

Chapter - 1 "Appointment and Qualification of Directors"

(iv)	Sec. 160:	<u>Rights of Persons other than Retiring Directors to stand for Directorship</u>	
		<u>(Along with Rule 13 - Notice of Candidature)</u>	
		A Person who is not a retiring director is eligible for appointment to the office of director at any general meeting.	
		<u>Steps to be followed:</u>	
		(14 days before AGM)	(7 days before AGM)
	Notice of AGM / EGM	Notice in writing proposing candidature to be left at regd. office by	Company shall inform such candidature by
	(21 days before date of AGM)		Date of AGM/EGM
	Candidate himself	or member intending to propose the candidature of other person as director	serving individual notice through E-mail to members who provided their E-mail addresses
			placing notice of candidature on website of company, if any
			AND
	Note: Along with notice, a deposit of ₹1 Lac shall also be made.		in writing to all other members
			↓
	<u>Exception:</u> Deposit not required in case of		Exception to requirement of Individual Notice
	(a) Appointment of I.D.		Individual notice need not be served if company advertises such candidature or intention
	(b) Director recommended by NRC		
	(c) Director recommended by Board		↓
	if company not required to constitute NRC.		Not less than 7 days before the meeting in a
	Note: Deposit shall be refunded, if person		(a) Vernacular Newspaper; and
	(a) Elected as director		(b) English Newspaper
	or		
	(b) gets >25% of valid votes cast		

(v) Sec. 161: Appointment of Additional Director, Alternate Director and Nominee Director:

Appointment of Additional Director - Sec. 161(1)

	Authority to Appoint	Persons who cannot be appointed	Tenure
Sec. 161(1) - Additional Director	BOD, if power conferred by the ⇒ Articles	A person who ⇒ fails to get appointed as a director in general meeting.	⇒ Up to date of next AGM or ⇒ the last date on which AGM should have been held, whichever is earlier.
<p>Notes:</p> <p>Additional Directors are considered as Non-Rotational Directors, hence cannot be considered as Retiring Director.</p> <p>To re-appoint additional directors, requirements of Sec. 160 need to be complied with.</p>			
<p>Examples:</p>			
1	BOD of X Ltd. appoints Mr. Mohan as additional director through resolution by circulation. Whether the appointment is valid.		
2	Y Ltd. appoint Mr. Sohan as additional director in its EGM through Ordinary Resolution. Whether the appointment is valid.		
3	BOD of MN Ltd. appoints Mr. Manish as additional director, whose resolution for appointment was failed in immediately preceding AGM. Whether the appointment is valid.		
4	BOD of OP Ltd. appoint Mr. Ram as additional director in Board Meeting, for a period of 3 years. Whether the appointment is valid.		

Appointment of Alternate Directors - Sec. 161(2)

	Authority to Appoint	Persons who cannot be appointed	Tenure	Other Provisions / Conditions
Sec. 161(2) - Alternate Director	BOD, if authorised by the	A person holding	⇒ Up to the period permissible to the Original director.	Provisions as to automatic re-appointment of retiring director shall apply to Original Director, not to alternate director
	⇒ Articles or	⇒ alternate directorship for any other director in the company or	⇒ Vacation arises at the moment when Original director returns to India.	
	⇒ A resolution passed by company in GM	⇒ holding directorship in the same company		
	Note: To become alternate director for an I.D., person need to be qualified as an I.D.			
	Examples:			
1	Mr. A was appointed as Alternate Director by Mr. O for 6 months as he was going outside India for some personal reasons. Is it a valid appointment?			
2	Whether Mr. X (Director in X Ltd.) can be appointed as Alternate Director for Mr. Y (Director in X Ltd.)			
3	Whether Mr. X (Alternate Director in X Ltd. for Mr. O) can be appointed as Alternate Director for Mr. Y (Director in X Ltd.)			
4	Due to absence of Mr. O from India, Mr. A was appointed as alternate director. Period of office of Mr. O is liable to be determined by rotation. In the AGM as well as adjourned AGM, no resolution passed to re-appoint Mr. O and no resolution passed as to not to fill the vacancy. Whether Mr. A can be deemed to be re-appointed automatically.			

Appointment of Nominee Director - Sec. 161(3)

	Authority to Appoint	Persons who can be appointed
<p>Sec. 161(3) - Nominee Director</p>	<p>BOD, subject to ⇒ Articles of company</p>	<p>A person nominated by: ⇒ any institution in pursuance of</p> <ul style="list-style-type: none"> • provisions of any law <p style="text-align: center;">or</p> <ul style="list-style-type: none"> • any agreement <p>⇒ the C.G. or S.G. (in case of Govt. company)</p>
Examples:		
1	<p>BOD appoint Mr. X as nominee director in pursuance of an agreement with a financial institution. Whether the appointment is valid.</p>	
2	<p>BOD appoint Mr. Ravi as a nominee director on request of a bank which has extended its financial assistance to the company. There is no clause in the loan agreement for such nomination. Whether the appointment is valid.</p>	
3	<p>BOD appoint Mr. Swamy as a nominee director on request of a bank which has extended its financial assistance to the company in pursuance of a nomination clause in the loan agreement. Articles do not confer such power on the Board.</p> <p>However, Company passed a special resolution in this regard authorising the Board to appoint such director. Whether the appointment is valid.</p>	

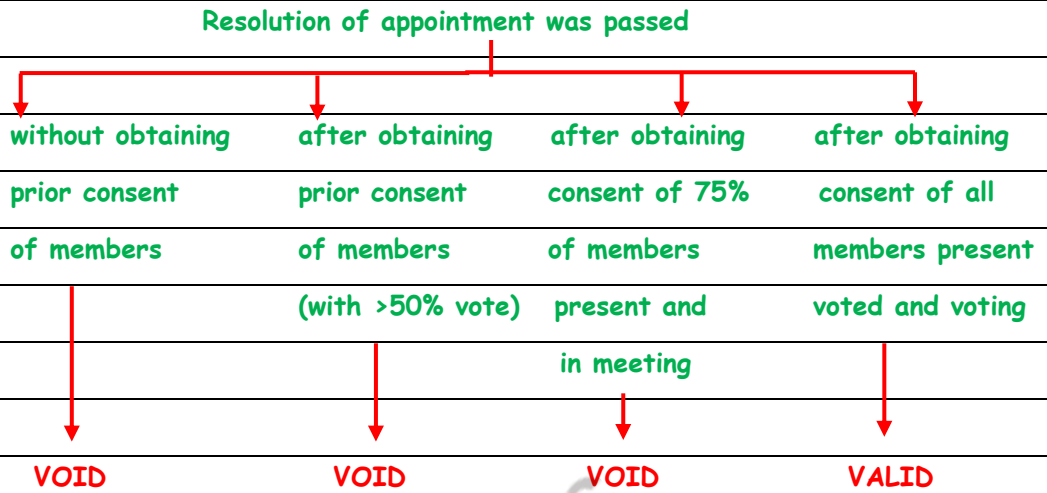
Filling of Casual Vacancy - Sec. 161(4)

	Nature of Casual Vacancy	Authority to appoint	Manner of appointment	Tenure
Sec. 161(4)	Vacancy created in office of any director ⇒ appointed by company in general meeting, ⇒ before expiry of term in normal course.	BOD ⇒ in default of and subject to any regulations in the Articles.	⇒ Appointment shall be made at a meeting of Board. ⇒ Appointment shall be subsequently approved by members in immediate next general meeting.	Person so appointed to fill casual vacancy shall hold office up to the date to which the director in whose place he is appointed would have held office if it had not been vacated.
<p>Note: Person appointed to fill casual vacancy cannot be considered as retiring director. To re-appoint such director, requirements of Sec. 160 need to be complied with.</p>				
Examples:				
1	BOD of X Ltd. appoints Mr. Mohan u/s 161(4) so as to fill the vacancy created due to resignation of Mr. Sohan, through resolution by circulation. Whether the appointment is valid.			
2	Whether BOD can fill the vacancy created due to death of a director who was appointed earlier by the BOD u/s 161(4).			
3	How the vacancy created due to death of a director appointed u/s 161(4), be filled.			

Do Practice - Questions on Sec. 161

(vi)	<u>Sec. 162: Appointment of Directors to be voted Individually:</u>
	<u>Sec. 162(1):</u> At a general meeting of a company
	↓
	a motion for appointment of ≥ 2 persons as
	directors of the company
	↓
	by a Single Resolution
	↓
	shall not be moved
	↓
	unless a proposal to move such a resolution has first been agreed
	to at the meeting without any vote being cast against it.
	<u>Sec. 162(2):</u> A resolution moved in contravention of Sec. 162(1) shall be <u>void</u> whether or
	not any objection was taken when it was moved.
	Note: Sec. 162 shall not apply to Private Companies.
	<u>Example 1:</u> Company is willing to appoint > 2 persons as directors by single resolution.
	Situation I: Appointment Made without any resolution for moving such
	resolution.
	Situation II: Appointment made after passing a resolution of members for
	moving such motion (with 2/3 rd Majority).
	Situation III: Appointment made after passing a resolution of members for
	moving such motion (without any vote cast against it).
	<u>Solution:</u>
	I - Void
	II - Void
	III - Valid

Example 2: In a General meeting of X Ltd., 3 directors were appointed by a single resolution.



Solution:

Do Practice - Questions on Sec. 162

Sec. 163: Option to adopt Principle of Proportional Representation for appointment of Directors:

- Notwithstanding anything contained in this Act, the articles of a company may provide for the appointment of not less than 2/3rd of the total number of the directors of a company in accordance with the principle of proportional representation.
- Such appointments may be made once in every three years.
- Appointment may be made by
 - (a) voting according to the single transferable vote, i.e. a candidate gets elected if he secures the requisite votes fixed as quota; or
 - (b) voting according to a system of 'cumulative voting'; or
 - (c) otherwise i.e. adoption of any other transparent and effective method of voting if it ensures that the Board shall have fair representation of the minority interest, in case methods stated at (a) or (b) are not adopted.