and hence all the duties, responsibilities, eligibility to become a director, provisions relating to disqualification, vacation, resignation, liabilities, benefits as applicable to a normal director will apply.

It is only when an alternate director can be appointed, his tenure and when he vacates office is specially defined in addition to other requirements which are specific to alternate director.

Alternate director is **not a proxy** to the original director.

SS 1 mandates that the Notice, Agenda and Notes on Agenda shall be sent to the Original Director also at the address registered with the company, even if these have been sent to the Alternate Director. It is advisable to ensure that the circulation of draft minutes and signed minutes are also sent to original director for information.

Guidance note on board meetings issued by ICSI states as follows:

Quote:

‘Interest’ in case of Alternate Director: In case an Alternate Director has been appointed and the Original Director is interested in a particular Resolution, the Alternate Director does not ipso facto become interested in that particular Resolution by virtue of the Original Director being interested.

The Alternate Director should be treated as interested and not entitled to vote only if he himself is interested in any other manner in such Resolution.

Section 165 deals with number of directorships:

According to Section 165(1) no person, after the commencement of this Act, shall hold office as a director, including any alternate directorship, in more than twenty companies at the same time.

LODR:

Regulation 17A which prescribes maximum number of directorships includes alternate directorship. Regulations relevant portion is reproduced below for reference:

a) Maximum number of directorships. 17A. The directors of listed entities shall comply with the following conditions with respect to the maximum number of directorships, including any alternate directorships that can be held by them at any point of time.

Regulation 25 deals with obligation with respect to Independent directors

b) 25(1) prescribes that no person shall be appointed or continue as an alternate director for an independent director of a listed entity with effect from October 1, 2018.

It can be inferred that, a listed company cannot have an alternate director for an Independent director, however in case of an unlisted company an alternate director may be appointed for an Independent director if the director to be appointed is also qualified to be an independent director.

CONTRAVENTION AND CONSEQUENCES:

There is no specific provision under Section 161 prescribing consequences if there is non-compliance of Section 161. However Section 172 under the same chapter XI provides that:

172. Penalty

“ If a company is in default in complying with any of the provisions of this Chapter and for which no specific penalty or punishment is provided therein, the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees, and in case of continuing failure, with a further penalty of five hundred rupees for each day during which such failure continues, subject to a maximum of three lakh rupees in case of a company and one lakh rupees in case of an officer who is in default.”

COMPILED BY: **Ms CS Anusha and Ms CS Shiva Priyaa S. Partners, B RAVI & ASSOCIATES**

MINISTRY OF CORPORATE AFFAIRS: AUGUST 2024 - NOTIFICATIONS

S.No.	Date of Notification/ Circular	Notification/ Circular No.	Effective date of the Notification/ Circular	Subject matter in brief
1.	05.08.2024	Notification No: G.S.R. 475(E).	27.08.2024	Limited Liability Partnership (Amendment) Rules, 2024 to insert "the Centre for Processing Accelerated Corporate Exit" under Rule 37 of the Limited Liability Partnership Rules, 2009
2.	05.08.2024	Notification No: G.S.R. 476(E).	16.09.2024	Companies (Adjudication of Penalties) Amendment Rules, 2024 to introduce e-adjudication platform and introduction of form for the same
3.	12.08.2024	Notification No: G.S.R. 491(E).	09.09.2024	Companies (Registration of Foreign Companies) Amendment Rules, 2024 to bring "Registrar, Central Registration Centre" under the rules in place of "registrar".
4.	12.08.2024	Notification No: G.S.R. 492 (E).	14.08.2024	Companies (Indian Accounting Standards) Amendment Rules, 2024 for various amendments under IND AS

SECURITIES EXCHANGE BOARD OF INDIA – AUGUST 2024 - CIRCULARS

Aug 30, 2024 Review of eligibility criteria for entry/exit of stocks in derivatives segment

Aug 22, 2024 Amendment to Master Circular for Infrastructure Investment Trusts (InvITs) dated May 15, 2024 - Review of statement of investor complaints and timeline for disclosure of statement of deviation(s)

Aug 22, 2024 Amendment to Master Circular for Real Estate Investment Trusts (REITs) dated May 15, 2024 - Review of statement of investor complaints and timeline for disclosure of statement of deviation(s)

Aug 20, 2024 Cybersecurity and Cyber Resilience Framework (CSCRF) for SEBI Regulated Entities (REs)

Aug 19, 2024 Modalities for migration of Venture Capital Funds registered under erstwhile SEBI (Venture Capital Funds) Regulations, 1996 to SEBI (Alternative Investment Funds) Regulations, 2012

Aug 19, 2024 Guidelines for borrowing by Category I and Category II AIFs and maximum permissible limit for extension of tenure by LVFs

Aug 06, 2024 Amendment to Master Circular for Real Estate Investment Trusts (REITs) dated May 15, 2024 – Board nomination rights to unitholders of REITs

Aug 06, 2024 Amendment to Master Circular for Infrastructure Investment Trusts (InvITs) dated May 15, 2024 - Board nomination rights to unitholders of InvITs

Aug 05, 2024 Valuation of Additional Tier- 1 Bonds

Aug 05, 2024 Institutional mechanism by Asset Management Companies for identification and deterrence of potential market abuse including front-running and fraudulent transactions in securities

Aug 01, 2024 Amendment to Circular for mandating additional disclosures by FPIs that fulfil certain objective criteria.

CONSULTATION PAPERS ISSUED BY SEBI IN THE MONTH OF AUGUST 2024:

Aug 30, 2024 Consultation Paper on review of the Securities and Exchange Board of India (Informal Guidance) Scheme, 2003

Aug 29, 2024 Consultation paper on “Provisions pertaining to appointment of Public Interest Directors”

Aug 29, 2024 Consultation paper on Maintenance of Record of Mandatory Communication by Regulated Entities

Aug 28, 2024 Consultation Paper on “The facility for Trading in the Secondary Market using UPI Block Mechanism to be mandatorily offered by Qualified Stock Brokers (QSBs) to their clients (ASBA - like facility for secondary market) and other incidental matters”

Aug 28, 2024 Review of Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992 [Click here to provide your comments](#)

Aug 22, 2024 Consultation paper on Ease of Doing Business by Substituting the Requirement of Attestation of certain Documents by a Notary Public/Gazetted Officer.

Aug 21, 2024 Consultation paper on clarification on the term “pecuniary relationship” of Debenture Trustee (DT) with the issuer as per Regulation 13A of the DT Regulations.

Aug 20, 2024 Consultation Paper on Faster Rights Issue with flexibility of allotment to Selective Investor(s)

Aug 17, 2024 Consultation paper on streamlining disclosure in respect of appointment of Debenture Trustee (DT) in the offer document

Aug 16, 2024 Consultation paper on expanding the scope of Sustainable Finance framework in the Indian securities market

Aug 16, 2024 Consultation paper on measures towards Ease of Doing Business and streamlining compliance requirements for Non-Convertible securities – review of LODR Regulations [Click here to provide your comments](#)

Aug 16, 2024 Introduction of Liquidity Window facility for investors in debt securities through Stock Exchange mechanism

Aug 09, 2024 Public Consultation on Draft Circular on Periodic Reporting Format for Research Analysts and Proxy Advisers

Aug 08, 2024 Consultation Paper on draft circular for Reporting by Foreign Venture Capital Investors

Aug 06, 2024 Consultation Paper on investment by Foreign Investors through Segregated Portfolios/ P-notes/ Offshore Derivative Instruments

Aug 06, 2024 Consultation Paper on Review of Regulatory Framework for Investment Advisers and Research Analysts

Aug 05, 2024 Consultation Paper on Streamlining the process and reduction in timelines of Bonus Issue (enabling T+2 trading of shares post record date where T being record date)

NOTIFICATIONS ISSUED BY RESERVE BANK OF INDIA – AUGUST 2024

Aug 29, 2024: Scheme for Trading and Settlement of Sovereign Green Bonds in the International Financial Services Centre in India.

Interest Equalization Scheme (IES) on Pre and Post Shipment Rupee Export Credit

Aug 27, 2024: Implementation of Section 51A of UAPA, 1967: Updates to UNSC’s 1267/1989 ISIL (Da'esh) & Al-Qaida Sanctions List: Amendments in 01 Entry

Aug 22, 2024: Cessation of “Credit Suisse AG” as a banking company within the meaning of sub section (2) of Section 36 (A) of the Banking Regulation Act, 1949 .

Inclusion of “UBS AG” in the Second Schedule of the Reserve Bank of India Act, 1934

Cessation of “Krung Thai Bank Public Company Limited” as a banking company within the meaning of sub section (2) of Section 36 (A) of the Banking Regulation Act, 1949

Exclusion of “Credit Suisse AG” from the Second Schedule of the Reserve Bank of India Act, 1934

Exclusion of “Krung Thai Bank Public Company Limited” from the Second Schedule of the Reserve Bank of India Act, 1934

Processing of e-mandates for recurring transactions

Aug 16, 2024: Review of Master Direction - Non-Banking Financial Company – Peer to Peer Lending Platform (Reserve Bank) Directions, 2017

Aug 12, 2024: Review of Risk Weights for Housing Finance Companies (HFCs)

Review of regulatory framework for HFCs and harmonisation of regulations applicable to HFCs and NBFCs

Aug 08, 2024: Frequency of reporting of credit information by Credit Institutions to Credit Information Companies

Aug 06, 2024: Modified Interest Subvention Scheme for Short Term Loans for Agriculture and Allied Activities availed through Kisan Credit Card (KCC) during the financial year 2024-25

Aug 02, 2024: Prudential Treatment of Bad and Doubtful Debt Reserve by Co-operative Banks

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02.09.2024**