



*Can a person be appointed as an additional director by the board of directors by passing a Circular Resolution?*

Pursuant to sub-section (1) of section 161 of the Act, the Articles of Association of a company may confer on its board of directors the power to appoint any person (other than a person who fails to get appointed as a director in a general meeting) as an additional director at any time who shall hold office up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier. Pursuant to sub-section (3) of section 179 of the Act and Rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014, the board of directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely: (i) To make calls on shareholders in respect of money unpaid on their shares, (ii) To authorise buy-back of securities under section 68 of the Act, (iii) To issue securities, including debentures, whether in or outside India, (iv) To borrow monies, (v) To invest the funds of the company, (vi) To grant loans or give guarantee or provide security in respect of loans, (vii) To approve financial statement and the Board's report, (ix) To diversify the business of the company, (x) To approve amalgamation, merger or

*(Contributed by CS Gaurav Pingle)*

reconstruction, (xi) To take over a company or acquire a controlling or substantial stake in another company, (xii) To make political contributions, (xiii) To appoint or remove KMP, (xiv) To appoint internal auditors and secretarial auditor. Since there is no express restriction in sub-section (1) of section 161 of the Act and sub-section (3) of section 179 of the Act, a person can be appointed as an additional director by the board of directors by passing a Circular Resolution.

*Can a director be appointed as Managing Director by the board of directors by passing a Circular Resolution?*

Sub-section (54) of section 2 of the Act defines Managing Director as a director who, by virtue of the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its board of directors, is entrusted with substantial powers of management of the affairs of the company. It includes a director occupying the position of managing director, by whatever name called. According to the provisions of the Act, Managing Director can be appointed in any of the 4 ways, i.e., (i) By virtue of the Articles of Association of a company or (ii) Agreement with the company or (iii) Resolution passed in its general meeting or (iv) By its board of directors. As there is no express provision for appointment of a director as a Managing Director at the board

meeting only, a director can be appointed as Managing Director by the board of directors by passing a Circular Resolution. However, if Managing Director is to be appointed as KMP, then the board of directors shall pass a resolution at its meeting only Clause (2) of Rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014).

*Can a person be appointed as an alternate director by the board of directors by passing a Circular Resolution?*

Pursuant to sub-section (2) of section 161 of the Act, 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 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. Since there is no express restriction in sub-section (2) of section 161 of the Act and sub-section (3) of section 179 of the Act and Rules made thereunder, a person can be appointed as an alternate director by the board of directors by passing a Circular Resolution.

*Can a person be appointed as a director by casual vacancy by the board of directors by passing a Circular Resolution?*

Pursuant to sub-section (4) of section 161 of the Act, if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the Articles of Association of the company, be filled up by the board of directors at a meeting of the board which shall be subsequently approved by members in the immediate next general meeting. However, any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated. Pursuant to the Companies (Amendment) Act, 2017, the provisions are now applicable to all companies. There is an express provision in sub-section (4) of section 161 of the Act that the vacancy be filled up by the board of directors at a meeting of the board. Therefore, a person cannot be appointed as a director by casual vacancy by the board of directors by passing a Circular Resolution. Such appointment shall be made at the board meeting only.