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Directors liable to Retire by Rotation...

The Conceptual Understanding

Section 156(6) of the Companies Act, 2013 deals with aforesaid concept. In a Public Company, out of the Total Directors, $\frac{2}{3}$ rd of the Directors appointed needs to be retire by rotation subject to their tenure of holding the directorship in the company which means that a director who hold the position of director from a longer period will retire first. Our Findings on the Section 156(6) are as under:

1. That an Articles of Association of the Company may include the clause for Retirement of all the directors at AGM.
2. That, if there is no clause for Retire by rotation in the AOA, not less than $\frac{2}{3}$ rd of the directors will be liable to retire by rotation.
3. That, $\frac{1}{3}$ rd out of the $\frac{2}{3}$ rd who are liable to retire by rotation, will get retired on the AGM.
4. That, the out of the Directors who are liable to retire by rotation will get retired on the basis of their tenure of holding the directorship means that a person holding the directorship from a long period in comparison to other director will retire first and if directors joined directorship on the same day, it will be determined by a lot which means a kind of lottery draw whereof the paper slips will be shuffled into a box specifying the names and randomly, one paper slip will drawn for a director who will retire first.
5. That, the retiring director can be reappointed at the same AGM.
6. The Total number of Director does not include Independent directors.
7. That the Vacancy of Retiring Director needs to fulfilled in the same meeting and if not filled meeting gets adjourned and even if in the adjourned meeting itself, the vacancy not filled, the retiring director deemed to be re-appointed unless he himself expressed his unwillingness for re appointment or he becomes disqualified for appointment or any SR/OR required for his appointment or appointment needs to done for more than one retiring directors in a single resolution as per section 162 of the companies Act, 2013

According to Our understanding , the below mentioned category of directors will stay outward for calculating the 2/3rd number of directors who are liable to retire by rotation:

1. Nominee Director
2. Independent Director
3. Additional Director
4. Small Shareholder Director
5. MD or WTD
6. Alternate Director

Nominee Directors:

Specific exclusion like independent directors is not specified anywhere but certain legislations governing Public Financial Institutions state that the nominee directors shall not retire by rotation because their intent of appointment is to hold the interest of Financial Institution and not to promote any activity or the business of the company. They are not involved in day to day activities of the company and anytime the PFI can withdraw their appointment subject to their satisfaction and/or due to an agreement with the company.

Independent Director:

Independent director are excluded specifically . Refer Explanation to Section 152 (6) and section 149 (13) of the Companies Act,2013.

Additional Director:

Additional Director are appointed by the Board subject to power conferred in AOA of the company. The additional director shall hold the position only upto next annual general meeting or last date on which AGM should have been held. So the additional directors outside the preview of Directors liable to Retire by Rotation unless get regularized /appointed at the Annual general meeting.

Small Shareholder Director:

Rule 7(5) of the Companies (Appointment and Qualifications of Directors) Rules, 2014, states that such directors shall not be liable to retire by rotation.

Alternate Director:

Alternate directors are appointed by the Board in the absence of actual director for a period of not less than 3 months from india so in actual, we can say the alternate director is the person who holds the position of director unless the actual director joined the office again so he cannot be counted for retire by rotation.

Managing Director and Whole-Time Director:

Normally, the Company exclude the Managing Director and Whole Time Director from the provisions of section

152(6) i.e. directors liable to retire by rotation. There are certain points which needs to be considered

1. That , in no case, the non rotational directors exceed 1/3rd of the Total Directors and out of these 1/3rd non rotational directors , anyone appointed as the Managing Director or Whole Time Director then there will not be any non compliance.

2. That, one more view came to our understanding for getting them out of the preview of Retire by rotation is definitely the "Term" for which they have appointed. This is the common practice by the corporate that they specify the term of their appointment in their communication to MD and WTD and even intimate the regulators too.

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