

1. BOARD MEETINGS

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Note: The Sec's in the bold are the important Sec's to be remembered.

Q.NO.1. DEFINE BOARD OF DIRECTOR'S. CLASSIFY THE TYPE OF POWERS THAT CAN BE EXERCISED BY THE BOARD? ALSO STATE THE RESTRICTIONS PLACED ON THEIR POWERS.

- Meaning:** Company being an artificial (legal) entity it has to act through natural persons and they are named as directors and collectively as board of directors. The management of the affairs of the company are vested in the Board of Directors and thus they become the working organ of the company.
- Powers of the Board:** The Board of Directors of the company are entitled to exercise all such powers and to do all such acts and things as the company is Authorised to exercise and do. The powers of the Board can be classified under two broad heads viz;
 - That could be exercised only at the meeting of the Board. (Sec.292)
 - That could be exercised only with the consent of the company in general meeting. (Sec.293)
- Restrictions on powers:** The powers of Directors are, restricted in **two ways**:
 - First being Agents of the Co.,** the directors cannot do nothing which the company it self, their principal, cannot do under its MOA.
 - Second** the Board shall not exercise those powers or do any act which they are required or directed either by the Act, or by any other act or by MOA or AOA **required to be done by the company in General Meeting.**

Q.NO.2. WHAT POWERS THE BOARD OF DIRECTOR'S CAN EXERCISE AT THEIR MEETING?

Sec. 292 specifies certain powers which can be exercised by the Board only by passing a resolution at a Board meeting. However, some of these powers may be delegated by the Board in the manner prescribed.

1. Powers exercisable only by a resolution at a Board meeting: As per Sec. 292(1), the Board shall exercise the following powers only by means of a resolution passed at a meeting of the Board.

- a. Making calls on shares.
- b. Authorising buy-back (i.e. Sec. 77A(2)(b), Proviso 1) of shares without passing a special resolution, subject to other provisions of the Companies Act, if the following conditions are satisfied.
 - Such buy-back has been authorized by the Board by means of a resolution passed at a Board meeting.
 - The buy-back is not more than 10% of the total paid up equity capital and free reserves of the company; and
 - No offer of buy-back shall be made within a period of 365 days reckoned from the date of the preceding offer of buy-back, if any. In other words, no such further buy-back (i.e., buy-back under 1st proviso to Sec. 77A(2)(b)) shall be made in the next 365 days.
- c. Issuing debentures.
- d. Borrowing money otherwise than on debentures. (Eg: Deposits, bank loans)
- e. Investing funds of the company.
- f. Giving loans.

2. Delegation of powers: The powers specified under Sec. 292(1)(c), (d) and (e) may be delegated by the Board, as follows:

- a. **Delegation to whom:** These powers may be delegated to the following:
 - Committee of directors.
 - Managing director.
 - Manager.
 - Principal officer of the company.
 - Principal officer of the branch office.
- b. **Delegation subject to conditions:** The powers may be delegated if compliance is made with both the following conditions:
 - Resolution delegating powers shall be passed at a Board meeting.
 - Resolution passed at the Board meeting shall specify :

Where powers under Sec. 292 (1) (c) are delegated	Where powers under Sec. 292 (1) (d) are delegated	Where powers under Sec. 292 (1)(e) are delegated
The total amount outstanding at any one-time upto which moneys may be borrowed.	a. Total amount upto which funds may be invested. b. Nature of investments to be made.	a. The total amount upto which loans may be made. b. The purpose for which loans may be made. c. The maximum amount of loans for each such purpose.

- c. **No delegation u/s 372A:** power to make intercorporate loans and investments cannot be delegated by a public company.

3. Provisions applicable to a banking company:

- a. Borrowings exclude:
 - borrowings from other banking companies, RBI or other banks;
 - accepting deposits from customers.

- b. Loans exclude deposits made with other banking companies.

Further restrictions on exercise of powers:

1. While delegating any of the powers specified under Sec. 292(1)(c), (d) or (e), the Board may impose such restrictions and conditions on exercise of powers specified under Sec. 292(1)(c), (d) or (e), as the Board deems fit.
2. The shareholders are empowered to impose such restrictions and conditions on exercise of any of the powers specified under Sec. 292(1), as the shareholders deem fit.

Q.NO.3. WHAT ARE THE POWERS THAT CAN ONLY BE EXERCISED BY THE BOARD OF THE DIRECTORS OF A PUBLIC COMPANY WITH THE CONSENT OF THE COMPANY IN GENERAL MEETING?

Sec. 293(1) imposes the following restrictions on the powers of the Board: Without the prior consent of the shareholders in general meeting, the Board shall not exercise the following powers:

1. Sell, lease or otherwise dispose of the whole, or substantially the whole, of one or more undertakings of the company.

Following points must be noted:

- a. Memorandum of the company must authorise a company to exercise such power.
 - b. The resolution passed at the general meeting stipulate the conditions regarding the use, disposal, or investment of the sale proceeds, which may result from the transaction.
 - c. Where a buyer or a lessee exercises due care and caution, and buys or takes a lease in good faith, his title shall not be affected even if the Board sells or grants the lease without approval of the general meeting, i.e., the title of a *bona fide* buyer or lessee shall be free from any defect..
 - d. No approval of the general meeting is required if the ordinary business of the company consists selling or leasing of properties.
2. Remit, or give time for the repayment of any debt due by a director. However, advance given in the ordinary course of business to a director may be renewed by a banking company without the approval of the general meeting.
 3. Invest, otherwise than in trust securities, the compensation received in respect of the compulsory acquisition of
 - a. any undertaking of the company; or
 - b. premises or properties of the undertaking without which the undertaking cannot be carried on or can be carried on only with difficulty or can be carried on only after a considerable time.

No consent of the shareholders is required if compensation received by the company is invested in trust securities specified under Sec. 20 of the Indian Trust Act.

4. Borrow moneys if money already borrowed, together with moneys to be borrowed will exceed the aggregate of paid up capital and free reserves of the company.

Following points must be noted:

- a. Temporary loans obtained from the company's bankers in the ordinary course of business are considered as borrowings.
- b. 'Temporary loans' means
 - loans repayable on demand; or
 - loans repayable within 6 months of the date of the loan.

However, 'temporary loans' does not include loans raised for financing capital expenditure.

- Memorandum of the company must authorise a company to borrow money. However, a trading company has an implied power to borrow.
- In case of a banking company, accepting deposits from customers is not 'borrowings'.
- The resolution passed in the general meeting shall specify the total amount upto which moneys may be borrowed by the Board; otherwise the resolution shall be void. Therefore, it is evident that the shareholders cannot grant an unlimited power to the directors to borrow money.
- Any borrowings in contravention of this Sec. cannot be enforced by the lender unless he proves that he advanced the loan in good faith and without knowledge that the limit imposed under this Sec. had been exceeded.

5. Contribute to:

- a. Charitable funds; or
- b. Any other fund not directly relating to the business of the company; or
- c. Any other fund not directly relating to the welfare of its employees,

If the amount contributed in a financial year exceeds:

- i. Rs.50, 000; or
- ii. 5% of average net profits (as determined under Sec.s 349 and 350) during 3 immediately preceding financial years whichever is greater.

Following conclusions may be drawn:

- a. No approval of the shareholders is required if a public company makes a charitable contribution of Rs. 50,000 or 5% of average net profits during 3 immediately preceding financial years, whichever is higher.
- b. With the approval of shareholders in general meeting, a public company may make a charitable contribution exceeding 5% of average net profits during 3 immediately preceding financial years. The resolution passed by the shareholders in general meeting must specify the total amount upto which moneys may be contributed by Board.
- c. Any amount spent for welfare of employees (e.g., a school or a hospital for benefit of employees) does not amount to charitable contribution.
- d. A private company may make charitable contribution of any amount without requiring any approval of the shareholders. (that is this Section is not applicable for private companies).

Q.NO.4. WHAT DO YOU UNDERSTAND BY THE PASSING OF RESOLUTIONS BY CIRCULATION?

1. Sec.289 of the companies act deals with resolution by circulation.
2. It may be noted that only the directors and their committees are authorised to pass a resolution by circulation. Under the Act certain powers are exercisable by the Board by passing resolutions at the duly convened Board meetings only. For instance, Sec. 292 specifically confers certain powers on the Board to be exercised by Board only at the Board meeting.
3. But where the Act is silent, the Board is empowered to take decisions by passing resolutions by circulation.
4. Further, Sec. 289 provides that 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 necessary papers, if any, to all the directors or to all the members of the committee.
5. Then in India, not being less 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 the resolution.

6. Thus, no resolution by circulation can be passed if the number of directors then present in India is less than the number, which is necessary to form the quorum had there been a meeting of the Board.
7. Similarly, no resolution by circulation can be passed by a Committee of directors if at the relevant time the number of directors present in India out of the total number of directors forming the committee is less than the quorum fixed for the committee.
8. Since passing a resolution by circulation does not involve any meeting, neither any notice nor any agenda showing the items of the business is necessary.
9. Sec. 289 requires that while sending the draft of the resolution necessary papers are also sent therewith. "Necessary Papers" would refer to those papers or documents which would explain the purpose of the resolution.

Refer to Practical Question from Examination:

P17 : Passing to resolution by circulation.

Illustration on Circular Resolution

Situation	No. of Directors in India	Directors Aboard	Votes required to pass the resolution by circulation
A	4	3	- Either all 4 Directors in India, or - A majority out of 7 Directors (i.e. 4 in any combination say 1 in India and 3 Aboard)
B	4 (of which 1 is an Interested Director)	3	- Either all 3 Directors in India (who are entitled to vote) or - A majority out of 6 Directors (3+3) who are entitled to vote (in any circumstances)
c	4	3(of which 1 is an Interested Director)	- Either all 4 Directors in India, or - A majority out of 6 Directors (3+3) who are entitled to vote

Q.NO.5. TYPES OF BOARD'S RESOLUTIONS?

1. Those passed at board meetings.
2. Those passed by circulation.

Q.NO.6. FREQUENCY OF BOARD MEETINGS?

1. Sec.285 requires the Board to meet at least once in every three months irrespective of whether it is the Board of a Public company or a Private Company and at least four such meetings must be held in every year.
2. **Is a director bound to attend the meeting of the Board:**
 - a. No, he is not so bound. But nonetheless he will be guilty of breach of duty if he fails to attend the Board meetings with reasonable regularity without sufficient cause being shown for non-attendance.
 - b. Willful non-attendance on his part may give rise to his liability on ground of negligence if it is prejudicial either to the company or to the general body of shareholders.
 - c. Although a director need not attend each Board meeting unless the articles provide, yet his continuous non- attendance say two attendances followed by two non-attendances again followed by one attendance and so forth just by way of a guard against infringement of provision of Sec. 283(1)(g) may render him guilty of breach of trust.
 - d. The absenting director would be responsible for the loss caused to the company if his presence could otherwise stop their wrongful acts resulting in the said dissipation of assets.

3. In the context of Sec. 285, let us consider another intricate issue:

- a. It is not necessary that the gap between two board meetings should be 3 months. Thus for the purpose of Sec.285, the board meetings held on 1st January, 30th June, 1st July and 31st December are sufficient compliance of the provisions of this Sec. - Dept. clarification.
- b. Sec 285 should be read along with Sec 288(2). Once a meeting is called during quarter of a year, which would be sufficient compliance of Sec. 285 even if the meeting could not be actually held for want of quorum, but, not for any other reason.

Refer to Practical Question from Examination

P5 : 4th Board Meeting not held for want of quorum – Whether Sec. 285 is contravened, and whether a Director is bound to attend all the Board Meetings.

P12: Board Meeting not held for want of quorum.

Q.NO.7. CAN THE BOARD MEET ON A PUBLIC HOLIDAY? (SEC.288)

1. No specific restriction for original Board Meeting.
2. But if the meeting is adjourned for want of quorum and if the articles do not otherwise provide, the meeting will stand adjourned automatically till the same day, in the next week at the same place and time. If that day happens to be a public holiday, then to the next succeeding day, which is not a public holiday at the same place and time.

Q.NO.8. PLACE OF MEETING.

1. No restrictions:

- a. The act does not require the board meeting to be held at the registered office. The meeting may, therefore, be held at any place convenient to the directors provided the requirements regarding signing of the register of contracts etc. are complied with.
- b. Many companies have an "administrative office" situated at place different from the registered office and board meeting are held at such offices.
- c. Directors can hold a board meeting even in a foreign country where circumstances justify and no malafide intentions involved. Under Sec. 166, the AGM of a company shall be held during business hours and on a day that is not a public holiday.
- d. There is no similar provision in the act with regard to meetings of the board of directors and thus there is nothing to prohibit the holding of a meeting of the board on a public holiday or outside business hours.

2. Tele/video conference:

- a. Tele-conference and videoconference has not been recognized under the Companies Act, 1956. It is felt that meetings by video conferencing and teleconferencing are not valid board meetings for the purposes of this Sec..
- b. Companies can however combine video tele-conferencing with physical meetings where the requisite quorum is physically present.
- c. The views expressed by the directors who are not physically present through tele/video conferencing can be minuted only as their views expressed over video/telephones. However, for voting and quorum purposes the directors' physically presence alone will be counted.

3. Informality: A mere informality in the proceedings is not sufficient to invalidate a meeting, provided due notice of the meeting was given.

Refer to Practical Questions from Examination:

P3 : Holding a Board Meeting on a Public Holiday after business hours – Whether permissible?

P8 : Calling a Board Meeting – Whether permissible?

Q.NO.9. ESSENTIAL REQUISITES TO CONSTITUTE A VALID BOARD MEETING?

A. Notice- Sec.286:

1. Given in writing to every Director for the time being in India.
2. For the directors not in India, at his usual address in India to every other Director.
3. Suppose, the above-mentioned **notice, as required by Sec. 286(1) has not been served.** In such a situation the proceedings at the meeting **shall not become invalid** provided
 - a. All the directors attend the meeting and do not raise any objection to the non-service of notice; or
 - b. Where the absent directors make no complaint about the want of notice particularly when the proceedings are ratified by confirming the minutes of the earlier meeting, at a subsequent meeting where at the absentee directors are present.
4. **Points to be borne in mind:**
 - a. Notice should be given to a director **even if he has stated** that he will not be able to attend.
 - b. Notice should be given to a director even he cannot participate or vote on the subject to be transacted at the meeting **by virtue of Sec. 300.**
 - c. A director has no power to waive his right to receive notice.
 - d. **Articles of a company** may provide for the holding of Board meetings at a specified hour on a specified day on dates of particular months e.g.. the 2nd Monday of the months of January, April, July and October, notices of such meeting need not be given.
 - e. Contingent notice is not a sufficient notice.
 - f. As an **adjourned meeting** is the continuation of the original meeting and hence **notice is not required** in the case where the Board meeting stands adjourned.
5. **Form and Length:** No prescribed format and no mode of service prescribed by the act. As far as the length (period) of notice is concerned it should be reasonable - what is reasonable depends upon the circumstances.
6. **Contents:**
 - a. Place, Date and time of the meeting.
 - b. Business to be transacted at the meeting (**agenda**) **is not mandatory** but good practice. Directors can discuss matters that are not in the Agenda with the permission of the Chairman. However in the following **three cases agenda is mandatory.**
 - When a public company or a private company which is a subsidiary of a public company would like to appoint a person as its Managing Director, if he is the Managing Director or Manager of one and not more than one, other company including a private company which is not a subsidiary of a public company. **Sec. 316(2).**
 - Where a public company or a private company which is a subsidiary of a public company wants to appoint a person as its manager, if he is the manager or Managing Director of one and not more than one other company (**Sec. 386**).
 - As per sec.372 A.
7. **Parameshwari Prasad gupta vs. Union of India.** Supreme Court has held that to a board meeting to be effective must be duly convened by proper notice to each director and in default the meeting is irregular.

Refer to Practical questions from Examination

P1 : Day of Board Meeting Fixed by Articles – Whether notice is required?

P2 (1) : Whether right to receive notice can be waived?

P2 (2) : Notice to alternate Director – Whether required?

P9 : Notice by E-mail, scrutiny of Agenda by Chairman, Presence of outside consultant in Board Meeting etc – Whether permissible?

P15 : Notice to a Foreign Director – Where to be given?

P16 : Omission to give notice.

B. Quorum-Sec.287:

1. **Meaning:** Minimum number of directors competent to transact and vote on any business before the meeting.
2. **Statutory limit:** **One third** of the total strength (fraction in that one third, rounded off as one) **or two** directors whichever is higher.
3. **Total strength means** total strength of the Board less the total number of directors whose place remains vacant at present.
4. The **AOA** of a company can provide for a **higher** quorum, nothing in law prevents it. Where the number of directors of the company is reduced below the minimum fixed by the articles, business may still be transacted if a quorum exists as fixed by the law.
5. Quorum is required **through out the Meeting**. (Not so, in case of G. Meeting).
6. **Interested Directors** will not be counted for the purpose of quorum. If the interested directors **exceeds or equal to 2/3rd** of the total strength, the remaining non interested shall be the quorum, provided it is not less than two.
7. **Quorum for committee meetings:** No quorum need be present for a meeting of the Committee of directors unless the quorum has been fixed for the committee by resolution of the Board or by the AOA of the Company.
8. **Sec. 25 Companies:** This Sec. shall apply to Sec. 25 companies only to the extent that the quorum for the Board meeting shall be either eight members or 1/4th of its total strength whichever is less (Remember for other cases it is which ever is more) provided the quorum shall not be less than two members in any case.
9. **No quorum: Consequences thereof:**
 - a. Quorum is a must and **transaction done** without a quorum is **invalid unless** it is ratified at the next meeting, provided the act is intra vires the company.
 - b. Contracts entered into with third parties who are **not having any knowledge** of any defect in the constitution of the Board will not be affected, for the absence of a quorum.
 - c. As per Sec.288 meeting **stands adjourned** on the same day in the next week, at the same time and place, or if that day is a public holiday, till the next succeeding day, which is not a public holiday, at the same time and place.
 - d. But what will happen to an adjourned meeting when the quorum is not present there also? Meeting **stands dissolved**.
10. **If all the Directors are interested** in a contract, it has been clarified by DCA, the remedy is
 - a. Increase the strength of the Board by appointing disinterested directors i.e. appointing additional directors. Or
 - b. Place the contract before general meeting for consent.
11. **Can the Board act without quorum? Yes**, the Board can act only for the following **2 purposes** (Reg.75 of Table A.)
 - a. For the purpose of **increasing the number of directors** to what fixed for the purpose of quorum.
 - b. For summoning a general meeting of the company.

Refer to Practical Questions from Examination:

P10 : Whether Quorum is present.

P13 : Position of alternate Directors while computing quorum.

C. Chairman:

1. There must be a proper person in the Chair. AOA will normally provide for election of Chairman and the period upto, which he is to hold office etc.
2. Board may elect a Chairman of its meetings and determine the period of his office.
3. If **no chairman is elected** or if at any meeting the Chairman **is not present** within FIVE minutes after the time appointed for holding the meeting the directors present may chose ONE OF THEM to be Chairman of the Meeting.
4. The ruling of the Chairman is binding. If the articles provides, then in case of equality of votes the Chairman of the Board if any shall have a second or **casting vote**.
5. Only a director can be the chairman.
6. Period of Office: **Until he ceases to be a director or some other director is appointed**
7. **As the chairman he remains in the office.**

D. Voting:

1. Questions at a meeting of the Board unless expressly provided otherwise in the Act are decided by a **majority of votes**. There are three exceptions to the majority rule: i.e. **Unanimous approval is required**.
 - a. Appointment of Managing Director if the person is already a Managing Director/Manager (316).
 - b. Appointment of Manager if the person is already a Manager (386).
 - c. In the case of Sec. 372A.
2. **Interested director cannot participate** or vote on the resolutions in which he is interested directly or indirectly. - **Unless** otherwise the company concerned is exempted from Sec. 300 by virtue of Sec. 300(2)(Discussed later in this lesson).
3. All matters are decided by show of hands only and **no question of a poll** since each director is entitled for one vote each.
4. **No proxy** is permitted.

E. Attendance: No statutory compulsion for a director to attend all the meetings of the Board - But under Sec. 283(1)(g) the office of the director shall be vacated if he absents himself from three consecutive meetings or all meetings of the Board continuously for three months whichever is longer without leave of absence from the Board.

F. Minutes:

1. The expression "Minute" means the official recording of the proceeding of a meeting. It should be recorded within 30 days from the conclusion of every such meeting
2. In a book kept for that purpose with their pages consecutively numbered.
3. Each page of the minute book should be initialed or signed and in the last page of the record of proceedings of each meeting in the minutes book shall be dated and signed by the Chairman of the said meeting or the Chairman of the next succeeding meeting. It means that a chairman who is not a chairman of preceding Meeting (i.e. a new chairman) can sign the minutes of the previous B.M. Minutes even though he is not the chairman of such meeting.(i.e. old/ previous meeting) The Chairman of the next succeeding meeting who is signing the minutes earlier meeting, need not necessarily have been present at the meeting of which the minutes are recorded.
4. No attachment shall be made to the minute's book by pasting or otherwise.
5. **Inclusion or Non inclusion powers:** Chairman has the power with regard to inclusion or non-inclusion of any, matter in the minutes, if he is of the opinion that it's defamatory of any person or it is irrelevant or immaterial or it is detrimental to the interest of the company.

6. Loose leaf and Binding:

- a. The Minutes book must be a bound book and must be hand-written. It cannot be a loose-leaf binder and type written.
- b. Department of Company Affairs stated that without prejudice to the strict legal position are agreeable to permit the loose leaf minute books, provided the company takes appropriate safeguards against interpolation of the leaves in the books such as serial numbering of pages, authentication of each page of the book, safe custody of the key, if any, to the loose leaf register.
- c. The company should also arrange for the loose-leaf minutes to be bound into books at regular intervals of six months.

Refer to Practical Questions from examination:

P4 : Maintenance of Minutes in loose leaf form – Whether permissible.

7. **Procedure for correction:** If there be something recorded at an earlier meeting which is not acceptable at a later meeting proper procedure is to pass a subsequent minute rescinding the terms of the old minutes. The old minutes should not be deleted or crossed out at the confirmatory¹ meeting.

Refer to Practical Questions from examination:

P7 : Minutes recorded wrongly – What remedy is available.

8. **Signature period:** The Department has confirmed the view that the minutes of a board meeting only need to be written within a period of 30 days from the date of meeting conclusion and there cannot be any insistence on they having been signed within that period.

Refer to Practical Questions from Examination:

P14 : Signing of Minutes Book – Position where Chairman dies.

9. **Sec. 25 companies:** Sec. 193 applies to Sec. 25 companies subject to the modification that minutes may be recorded within 30 days of the conclusion of every meeting.
10. **SH Right of Inspection:** The Companies Act contains no provision either specifically permitting or prohibiting inspection by /or supply of copies to the shareholders of a company of the minutes of the meetings of the Board. The Department is of the view that unless the AOA provide to the contrary, a shareholder has no right of inspection or of obtaining copies of the minutes of its Board meetings.

Refer to Practical Questions from examination:

P11: Inspection of Minutes Board Meeting by a member – Whether permissible.

11. **To be kept at:** DCA has clarified that the minute's book shall be kept at the Registered Office and the same can be moved only when the Board Meeting takes place outside the Registered Office of the company for that purpose.

12. Contents:

- a. The minutes book should Contain a fair and correct summary of the proceedings.
- b. Appointment of officers made at a meeting should be included in the minutes.
- c. Minutes of the Board of Directors or Committee of the Board shall also contain the names of the Directors present at the meeting and
- d. Also the names of the directors who dissented from or not concurred with a resolution passed at the meeting.

13. **Presumptions/Implications:** Where the minutes of the proceeding of the Board or a committee thereof have been kept in accordance with Sec. 193, then until the contrary is proved.

- a. The meeting shall be deemed to have been duly called and held
- b. All proceedings there at to have been duly taken place and
- c. All appointment of directors/resignation at the meeting shall be deemed to be valid.

Refer to Practical Question from examination:

P6 : Inspection of minutes of Board Meeting by an Auditor – Whether permissible.

Subsidiary Question (point F):

1. BOD of DBM Ltd held a BM on 2nd May 2008 at its Registered Office. State the silent points to be taken into account while drafting the minutes of the said BM.

Q.NO.10. COMMITTEES OF DIRECTORS AND THEIR MEETINGS?

Sec.291 of the Companies Act provides that subject to the provisions of this Act, the Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is entitled to exercise and do. This provision clearly indicates that as a general rule, the directors must exercise their powers collectively as Board. However, the Board may delegate certain powers to an individual director or a committee of directors. Provisions relating to committee of directors are explain hereunder:

1. **Constitution by Board:** A committee of directors may be constituted by the Board of directors by passing a resolution. The resolution may also specify the powers delegated to the committee, regulations subject to which the committee shall work, the members and chairman of the committee, the quorum of the committee and other relevant matters.
2. **Authority to appoint a committee:**
 - a. **Authorisation by articles:** The Board of directors may, if authorised by the articles, delegate their powers to a committee of directors. As such, where the articles of the company do not authorise the Board to delegate, any delegation by the Board will be invalid in view of the maxim 'Delegatus non protest delegare' which means that a delegatee cannot further delegate.
 - b. **Authorisation by the Act:** Where the Companies Act specifically empowers the Board to delegate certain powers to a committee of directors, no specific power is required by the articles for such delegation. For example, Sec. 292 empowers the Board, subject to certain limitations as specified in Sec. 292(2) to (4), to delegate the following powers to a committee of directors:
 - Power to borrow money other than on debentures.
 - Power to invest funds of the company.
 - Power to make loans.
3. **Powers that cannot be delegated:** Certain powers are required to be exercised by the Board only at a Board meeting and so these powers cannot be delegated to a committee of directors, e.g., powers to make calls on shares and borrowing money by issue of debentures (Sec.292), filling a causal vacancy in the office of a director (Sec.262), making intercorporate loans and investments etc. (Sec.372A).
4. **Revocation of powers:** The powers delegated to the committee may, at any time, be revoked by the Board of directors. In such a case, the committee shall stand dissolved.
5. **Committee to act in accordance with the regulations made by Board:** The committee shall confirm to any regulations that are made by the Board of directors. Subject to these regulations and provisions contained in the articles, the committee may regulate its own procedure. It can also pass a resolution by circulation. However, a committee has no power to increase the strength of the committee or to fill a vacancy arising by any reason.
6. **Number of members of the committee:** Only a director can be appointed as a member of the 'committee of directors'. A committee may consist of one director or two or more

directors. However, in certain cases, the committee must specified number of members, e.g., Companies (Issue of Share Certificate) Rules, 1960 requires that the Share Transfer Committee must consist of at least 3 directors where the total number of directors exceeds 6, and at least 2 directors in any other case.

7. **Quorum of the committee:** The quorum of the committee shall be as specified by the Board at the time of constitution of the committee. However, where quorum for a committee of directors is not specified, the whole of the committee must meet [Liverpool Household Stores Association Ltd).

Q.NO.11. HOW FAR THE ACTS OF A DIRECTOR WILL BE VALID, IF HIS APPOINTMENT IS NOT VALID?

1. Sec.290 provides that the acts done by a person as a director shall be valid in spite of the fact that his appointment may afterwards be discovered to be invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in the companies act or in the articles.
2. Sec.290 however, does not apply to an appointment, which is from the very beginning illegal or no appointment at all. It will not apply to the case of a director, whose term of office has expired but who wrongly continues to act as such director. It does not apply where a director from the very beginning know that his appointment was defective.
3. A party to a transaction may rely on the Section if he does not know any irregularity in the appointment of a director.
4. If a person is put to an enquiry but fails to enquire, he cannot take advantage of this Section.
5. An act done by a director shall not be valid after his appointment has been shown to the company to be invalid or to have terminated [Proviso to Sec 290]
6. The Sec. does not validate the acts of persons such as the managing director, manager or secretary.
7. It does not validate an ultra vires act.

Q.NO.12. INTERESTED DIRECTORS ARE NOT COUNTED FOR THE QUORUM IN GENERAL. ARE THERE ANY EXCEPTIONS TO THIS GENERAL RULE?

In terms of Sec. 300(2) the interested directors can be counted for the purpose of quorum in the following cases, namely

1. Where the company is a private company which is neither a subsidiary nor a holding company of a public company;
2. Where the company is a private company, which is a subsidiary of a public company in respect of any contract or arrangement entered with the holding company thereof.
3. Where there is any contract of indemnity against any loss, which the directors or any one or more of them may suffer by reason of becoming or being sureties or surety for the company.
4. In respect of any contract or arrangement entered or to be entered into with a public company, or a private company, which is a subsidiary of a public company in which the director's interest consist solely.
 - a. In his being a director holding shares of such number or value as to be just enough and not more than enough to qualify him for appointment as director, or
 - b. In his being a member holding not more than 2% of the paid-up share capital of the company;
5. Where it is a public company in respect of which the central government has, through a notification in the official gazette, waived the necessity to comply with the requirements of Sec. 300(1) on consideration of establishing or promoting any industry, business or trade in the public interest.

Q.NO.13.WRITE SHORT NOTES ON REGISTER OF CONTRACTS, COMPANIES AND FIRMS IN WHICH DIRECTORS ARE INTERESTED ? [Sec. 301]

Ans:

1. Contracts covered:

Included Contracts	Excluded Contracts / Arrangements
All contracts or arrangements to which Sec.297 or Sec.299 applies, i.e. contracts and arrangements in which Directors are interested	The following need not be entered in Sec.301 Register: a. Sale, purchase or supply of any goods, materials or services, the value of which does not exceed Rs.1,000 in the aggregate in any year, b. Those entered into by a Banking Company for the collection of bills in the ordinary course of business, c. Transactions entered into in the ordinary course of business by a Banking or Insurance Company, with the Directors or interested persons specified u/s 297.

2. Contents: The following particulars should be recorded in the Register:

- a.** Date of contract or arrangement,
- b.** Names of parties thereto,
- c.** Principal terms and conditions thereof,
- d.** Date on which the contract / arrangement was placed before the Board,
- e.** Names of the Directors voting for and against the contract / arrangement, and the Names of those remaining neutral.

Note: The Register should also specify in relation to each of the Directors of the Company the names of the Firms and Body Corporate in respect of which General Notice have been given by the Director to the Board u/s 299(3).

3. Time Limit: Particulars of contract should be entered in the Register :

Contract / Arrangement	Time Limit for entry in the Register
Those requiring Board's approval	Within 7 days (excluding public holidays) of the Board Meeting in which the contract or arrangement is approved.
Any other Contract / Arrangement	a. Within 7 days from the date of receipt of particulars about the contract at the Registered Office of the Company, or b. Within 30 days from the date of the contract or arrangement, whichever is later .

4. Place: The Register shall be kept at the **Registered Office** of the Company.

5. Authentication: After updating the entries within the time limit, the Register shall be:

- a.** Placed before the Board in its **next** Meeting.
- b.** Signed by **all** the Directors present at the Meeting.

6. Inspection: The Members of the Company are entitled to:

- a.** Inspect the Register of Contracts kept at the Registered Office,
 - b.** Make extracts there from, and
 - c.** Take copies thereof.
- } in the same manner as for Register of Members.

Note: As such, Non-Members are not entitled to inspect Sec.301 Register.

7. **Non-compliance:** Failure to comply with Points 1, 2 & 3 above renders the Company and every Officer in default, punishable with a fine upto Rs.5,000.

Q.NO.14.ADVISE THE BOARD OF DIRECTORS OF A PUBLIC COMPANY ABOUT THEIR POWERS IN RESPECT OF FOLLOWING PROPOSALS:

1. DONATION OF RS.5,00,000 TO A HOSPITAL ESTABLISHED EXCLUSIVELY FOR THE BENEFIT OF EMPLOYEES.
2. BUYBACK OF SHARES OF THE COMPANY FOR THE FIRST TIME UP TO 10% OF THE PAID UP EQUITY CAPITAL.
3. DELEGATING TO THE MD OF THE COMPANY, THE POWER TO INVEST SURPLUS FUNDS OF THE COMPANY IN THE SHARES OF SOME COMPANIES?

Ans:

Proposal	Powers
1. Donation to Hospital for the exclusive benefit of the employees	a. Sec.293(1)(e) is applicable only if the donations are made to funds not directly related to the welfare of the employees. b. Here, the donations are given to hospitals established for benefit of the employees. Hence the Board is empowered to make the proposed donation.
2. Buyback of Shares upto 10% of the Paid Up Capital of the company	a. Board has the power to buy back Shares upto 10% of the Total Paid Up Capital and Free Reserves. b. Since the buyback does not exceed 10% of Paid Up Capital, the Board can proceed with the proposal without the Shareholders approval.
3. Delegation of power to invest in shares of another Company, to Managing Director	a. Sec.292 empowers the Board to delegate to the Managing Dire, power to invest its surplus funds. b. However, u/s 372A, investment in any Body Corporate cannot be made unless it is sanctioned by a resolution passed at the meeting of the Board of Directors with the consent of all the Directors present. c. In the given case, the investment is proposed to be made in the Shares of another Company. Hence, Sec. 372A is attracted. Sec.372A does not provide for delegation, and so, the proposed delegation is not tenable in law.

Practical Questions

P.Q.1. The AOA of a company provide that the meeting of the Board of Directors of the company will be held on the last Friday of every month. The Secretary of the company as a result does not serve the notice to the individual directors of the company. Consequently, a meeting of the Board of Directors was held on 23rd February, 1996. The meeting was attended by all the directors with the exception of two directors out of a total of 10 directors and certain resolutions were passed. The two absentee directors object to the meeting and the proceedings of the meeting for want of notice. Referring to the provisions of the Companies Act, 1956, decide:

1. Whether the objection raised by the two absentee directors is valid?
2. Would your answer be the same in case the Secretary of the company, instead of sending notice on a usual format to the individual directors, sent a copy of the AOA to each one of the directors? (May 96)

OR

The AOA of ABC Ltd provides that a meeting of the BOD shall be held at 11.00 am on the last day of the every quarter ending on 31st March, 30th June ,30th September and 31st December. Relying on the said provisions, the Company did not send notices to the Directors in respect of the BM held on 31.03.2008. Some of the Directors have questioned the validity of the BM on the ground that the individual notices have not been sent to directors. Comment.

Ans: Sec.286 of the Companies Act, 1956 provides that notice of every meeting of the Board of directors of a company shall be given in writing to every director for the time being in India and at his usual address in India to every other director. From, the wordings of the Sec. it is clear that no particular form for serving notice has been prescribed by the law. Moreover, it has already been held in *Arunachalam Chettiar vs Kaleswarar Mills Ltd.*, that where the articles of the company provide that there will be a meeting at a fixed time it is sufficient compliance of the provisions of Companies Act, 1956 as contained in Sec. 286 (1).

Thus based on the above, the questions as asked in the problem can be answered as under:

1. The objection raised by the two absentee directors in the given case shall not be valid for the reasons stated above.
2. In the second case also the answer will remain the same.

P.Q.2. Advise the company with reference to the relevant provisions of the Companies Act about sending notice of board meetings to the following directors.

1. Mr. Rohit, a director, states that he will not be able to attend the next board meeting.
2. Mr. Ram goes abroad for four months from 4.1.1999 and an alternate director has been appointed in his place.

Ans: According to Sec. 286 of the Companies Act, 1956 notice of every board meeting shall be given in writing to every director for the time being in India, and at his usual address in India to every other director.

1. Notice should be given even if Mr. Rohit expressed his inability to attend the next board meeting. Otherwise Sec. 286(1) will be violated.
2. Although there is no legal precedent in this regard, it would be a prudent practice that notice should be served to both the alternate director as well as the original director Mr. Ram who is outside India at his usual address in India.

P.Q.3. The Board of Directors of InfoTech Consultants Limited, registered in Calcutta, proposes to hold the next board meeting in the month of May 2000. They seek your advice in respect of the following matters:

1. Can the board meeting be held in Chennai, when all the directors of the company reside at Calcutta?
2. Whether the board meeting can be called on a public holiday and that too after business hours as the majority of the directors of the company have gone to Chennai on vacation.
3. Is it necessary that the notice of the board meeting should specify the nature of business to be transacted?

Advise with reference to the relevant provisions of the Companies Act. (May 2000)

Ans:

1. There is no difficulty at all in holding the board meeting at Chennai even if all the directors of the company reside at Calcutta and the registered office is situated at Calcutta provided requirements regarding signing of register of contracts, etc. are complied with. (For detailed answer refer to Q 8)
2. As provisions of Sec. 166 of the Companies Act, 1956, the annual general meeting shall be held during business hours and on a day that is not a public holiday. There is no similar provisions in the Act with regard to board meetings. Therefore, in the absence of any specific restrictive provision, the board meeting can be held even on a public holiday and out of the business hours.
3. If the articles of association of the company are silent, the notice of board meeting is not required to specify the nature of business to be transacted thereat. If, however, the articles provide otherwise, then notice must specify the nature of business to be transacted. All said and done, a better course seems to be that the notice should specify the purpose of the meeting, if it is an extra ordinary or special meeting.

P.Q .4. A Ltd maintains the Minutes Book of the Board Meetings in loose-leaf system and get them bound once in three months. Can it do so? Board meetings were held on 24th March 2000 and 15th

April 2000. Mr. Ram, who was the Chairman of these two Board Meetings, died on 1.5.2000, without signing the Minutes. How should be the Minutes be signed and by whom? (Nov 2000)

Ans: Ordinarily Minutes cannot be kept in loose-leaf system. The Department of Company Affairs, however, has expressed that it would refrain from taking any action against a company, which maintained its minutes in the loose leaf form, provided that adequate safeguards are taken against falsification, and loose-leaves are bounded in books at reasonable intervals, say six months. In this case, since the Minutes Book leaves are bound once in three months (January to March, 2000), and as such the same is in order.

According to Sec.193 (IA), the minutes of a Board Meeting may be signed by the Chairman of the said meeting or the Chairman of the **next succeeding meeting**. The Chairman of the Board Meeting held after 15th, April, 2000 for the first time may sign the minutes of Board Meeting held on 15.4.2000 in accordance with Sec. 193 (IA) (a).

Minutes of 24th march: According to the provisions of Sec.193 (1) read with Sec.193 (IA) the minutes of Board Meeting held on 24 March, 2000 should have been signed by Mr. Ram himself as he was the Chairman of the Board Meeting held on 24th March, 2000 as well as the Chairman of the next succeeding meeting. There is no specific prevision in the Companies Act, 1956 as to the person who can sign the minutes of Board Meeting held on 24th March, 2000 in this case. Hence the new chairman may sign the minutes of 24th march.

P.Q. 5. The Board of Directors of a public company met on three times in the previous year, the fourth meeting though called could not be held for want of quorum on two occasions successively. Discuss whether any provisions of the Companies Act has been contravened.

Ans: As per Sec. 235 of the Companies Act, 1956, a company must hold a meeting of its Board of Directors atleast once in every three months and there should be at least four meetings of the Board every year. But, Sec. 283(2) provides that where a meeting was called but could not be held for want of quorum there is no contravention of any provisions of the Companies Act, 1956.

P.Q.6. The auditor of a company wanted to see the minutes book of director's meetings. The chairman of the company refused on the ground that matters of confidential nature were contained therein. Advise the auditor.

Ans: Under Sec. 227(I) of the Act, the auditor of a company has the right of access at all times to all books and information which he considers necessary for the proper performance of his duties, even though the information is of a confidential nature. He has, accordingly, a statutory right to inspect the director's minutes book. In case, he is denied access to it, he should state that in his report along with the reasons therefore.

P.Q.7. In a Board meeting, a few Directors raise disagreements on the minutes of the earlier Board meeting alleging that the decisions were recorded wrongly. Advise the Chairman.

Ans: The minutes of a Board meeting once recorded cannot be changed. However at the current meeting, the disagreeing directors, with the permission of the Chairman, may move a motion for a resolution modifying the earlier resolutions recorded in the minutes which, they feel, have been wrongly recorded.

P.Q. 8. Y, one of the directors of the company, sends a letter to the company secretary for convening the Board meeting at an early date. Comment.. [CS (Final), June 1999]

Ans. Regulation 73 of Table A provides that an individual director may requisition a Board meeting. On such requisition of a director:

1. The manager or the secretary shall summon a Board meeting; and
2. Any director (including the director requisitioning the Board meeting) may also summon the Board meeting.

However, neither the Companies Act nor Table A contains any provision regarding postponement of a Board meeting or convening a Board meeting at an early date. Thus a, Board meeting can be convened at an early date if the articles of the company contain a provision in this regard. However, in the absence of any provision in the articles the secretary should consult the chairman or the managing director and discuss the suitability of holding the Board meeting at an early date

P.Q.9. You are a company secretary of the Conventional Garments Ltd. (CGL). CGL is a long-established and rather old-fashioned company in the clothing industry. It has a new managing director, Subudhi, who is determined to modernise the company and reduce bureaucracy. Apart from Subudhi, CGL has three other directors, Ajay, Vijay and Budha. Budha is approaching retirement and does not agree with Subudhi's plans for the company.

You are called to Subudhi's office. You learn that:

1. Subudhi, Ajay and Vijay have decided to dismiss Budha. Subudhi asks you to write to Budha forming him of his dismissal and to prepare minutes of Subudhi's meeting with Ajay and Vijay to go into the minute book of the meetings of the Board of directors.
2. Subudhi has some ideas about streamlining the meetings of the Board of directors. He wants personally to approve the agendas for meetings of the Board and will exclude items put forward by other directors if, in his opinion, they are not relevant. He wants the agenda and papers to be circulated to directors by e-mail; and he wants Vivek, a consultant to attend all meetings of the Board of directors over the next six months and to advise directors on how they should transact Business in the Board room. Give your opinion on the points (i), and (ii) above.

Ans. Notice of every Board meeting shall be given in writing to every director for the time being in India and to every other director at his usual address in India (Sec. 286) must be sent to all the directors, otherwise the proceedings of the meeting and the resolutions passed thereat shall be invalid. [Parmeshwari Prasad Gupta v Union of India (1974).]

In the given case :

1. Notice of the Board meeting has not been given to all the directors. Therefore a meeting between the managing director and two other directors cannot be regarded as a Board meeting. Only resolutions validly passed are entered in the minute book. Since the meeting has not been validly convened, all the resolutions are invalid and the decision taken as to removal of Budha cannot be entered in the minute's book of the company. Therefore, removal of Budha by the managing director without convening a Board meeting is invalid.
2. The articles of a company generally contain a regulation empowering a director to summon a Board meeting. Even if the articles do not contain such a power, the directors have the power at common law to summon a Board meeting. There it is not possible for the managing director to exercise his discretion thereby disallowing items put forward by other directors, even if he is of the opinion that such items are not relevant. However, the managing director of the company has the power to approve the agenda for meetings of the Board.

The Companies Act only requires that the notice should be given in writing. It does not prohibit sending of notice by e-mail. In fact, notice given by fax has been held to be a valid notice [ferruccio Sias v Jai Mangeeram Mukhi (1993) 12 CLA 212]. Thus where the directors are equipped to receive the notice by e-mail and the secretary is authorised to send the agenda and papers to the directors by e-mail, the notice will be in accordance with Sec.286.

Ordinarily, only the directors can be present in a Board meeting and the outsiders are debarred from attending the Board meetings. However, with the special permission of the chairman or the managing director, an outsider can also attend a Board meeting. Therefore, Vivek may be permitted by the managing director, Subudhi, to attend all the meetings of the Board for a period of 6 months.

P.Q. 10: What is the required quorum for holding a Board meeting? Examine the following cases:

1. In a Board meeting, only 3 directors were present out of the total of 11 directors. None of the 3 directors was interested in any of the items of the agenda. Examine the validity of meeting.
2. In a meeting of the Board, out of the total of 11 directors, 7 directors were present of which only 2 directors were not interested in one of the transactions. How should the meeting deal with the matter.
3. The articles of association of a company fixed 3 as the quorum for a meeting of the Board-- meeting of the Board at a meeting of the Board, all the 5 directors were present. They allotted the shares of the company to 3 of the directors. Is it valid? [CS (Final, Dec. 1995; June 1997)]

Ans: The provisions relating to quorum for a Board meeting are contained in Sec. 287. Unless the articles provide for a higher quorum, the quorum shall be one third of the 'total strength' (any fraction contained in that one third shall be rounded off to one) or two directors whichever is higher

[Sec. 287(2)]. However, proviso to Sec. 287(2) states: that where at any time the number of interested directors exceeds or is equal to two third of the 'total strength', the number of disinterested directors present at the meeting, being not less than two, shall form the quorum.

1. In the instant case, one third of 11 comes to 3.67; the fraction 0.67 shall be rounded off to 1. Thus, at least 4 disinterested directors must be present in the Board meeting. However, only 3 directors are present in the Board meeting.

Moreover, there is no interested director present in the meeting and so the benefit of proviso to Sec. 287 cannot be availed. Therefore, the quorum is not present and the meeting cannot be held valid.

2. In the given case, the required quorum comes to 4 directors, but only 2 disinterested directors are present.

Two third of the 'total strength' comes to 8 (Being two third of 11 is 7.33; the fraction 0.33 shall be rounded off to 1). Since the number of interested directors is only 5, the proviso to Sec. 287 is not attracted. Thus, the remaining 2 directors who are not interested do not constitute a quorum and hence the Board meeting cannot be validly convened.

In the case of a private company, interested directors are also counted in quorum. In this case, if the company is a private company, all the 7 directors shall be counted to determining quorum. Since the required quorum is only 4, the quorum is present if it is assumed that the company is a private company.

3. Where a transaction is really one transaction, the necessary quorum cannot be obtained by dividing the transaction into two transactions (Re, Sir Homusji and Wadia AIR (1921) Bombay 372].

In the given problem, the required quorum comes to 3 directors, but only 2 disinterested directors are present.

Two third of 'total strength' comes to 4 (Being two third of 5 is 3.33; the fraction 0.33 shall be rounded off as one). Since number of interested directors are only 3, the proviso to Sec. 287 is not attracted. Thus, the remaining 2 directors, who are not interested, do not constitute a quorum and hence the meeting cannot be validly convened. Therefore, the allotment of shares at the aforesaid meeting is not valid.

In the case of a private company, interested directors are also counted in quorum. In this case, if the company is a private company, all the 5 directors shall be counted file determining the quorum. Since the required quorum is only 3, the quorum is present if it is assumed that the company is a private company.

P.Q. 11. A member wants to inspect the minute's book of the meetings of the Board. Advise.

Ans: Sec.196 confers a right on the members of the company to inspect and obtain copies of the minutes of a general meeting. However, this right does not extend to the minutes of a Board meeting.

Companies Act contains no provision either specifically permitting or prohibiting inspection by the shareholders of the minutes of the Board meeting. Unless the articles of company otherwise provide, a shareholder has no right of inspection or of taking copies of the minutes of the Board meetings [Department Letter No. 8/15 (169)/63-PR, dated 11.2.1963].

In the given case, if the articles of the company give a right to the members to inspect the minutes, the inspection cannot be declined; otherwise the member has no right to make the inspection.

P.Q.12. A meeting of the Board of directors of OPQ Co. Ltd. due to be held on 30.9.2001 did not take place for want of quorum. As a result, the company did not hold any Board meeting for the quarter ended 30.9.2001 and there is a complaint that the company has violated the provisions of the Act in this regard. Advise. [CA (Final) Nov.2001]

OR

The Board of Directors of ABCLtd met thrice in the year 2008 and the 4th meeting, though called, could not be held for want of Quorum. Examine whether any provisions of the Companies Act have been contravened.

OR

The Board Meeting of ABCLtd had the following schedules – 1st January, 30th June, 1st July and 31st

December. The meeting on 31st December could not be held for want of quorum. State whether the Board meetings were held as per the requirements of the Act and also state what shall be the date of adjourned meeting if that day happens to be a public holiday.

OR

A Meeting Board of Directors of a Company was convened to be held on 15.12.2007 but the meeting could not be held for want of quorum. The last meeting of the Board of Directors was held on 16.08.2007. Whether any contravention is involved.

Ans. As per Sec. 285, at least four Board meetings shall be held in each calendar year and at least one Board meeting shall be held in each quarter.

Sec. 285 shall not be deemed to be contravened, if a Board meeting could not be held for want of quorum (Sec. 288).

In the instant case, the Board meeting called on 30.9.2001 could not be held for want of quorum. This resulted in not holding any Board meeting in the quarter July to September 2001 (assuming that no other Board meeting was held in this quarter). In spite of not holding the meeting in the quarter July to September, the provisions of Sec. 285 shall not be deemed to be contravened because the meeting was validly called but could not be held only because of absence of quorum. Therefore, the company has not violated the provisions of Sec. 285.

P.Q.13 .The articles of association of XYZ Computers Limited provide for a maximum of 15 directors. But the company has only 10 directors and for two of them representing foreign collaborator alternate directors have been appointed. Board meeting held on 1st August, 2003 was attended by 4 directors including 2 alternate directors.

Examine with reference to the relevant provisions of the Companies Act, 1956 whether quorum was present at the Board meeting held on 1st August, 2003. Will your answer be different, if the articles provide for a quorum of 6 directors? [CA (Final), May 2004]

Ans. As per Sec. 287(2), the quorum for a Board meeting shall be higher of-

1. 1/3rd of total strength (any fraction contained in that one-third shall be rounded off as one); or
2. 2 Directors.

Total strength' means the total strength of the Board of directors of a company as reduced by the number of directors whose places are vacant at that time.

However, the articles of a company may provide for a larger quorum than specified under Sec. 287 (Amrit Kaur Puri v Kapurthala Flour Oil & General Mills Co. P. Ltd. Comp Cas 194].

In the given case, total strength is 10. Quorum for the Board meeting held on 1st August, 2003 shall be 1/3rd of 10 directors, i.e., 3.33, taken as 4 directors. Since the 4 directors are present in the Board meeting (alternate director shall also be included while computing quorum), the quorum is present.

However, if the articles provide for a quorum of 6 directors, the required quorum is 6, and not 4. In such a case, the quorum is not present in the Board meeting held on 1st August 2003.

P.Q. 14 . Board meetings were held on 24th March 2000 and 15th April 2000. Mr. Rameshwar, who was the chairman of these two Board meetings died on 1.5.2000, without signing the minutes should the minutes be signed and by whom? [CA (Final), Nov.2000]

Ans. As per Sec. 193(1A), the minutes of a Board meeting may be signed by the chairman of the said meeting or the chairman of the next succeeding meeting. However Department of Company Affairs has clarified that there is no requirement that the minutes of a Board meeting shall be signed within a period of 30 days from the conclusion of the Board meeting. In other words, no time limit has been prescribed for signing of minute's book.

In the present case, the minutes of the meeting held on 24.3.2000 could be signed either by the chairman of the meeting held on 24.3.2000 or by the chairman of the next meeting held on 15.4.2000. Incidentally, the chairman of these two meetings is the same, i.e., Mr. Rameshwar, who has died. The result is that the minutes of the two previous Board meetings, held on 24.3.2000 and 15.4.2000, have remained unsigned.

There is no legal provision covering the above situation. Therefore, it is advisable to convene a

Board meeting and appoint a chairman who shall be authorised to sign the minutes of both the meetings held on 24.3.2000 and 15.4.2000.

P.Q. 15 . X, a director residing abroad complains that he does not receive notices for the Board meetings regularly. Advise. [CS (Final, Dec. 1997)]

Ans. As per Sec. 286, notice to a director who is out of India must be sent at his usual in India. Sec. 286 does not differentiate between a director who is resident of India but is temporarily out of India and a director who is permanently resident outside India. In the similar question, the Company Law Board has held that if notice is sent to a director who mostly stays out of India at his usual local address, the notice is inadequate (even if the articles of the company do not require the sending of notice abroad). He would not be able to attend the meeting. It would show lack of probity and fair play on the part of directors. The meeting was held to be null and void [Dr. Kamal Kumar Dutta v Ruby General Hospital Ltd. (2000)].

In the given case, there is no legal requirement of sending notice to Mr. X at his foreign address notice given to him at his usual address in India is sufficient (Sec. 286). However, considering the judgement given by the Company Law Board in Dr. Kamal Dutta v Ruby General Hospital Ltd., the company should also give a copy of the notice to Mr. X at his foreign address, if any.

P.Q. 16. By an oversight, a notice of meeting of the Board was not sent to one of the directors who were in India. Is the meeting valid? [CS (Final, Dec. 1995; June 1997)]

Ans. According to Sec. 286, notice of every meeting of the Board shall be given in writing to every director in India and to every other director at his usual address in India. Provisions of Sec. 286 are mandatory and failure to send the notice even to a single director would make the meeting and the resolution passed at the meeting null and void [Kuldip Singh Dhillon v Paragon Utility Financiers (P) Ltd. (1988) 60 Comp Cas 77]. Even an accidental omission to give notice to a director would make the meeting invalid [Parmeshwari Prasad Gupta v Union of India].

P.Q.17. A company has 8 directors, out of whom 5 directors went abroad. A resolution by circulation approved by the remaining 3 directors is passed and forwarded to the concerned authority. On their return, the directors who were then abroad objected to the resolution. Is the resolution validly passed? [CS (Final, Dec. 1998)]

Ans. Mr. A resolution is said to be duly passed by circulation if the following conditions are Satisfied:

1. The resolution shall be circulated in draft, together with necessary papers, to all the members of Board or committee then in India and to all other members at their usual address in India.
2. The resolution shall be 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 the resolution.

In the present case, 3 directors (1/3rd of 8 directors) shall form the quorum for a meeting of Board of directors. Since, 3 directors are present in India, the quorum required for holding a Board meeting is present and so the resolution may be passed by circulation. The resolution shall be passed only if:

1. Any of the 5 directors (whether in India or outside India) vote in favour of the resolution; or
2. All the 3 directors who are present in India vote in favour of the resolution.

The resolution has been approved by all the 3 directors remaining in India and therefore the resolution is validly passed. However, this resolution can be changed directors who were then abroad come back to India. This can be done by holding a meeting and passing a resolution reversing the earlier resolution.

P.Q.18: XYZ Company Ltd calls a meeting of the Board of Directors without, giving notice to Directors as required under the Companies Act, 1956. The meeting is attended by all the Directors. None of the Directors of the Company objected to the absence of notice. The proceedings of the meeting are ratified later by the Board of Directors at a regularly constituted meeting. Decide giving reasons for your answer whether:

1. The Meeting and the proceedings are valid.
2. The Board of Directors is competent to ratify the above proceedings at "a later meeting.

By an oversight, a notice of the meeting of the Board was not sent to one of the Directors who was in India. Is the meeting valid?

Ans:

Protection to Third Parties: If the Directors transact business at a meeting, which is not validly called, then outsiders will not be prejudiced by such irregularities, if they have no notice of it.	Royal British Bank vs. Turquand
Invalid Meeting. If notice of the Meeting is not given to all the Directors, resolutions passed at such Meetings are invalid .	Col. Kuldip Singh Dhillon vs Paragon Utility Financiers
Power of Board to ratify acts subsequently: a. Where notice is not given as required but all Directors attend the meeting and do not object to the absence of notice or where the absentee Directors do not complain of want of notice, the proceedings at the meeting will not be invalid , especially if they are ratified at a subsequent meeting at which the Absentee Directors are present. b. It is open to a regularly constituted meeting of the Board of Directors to ratify that action which though unauthorized is done on behalf of the Company. Ratification generally relates back to the date of the act ratified.	Parameshwari Prasad Gupta vs Union of India 44 CC 1

P.Q.19: under the prevailing circumstances, Universe Ltd finds it difficult to convene a Board Meeting. So it decided to pass the resolution by way of circulation u/s 289. Mr. X, Mr. Y are Directors who are for the time being outside India. Mr. A, Mr. B, Mr. C and Mr. Z are present in India. Mr. Z is interested in the resolution proposed to be passed. State whether the resolution is validly passed in the following cases:

1. Mr A, Mr. B, Mr. C, Mr. X and Mr. Y voted in favour of the resolution.
2. Mr. A, Mr. B and Mr. Y voted in favour of the resolution.
3. Mr. A, Mr. B and Mr. C voted in favour of, the resolution.

Ans:

Situation	Votes Count	Validity of Resolution
All Directors voted in favour of the resolution	No. of Directors who are entitled to vote= 5 No. of Directors voted in favour = 3	Directors who are entitled to vote, have approved the resolution. So, resolution is valid .
Mr. A, Mr.B and Mr.Y voted in favour of the resolution	No. of Directors who are entitled to vote= 5 No. of Directors voted in favour = 3	Majority of all the directors whether in India or outside India who are entitled to vote, have approved the resolution. So, resolution is valid .
Mr. A, Mr.B and Mr.Y voted in favour of the resolution	No. of Directors who are in India = 4 No. of Directors who are entitled to vote= 3 No. of Directors voted in favour = 3	The Directors who are then in India and are entitled to vote, have approved the resolution. So, resolution is valid .

P.Q.20: A member wants to inspect the Register of Directors' Shareholdings on a day other than the date on which the AGM of the Company is held. As a Secretary of a Public Company, how will you deal with the above situation?

Ans: Member is entitled to inspect the Register of Directors' Shareholdings in the following manner:

Person entitled to inspect	Time for inspection
1. Any Member or Debentureholder	14 days before the date of AGM and 3 days after its conclusion. Note: In computing the period of 14 days and 3 days, Saturday, Sunday and public holidays should not be considered.
2. Any person having the right to attend the AGM.	During the continuance of the AGM. [Note: Register shall be produced at the commencement of every AGM]

If a Member wants to inspect the Register beyond the period stipulated above, it is not necessary for the Company to make available the Register for inspection. [Sec.307(5)]

P.Q.21: ABC Ltd has 12 Directors on its Board, and has the following clause in its **AOA**:

"The question arising at any meeting of the Board of Directors or any Committee thereof shall be decided by a majority of votes, except in cases where the Companies Act, 1956 expressly provides otherwise".

OR

In a meeting of the Board of Directors of ABC Ltd, 8 Directors were present. After completion of discussion on the matter, voting was done. 3 Directors voted in favour of the motion, 2 Directors voted against the motion while 3 Directors abstained from voting. State whether the motion was carried or not.

Ans:

1. Principle: Regulation 74(1) of Table A provides that save as otherwise expressly provided in the Companies Act, question arising at any meeting of the Board shall be decided by a **majority of votes**. For this purpose, only those Directors who have **actually voted**, shall be considered. Abstentions will not be considered.

2. Analysis:

- a. No. of Directors present and voting = 8 present - 3 Abstentions = 5
- b. No. of votes in favour of the motion = 3
- c. No. of votes against the motion = 2

3. Conclusion: Since votes in favour (3) exceed votes against (2), the motion is carried, i.e. considered to be passed by majority, unless it is a matter requiring unanimous voting as in the case of a resolution u/s 372A(2).

P.Q.22: The Board of Directors of XYZ Ltd, delegated to the Heads of its Branch Companies, the power to borrow money by way of Promissory Note upto a maximum limit of Rs.50,000. Utilizing this delegated power, a Branch Head borrowed a sum of Rs.25, 000 by way of Promissory Note. State in this connection:

- 1. Can the Company borrow by way of Promissory Note?
- 2. Can the Directors delegate the power to the Branch Heads?
- 3. What shall be the consequences if the power is delegated to a Managing Director, who is vested with all powers of the management?

Ans:

- 1. The Company can borrow by way of Promissory Note also,
- 2. Directors can delegate the power to borrow moneys otherwise than on Debentures, to the Principal Officer of the Branch Office (i.e. Branch Head), if any. However, the resolution delegating the power should specify the total amount outstanding at any one time up to which the moneys may be borrowed by the delegate.
- 3. If the MD, vide a Board Resolution, is vested with full powers of the management of the affairs of the Company and is authorized to sign all the papers of the Company, he would have full powers to borrow money on a Promissory Note **even without a Board Resolution** u/s 292.

P.Q.23: The Board of XYZ Ltd has received an attractive offer for sale for one of the sugar mills owned by the Company. The transaction should be completed within a month. Advise whether the Board of Directors can proceed with the same.

Ans:

- 1. **Approval:** The Board has to obtain the approval of Shareholders for sale or disposal of any undertaking of the Company. **(Sec.293(1)(a))**. Here, any decision by the Board to sell the sugar mill will not be valid, unless it is approved by the Shareholders in General Meeting.
- 2. **Prior Consent:** Sec.293 requires "consent" of Shareholders, which by implication, refers to **prior consent**. So, Directors cannot sell the undertaking with the hope that it will be ratified by members.
- 3. **Conclusion:** In the above case, the Board cannot accept the offer even if it is attractive. The acceptance is **ultra vires** the Board.

P.Q.24: The last 3 years Balance Sheet of PTL Ltd, contains the following information and figures:
For the year ended (Amounts in Rs.)

Particulars	31-03-2006	31-03-2007	31-03-2008
Paid up Capital	50,00,000	50,00,000	75,00,000
General Reserve	40,00,000	42,50,000	50,00,000
Credit Balance in P&L A/c	5,00,000	7,50,000	10,00,000
Debenture Redemption Reserve	15,00,000	20,00,000	25,00,000
Secured Loans	10,00,000	15,00,000	30,00,000
N.P for the year u/s 349&350	12,50,000	19,00,000	34,50,000

In the ensuing Board Meeting, scheduled to be held on 05.09.2008, among other items of agenda, following items are also appearing :

1. To decide about borrowing from Financial Institutions on long-term basis.
2. To decide about contributions to be made to Charitable Funds.

Based on above information, you are required to find out the amount upto which the Board can borrow from Financial Institutions and the amount upto which the Board of Directors can contribute to Charitable Funds during the financial year 2008-09 without seeking the approval in General Meeting.

Ans:

1. Maximum Amount that can be borrowed u/s 293 without Shareholders' approval:

Particulars	Rs.
Paid up Capital as on 31.03.2008	75,00,000
Add: Free Reserves [General Reserve and credit balance in P&L A/c]	60,00,000
Total Amount that can be borrowed without Shareholders approval	1,35,00,000
Less: Amount already borrowed by way of Secured Loans	30,00,000
Further amount that can be borrowed with out approval in General Meeting	1,05,00,000

2. Maximum Contribution to Charitable Funds u/s 293 without Shareholders' approval:

- a. Average Net Profits = [Rs. 12,50,000 + Rs. 19,00,000 + Rs.34,50,000) ÷ 3 = Rs.22,00,000
- b. 5% of Average Net Profits = 5% of Rs.22,00,000 = **Rs.1,10,000**
- c. Maximum Permissible Contribution without approval in General Meeting = Item (b) or Rs.50,000, whichever is greater, hence **Rs.1,10,000**.

P.Q.25: The Paid Up Share Capital and Free Reserves of XYZ Co Ltd, a Public Company is Rs. 100 Crores as on 01.04.2008. The Shareholders of the Company at their General Meeting held on 04.04.2008, by a resolution authorized the Board of Directors of the Company to borrow money "exceeding the Paid Up Share Capital and Free Reserves of the Company, to the extent required by the Board of Directors". The Board of Directors as a result borrowed money to an extent of Rs.130 Crores, including Rs.20 Crores as Short Term Loan and Rs.25 Crores as Temporary loan for financing the construction of a building of the Company. Examine the validity of the following:

1. The Board's exercising the powers for borrowing money to an extent, of Rs.130 Crores.
2. What would be your answer in case the Company's Paid Up Share Capital and Free Reserves increased to Rs.150 Crores and the Board of Directors borrow money to an extent of Rs.140 Crores which neither include any short term loan nor temporary loan for financing of the construction of a building of the Company

Ans: Refer to Sec.293(1)(d) and the meaning of "Temporary Loans" in that context.

Situation 1:

1. Analysis of Loans: Total Borrowings of Rs. 130 Crores is analysed as under:

- a. Rs.20 Crores - Short Term Loan - assumed repayable within 6 months - not considered in ceiling limit for Sec,293(1)(d) purposes.
- b. Rs.25 Crores -Temporary Loan but for capital purpose - **included** for Sec.293(1)(d) purposes.
- c. Rs.85 Crores - Other Loans - **included** for Sec.293(1)(d) purposes.

2. Loans above Ceiling Limit Total Borrowings u/s 293(1)(d) = Rs.1 10 Crores, exceed the
Board Meetings **1.23**

aggregate of Paid Up Capital and Reserves of the Company Rs.100 Crores. Hence approval in General Meeting specifying the amount of borrowing is required, to make the Borrowing valid.

3. **Nature of Resolution:** Here, the resolution is defective since it does not specify the amount that may be borrowed by the Company.
4. **Conclusion:** So, the management of the Company should convene an EGM and pass a resolution as required u/s 293(1)(d), to make the borrowing valid and binding on the Company and its Members.

Situation 2: If the Paid Up Capital and Free Reserves is increased to Rs.150 Crores, then the Borrowings of Rs.140 Crores is within the powers of the Board and hence the same is valid. Shareholders approval is not required in such case.

SUMMARY OF PROVISIONS AS TO REGISTERS

Name of Register	Contents	Inspection	Copies	Penalty for default
Register of Contracts in which Directors are interested [Sec.301]	See Q.No.13 Point 2 above	Only Members, free of charge	Allowed only for Members.	Fine upto Rs.5,000. Appeal to CLB not allowed
Register of Loans and Investments [Sec.372A]	Refer to Chapter 2	Only Members, free of charge.	Allowed only for Members.	Fine upto Rs.5,000+ Rs.250 per day of default. Appeal to CLB is not allowed.

The End