

Board Meetings (Sect. 285-289)

Section Summary:

- 285 : Minimum no. of Board Meetings in a Year
- 286 : Notice of Board Meeting
- 287 : Quorum
- 288 : Adjournment of BOD meeting due to Quorum
- 289 : Resolutions by Circulation

General Points:\

- ❖ There must be intention to meet. Accidental meeting a dir against the will of one will not constitute a valid meeting.
- ❖ A casual meeting of Dir, even at office co., can't be treated as BOD meeting
- ❖ BOD meeting should be called by proper authority.
- ❖ The law does not prescribe any place, time & day of meeting.
- ❖ Act has not prescribed any length (duration) for notice.
- ❖ A resolution passed at meeting will be binding on whole BOD including those Dir who were absent or who voted against it.
- ❖ Law does not require that notice should contain any agenda (business to be transacted/purpose of meeting.)
- ❖ Minutes of board meeting should be kept as per S. 193-195.
- ❖ If article requires then Dir. must sign attendance book.
- ❖ **A resolution may be passed by circulation unless the Act requires that such a resolution shall be passed at Board Meeting only.**
- ❖ **Appointment of Proxy:** The right to appoint a proxy is not an inherent right, the right is available only if it expressly given by the act. Since there is no provision in Co. Act about it so dir cannot appoint proxy. Even articles have no right to appoint proxy.
- ❖ The Board may delegate its powers to a committee of directors, director, officer or employee if authorized by articles.

285: Frequency of Meetings:

- ❖ Once in every **3 calendar months**
- ❖ At least 4 meetings in a year (Calendar Year (Jan-Feb))
- ❖ CG may notify **any class of co.** (and not any single co.) exempting from above requirement.(S. 25 Co./Govt. Co. – (once in 6 months & 2 meetings in a year)

Notes:

1. **DCA:** Gap may be more than 3 months provided if 1 meeting is held in every calendar quarter.(e.g. 1.1.2007, 30.6.2007 – condition satisfied)
 2. If meeting was duly called but could not be held for want of quorum, no contravention of S. 285. (S. 288)
 3. Original meeting can be held any day but adjourned meeting (due to quorum) should not be held on holidays.
 4. There is no limit for maximum no. of meetings.
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- **Duty of Dir to attend meeting:** Dir should attend but he is not bound to attend all meetings. However if continuous absent from meeting, it would amt. to negligence & breach of duty, moreover S 283 provision will be applicable(If absent w/o approval)

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- **Place, time & day of BOD meeting:** S 166 requires that GM shall be held only at registered office of within the city, town or village, where RO situated. GM should be held only during working hours and should not be held on public holidays. However there is no such provision for BOD meeting. BOD meeting can be held at anywhere in **India Or O/S India**. It can be held even after buss hrs. & original BOD meeting can be held even on public holiday. **However in case of adjourned meeting (due to quorum) unless articles say otherwise it should not be on public holiday.**
- Note: Acc. To S. 301 register of contract shall be placed in each BOD meeting & if we hold BOD meeting o/t registered office it would involve removal of register outside the registered office. Since register should be kept at RO hence it seems that we can held meeting only at RO. But DCA has allowed co. to remove register of contracts provided **1. Adequate notice to shareholder is given 2. Inspection of register is allowed to share holders.**
- **Day of Original BOD Meeting:** S 166-AGM-Held-Day which is not PH. However no such provision in BOD Meeting. So BOD meeting can be held even on PH **unless article of the co. o/w provide.** DCA also presented same view.
- **Day of Adjourned Meeting:** Refer S 288, if adjourns due to quorum. **Two Cases** where adjourned meeting can be held on public holiday:
 - 1. Meeting adj. due to quorum & article provide it to be held on PH.
 - 2. Board voluntarily adjourn meeting to a day which is PH.
- **Time of a BOD Meeting:** S 166>>AGM>>Only Buss. Hrs
No Such Provision in BOD meeting>UAOP>>Can be held beyond business hours

Questions:

1. BOD meeting held, Jan 1, June 30, July 1, Dec 1-Whether valid or not?

S 286: Notice of Board Meeting

- ❖ Notice in writing (mouth/telephone is not adequate notice)(telex, telegram, facsimile, e-mail is valid)
- ❖ Notice to all directors for the time being in India & other (outside) dir. At their usual address in India.
- ❖ Responsible officer – fails to do so – fine up to Rs. 1,000.

Notes:

1. **Notice to dire who is present in India:** Co. may even serve notice to dir by hand when he visits Co. - no need to send the notice at their usual address in India to a dir. Present in India.
2. **Notice to a dir abroad:** No need to send notice outside India even he resides abroad. Need is at usual address in India.
3. **Notice to a dir mostly stays abroad:** S. 286 does not differentiate between a Dir who is resident but is temporarily out of India and a Di who is permanently resident out of India. Hence there is no requirement to send a notice at foreign address. However in case of **Dr. Kamal Kumar Dutta V Ruby General Hospital Ltd., CLB** says that if notice is sent to dir who mostly stays o/s India at his usual local address notice is inadequate.
4. **If article fix meeting day** – then provision of articles is equivalent to a notice in a writing- **no need of notice. (Not required to send copy of article to director.** A director who does not read the article or misconstrues the same is nevertheless bound by articles.
5. **If BOD passed resolution** that meeting shall be held on particular day & **resolution copy sent to all dir. (old +new directors)** Then validity of notice can't be challenged **because S 286 not prescribe the form or mode of notice. (Sending resolution copy is must)**
6. **Waiver of Notice:** Even a dir. says **don't send notice to me, still notice required.**
7. **Int. Dir.:** Need to be given as section says **"Every Director"**.
8. **Alternate Dir:** Notice to alternate as well as original director.
9. **Improper Notice:** Meeting will be **void**. Even an **accidental omission** to give notice to a single dir.
10. **All dir. present w/o notice & not complain or subsequently ratified in subsequent meeting in which absence dir(s) are present-proceeding treated valid.**

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11. **An absence of agenda does not invalidate the notice. Exceptions S. 316/386 [require specific notice]**
12. If article prescribe the manner of sending notice>>follow that.
13. Notice should be definite, contingent notice is not good at law.
14. Notice of adjourned meeting not required as it is continuation of original meeting. Exceptions: 1. Where article says fresh notice should be provided. 2. BOD meeting adjourned. sine die (indefinite period)
15. **Doctrine of Indoor Manag.:** Meeting not called validly-outsiders will not be prejudiced if decisions taken.

287: Quorum For meeting

- ❖ Quorum means the minimum no. of dir competent to transact & vote on any buss. W/o it no buss. can be transacted.
- ❖ **Quorum = 1/3 of the Total Strength or 2 (whichever is higher) – fraction is rounded up to 1**
- ❖ **TS = TS of BOD– Vacate places.**

Proviso: If interested Dir is $\geq \frac{2}{3}$ rd then proviso of section 287(2) will be applicable and quorum shall be higher of

- a) No. of remaining dir. present at the meeting (i.e. disinterested dir) or
- b) 2 Dir.

1. TS= 6, Int. DIR = 4 - then remaining both should be present.
2. Dir. =11, 1 die/2 resign now quorum = $\frac{1}{3}$ rd of 8 i.e. 2.33, we can say 3or 2. here quorum will be 3

Notes:

1. Articles fix higher quorum but not lesser.
2. If TS of board is less then quorum: then step should be taken to: increase DIR. **Or** call GM.
3. If remaining uninterested DIR. is less then 2 then matter will be decided by member in GM.
4. Quorum should be **present throughout the meeting**. If during any time quorum is not present then **subsequent resolutions will be invalid**.
5. Acc. to **S 300** (A Only Pub. Co.), interested dir shall not 1. be counted in quorum. 2. Participate in discussion 3. vote.
6. Any resolution passed without quorum is **void & incapable of even subsequent ratification**.
7. Exam. Total dir is 11, 7 dir were present & out of which 5 were interested, we will see $\frac{2}{3}$ rd of 11 i.e. 8 but only 5 are interested hence proviso will not be applicable and remaining 2 directors will not constitute quorum. Hence meeting will be invalid in the case of Public co. however in case of private co. S 300 is not applicable hence 7 dir will be quorum whereas required quorum is only 4.
8. Quorum for committee of directors shall be decided while forming such committee if not decided then whole committee should meet.
9. **Alt. Dir** and **Org. Dir.** shall be counted as **one** only; Alt Dir will be counted in **quorum**.
10. **Even meeting gets adjourned sitting fees may be paid** however there will **not be additional fees** for adj. meeting as it is **continuation of original meeting**.

288: Meeting adjourns for want of quorum:

- ❖ If Quorum not present; **unless article o/w provide:**
- ❖ Meeting shall **automatically stand adjourn** to the next week at **same day/time/place**.
- ❖ If public holiday – succeeding day on no holiday(**if article provide then it may be on PH**)
- ❖ If meeting duly held- it will not be treated contravention of 285 (i.e. 3 month limit)

Notes:

1. Fresh notice of adjourned meeting need not to be given **Except** articles provide the same or meeting adjourn indefinite period.

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2. Resolution passed at an adjourned meeting does not related back to original BOD meeting.
3. If Quorum is not present in adjourned meeting also: BOD may adopt any following alternative measures"
 - a. Appoint additional dir
 - b. Matter send to GM & shareholders will decide.
4. PH means as per sect. 25 of Negot. Inst. Act>>>Sunday and any other day declared by **CG as PH**.

S 289: Passing of resolution through circulation:

Resolution may be passed by circulation however following condition must be satisfied:

- ❖ Draft of resolution with necessary papers must be circulated to **all dir.**
- ❖ No. of Dir. In India should not be less than quorum of BOD meeting.
- ❖ Circulate draft to all outside Dir. At their usual add. In India.
- ❖ Resolution will be **passed** either by all dir. In India & or Majority of Total dir.(who entitled to vote on resolution)-Section 300 reference

E.g. Total Dir. 12, 6 dir o/s India then resolution would be passed either by all 6 dir present in India or by 7 dir from all.

Notes:

1. Resolution will be passed only at **BOD Meeting not by circulation e.g. S 262, 293, 372A, 316 etc.**
2. S 289 does not dispense with statutory requirement of holding BOD meeting as per S 285.
3. Following resolutions can't be passed by circulations:
 - a. Filling a casual vacancy [262]
 - b. Powers as per sect. 292(1)(a) to (e)
 - c. Making any political contributions [293A]
 - d. Consent to a contract in which dir or other specified person is interested [297]
 - e. Disclosure of int. by a Dir. [299]
 - f. Appointment of a person as MD of Co. who is already MD or Manager of other co. [316]
 - g. Appointment of a persona as manager of Co. who is already MD or Manager of any other co.[386]
 - h. Making inter-corporate loans & investment[372A]
 - i. Making a declaration of solvency where it is proposed to wind up the co. voluntarily. [488]
 - j. In case of exercising powers referred u/s 292 (1) (a) to (e)
4. Res. Passed by circulation gets formally notified in next BM and gets recorded in minute book.

Act : *No resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the resolution has been circulated in draft together with the necessary papers, if any, to all the directors, or to all the members of the committee then in India (not being less in number than the quorum fixed for a meeting of the Board or Committee, as the case may be), and to all other directors or members at their usual address in India, and has been approved by such of the directors as are then in India, or by a majority of such of them as are entitled to vote on resolution.*

Other Points

Voting at a Board Meeting:

- ❖ Every director has one vote.
- ❖ Decision by Majority of votes except where act requires unanimous resolution(Reg. 74 of table A)
- ❖ **Three cases where act requires unanimous resolution:**
 - a) Appointment of a person as a Man. Dir. if he is already a manag. dir. or manager in any other co.(**S. 316**)
 - b) Appointment of a person as a Manager if he is already a manag. dir. or manager in any other co. (**S. 386**)
 - c) Making any inter corpor. invest., or giving any loan, guarantee or security to any other body corp.(**S 372A**)
- ❖ Those dir **who present in meeting and vote on resolution** are **only** considered for majority.

E.g. Total 13 dir in BOD, 10 directors present in meeting, 7 votes on a resolution 4 in favor, 3 against and 3 abstains from voting.

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- ❖ In case of equality of votes-**resolution lost**-unless chairman use casting vote in favor of resolution.(Reg. 74 of table A). It is not compulsory to give.
- ❖ A director can vote only if he is present in meeting.

Length (time limit) Of Notice: No time limit prescribed u/s 286, however it should be reasonable.

Agenda of Meeting: (M00)

- ❖ Agenda **Not** required to be sent with notice> As no form/content of notice specified under act (S. 286).
- ❖ If Agenda is given still BOD is free to discuss **any other business** else then agenda.
- ❖ If **article require** then nature of business (agenda) should go with notice.
- ❖ **Specific Notice Of Resolution (Only Two Cases): S 316, S. 386.** Here notice of BOM should expressly specify that BOM is called for transaction this business.(S 316/386)

Chairman of BOD Meeting

- ❖ Every meeting should be presided over by Chairman.
- ❖ No statutory provision (except reg. 76 of table A) to appoint chairman.
- ❖ Who can be Chairman? 1. Director only 2. Even Part-Time Dir. 3. Even Non-Share-holder dir.
- ❖ **Casting Vote:** Only in the case of equality of vote, Not compulsory to give Discretion of Chairman.

Minutes of BOD Meeting (M01, M05, M08) (S 193-195)

- ❖ Minutes shall be prepared **within 30 days** from conclusion of BOD meeting however there is no such time line for signing the minutes.
- ❖ **Contents:** Minutes of BOM shall contain 1. Fair and correct summary of proceedings 2. Substance of discussion at the meeting leading to the resolution. Shall contain following particulars:
 - a) Name of directors. Absent and asking for leave of absence.
 - b) Name of directors Present.
 - c) Name of directors dissenting from resolution.
 - d) All the appointments of officer made during meeting.
 - e) Fact of notice of disclosure of interest made by the Dir. And the fact that notice is read in meeting.
 - f) Fact of unanimity of decision as req. u/s 316, 386, 372A.
 - g) Fact of granting leave of absence to dir.
- ❖ **Signing:** Minute book shall be consecutively numbered. Each page shall be **initialed OR signed** and last page shall be **dated and signed by: 1. CM of same meeting or CM of succeeding meeting.**
- ❖ Chairman has absolute right to include/not include any thing in meeting. Nothing can be included if CM opinion that: 1. Defamatory to any person 2. Is irrelevant or immaterial 3. Detrimental to interest of co.
- ❖ **Inspection of Minute Books: 1. UTAOP members cannot inspect. 2. A director can inspect** Following can inspect: **1. Auditors (S. 227) 2. Registrar (S. 209A) 3. Officer auth. By C.G. (S. 209A)**
- ❖ **Presumption from minute books:** 1. Meeting was duly called and held. 2. Proceedings were duly taken place. 3. All the appoint. Of directors or liquidators at the meeting are valid.
- ❖ **No case minutes shall be attached to a minute book by pasting or otherwise.**
- ❖ DCA shall not take action if minutes maintained in loose leaf form provided following cond. Satisfied:
 - a. Pages should be serially numbered. b. Adequate safeguards are taken against falsification, proper locking device to ensure security and irregular removal of loose leaves. c. loose leaves must be bound at regular intervals say 6 months.
- ❖ Minutes kept in accordance with prov. Of s. 193 is the evidence of proceeding recorded there.
- ❖ No legal requirement to take confirmation of minutes in subsequent BOM, CM has full right to approve it. If a resolution is passed, entry in a minute book creates a rebuttable presumption that the resolution was duly passed. As such minute book provides a prima facie and not conclusive evidence of items recorded.