

2. Board Meetings

Meaning of Board meeting

The word 'meeting' in its sense implies coming together of two or more person face to face for some purpose and discussion. The provision relating to Board meeting, as contained in Section 285 to 289, must be complied with in calling and holding a Board meeting. Following points need to be noted in this regard:

1. Minimum number of Board meeting as specified under section 285 must be held.
2. A board meeting must be called by a proper authority.
3. The act has not prescribed any length of notice for calling a board meeting.
4. The notice of a board meeting shall be given in accordance with the provision of section 286.
5. Neither the business to be transacted at a board meeting, nor the purpose of any board meeting need be specified in the notice of a board meeting.
6. The required quorum should be present in a board meeting.
7. The law does not prescribe any place, time and day of a board meeting.
8. Proper person must be in the chair.
9. The minutes of the board meeting must be kept as per provision of section 193 to 195.
10. The directors must sign the attendance book, if so required by the articles.
11. A resolution may be passed by circulation unless the Act requires that such a resolution shall be passed at a board meeting only.
12. The board may delegate its powers to a committee of directors or any director or any officer or employee of the company, if so authorized by the articles.

Voting at a Board Meeting

1. Every director has one vote;
2. Except where the act requires a unanimous resolution, question arising at a board meeting shall be decided by a majority of votes
 - Only those directors who are present at the meeting and vote on a resolution are considered while determining majority. i.e., directors who are absent at a board meeting or who are abstaining from voting are not considered while ascertaining the result of a resolution.
3. In case of equality of votes, the resolution is lost unless the chairman uses his casting in favour of the resolution.
4. The act requires unanimous resolution in following situation
 - a. Appointment of a person as a managing director if he is already a managing director or manager in any other company (Section 316)
 - b. Appointment of a person as a manager if he is already a managing director or manager in any other company.(Section 386)
 - c. Making any interoperate investments, or giving any loan, guarantee or security o any other body corporate (Section 372A)
5. The article of a company may require a specific majority or unanimous resolution of the board in respect of certain matters or all the matters coming before the meeting.

6. A director can not vote if he is interested in contract or arrangement.
- A resolution passed at board meeting is binding on the entire director including those who were absent or who voted against such resolution.
- A director can not appoint proxy. Even the article cannot empower a director to appoint a proxy.

Authority to call a board meeting

- As per regulation 73 of table A, an individual director may requisition a board meeting. On such requisition of a director, the manager or secretary shall be duty bound to summon a board meeting.

Number of board meeting (Section 285)

- *Board to meet at least once in every three calendar months*
- 1. Interval between board meeting
 - Here each 'year' and 'year' means calendar year so between January to December.
 - One board meeting in every quarter, so it's not required that there is a gap of 3 months between two meeting it may be higher.
- 2. Relaxation or exemption by central government.
 - The CG may grant such exemption by way of official gazette.
 - The CG has exempted companies licensed under section 25 from the provision of section 285 subject to the condition that at least one board meeting shall be held every six calendar months.
- 3. Other
 - There is no limit for maximum number of meeting
 - If a meeting was duly called but it could not be held for want of quorum, it would not be deemed to be a contravention of section 285 relating to frequency of board meetings.

Place, time and day of board meeting

- There is no specific provision about the place of board meeting so board meeting can be held in India or outside India. But section 301 requires that the register of contract must be kept in board meeting. And register of contract must be kept at registered office only. If board meeting held other than registered office then removal of register outside the office is exists and if such happen then it's require providing notice to shareholders.
- A board meeting may be held even on a public holiday. As per section 288, if a board meeting can not be held for want of quorum, then unless the articles otherwise provide, the meeting shall automatically stand adjourned to same day, time and place in the next week, or if that day is public holiday then to next succeeding day, which is not a public holiday.
- A board meeting may be held even after business hours, unless the articles of the company otherwise provide.

Notice of a Board meeting (Section 286)

Notice of every meeting held 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.

1. Notice to be in writing
2. Notice to whom?
 - a. Notice to a director who is for the time being in India. (in this situation its nor require that notice must be sent at usual address of the director but it may be give hand to hand when director visit the company)
 - b. Notice to a director abroad (Notice to at his usual address in India its not required to sent notice abroad)
 - c. Notice to director mostly staying abroad (the section not give clarification for the resident status of director for servicing notice but in recent case the company law board took an opposite view about such situation its says that the person who normally stay out and if notice sent to its usual address in India than its not meaningful for him and thus the meeting was held to be null and void.
 - d. Where an alternate director is appointed the notice should be serving to them also.
 - e. It is necessary to send notice each and every director even if a particular director informs the company that he will not be able to attend the meeting.
3. Where the articles of a company prescribe the manner of ending notice of a board meeting, the notice must be sent in the manner so prescribed.
4. If board resolution specifying the day, time and place of future board meeting than no need to serve notice but company must send such resolution to every director. But in case article provide particular about the meeting than no need to send article to every director.
5. Notice of adjourned meeting is not required but if articles of the company provide than fresh notice must be served and if there is board meeting is adjourned sine die i.e., board meeting adjournment for indefinite period than also fresh notice must be serve.
6. Improper notice – consequence
 - Where no notice was sent to some of the directors and unreasonably short notice to some other directors, and certain strangers also participated in the meeting, the meeting was held to be invalid.
 - Even an accidental omission to give notice to a single director would render the resolution passed at the meeting void.
 - Where notice is not given as required, but all the directors attend the meeting without any objection or where the absentee directors do not complain of want of notice, the proceedings at the meting will not be invalid, especially of the proceedings are ratified at a subsequent meeting in which the absenter director are present.

Length of notice calling board meeting

- A board meeting may be held even after giving, as little as ten minutes written notice to the directors.
- A few minutes notice would be sufficient if all the directors are agree to meet at such notice.
- A few hours notice was held to be invalid where it did not state the purpose of the board meeting and resulted in the absence of certain director who would have objected the proposal.

- Where a meeting was called at a time when certain directors were absent and the opportunity was seized to pass certain resolutions, this was held to be a fraudulent exercise which vitiated the meeting.
- Where the articles of a company prescribe the time limit and length of notice, the notice must be sent accordance with the articles.

Agenda of Board meeting

- There s no required to send agenda along with the notice. Even where the agenda of a meeting is given, the board is free to discuss and transact any business in addition to the business specified in the meeting.
- For business transacting covered under section 316 and 386, the notice of board meeting must expressly specify such particular.

Quorum for a Board meeting (Section 287)

- Required quorum for Board meeting shall be determined as below
 1. As per section 287(2) the quorum shall be higher of 1/3rd of total strength or 2 directors.
 2. If the quorum is not present as per above than quorum shall be higher of number of reaming director or 2 directors.
 'Strength' includes the entire director after deduction vacant director at that time.
 According to section 300 a director who is interested in contract which transact in meeting are not covered for calculation of quorum.
- Where the quorum for a committee of director is not specified, the whole of the committee must meet.
- As per regulation 72 of table A, the board may delegate any of its power to a committee consisting of such member or members as it deems fit. Thus, the committee of director may consist of a single member and single member can form a quorum.
 - Where quorum is present at the beginning of meeting, but some of the directors leave the meeting, so that remaining directors do not constitute a quorum, any subsequent resolution will be invalid.

Adjournment of Board meeting for want of quorum

- The adjourned board meeting cannot be held if quorum is not present.
- Where a resolution passed at adjourned board meeting shall be treated to have been passed on the date on which it was in fact passed and not on any earlier date.
- No fresh notice for adjoined meeting required, unless the articles otherwise provide.

Situation where quorum is not present for transacting any particular business

Where a board meeting has already commenced, and on some particular business, interested directors exceed or are equal to 2/3rd of total strength, than consider following

- a. If the remaining disinterested director present in the board meeting are two or more, the provision to section 287 apply, and the reaming disinterested directors shall be deemed to be the quorum for transacting such particular business.
- b. If the reaming disinterested directors present in the board meeting are less than two, the provision to section 287 not apply, than choose one alternative that
 - i. The board may appoint additional director, if so authorized by the articles, who are not interested in such business.

- ii. The board may summon a general meeting and put such particular business for the consideration of members.

Chairman of the board meeting

1. Chairman – the presiding officer of a meeting
 - A chairman is always a part time chairman (even if he is a whole time director) since he can occupy the chair only when the meeting is in continuation.
2. Appointment of a chairman
 - Regulation 76 of table A provision relating to appointment are as follows
 - i. The board may elect its chairman for a particular period.
 - ii. Of no chairman is elected by the board, or if at any board meeting he is not present within 5 minutes, the directors present may choose one of them as a chairman.
 - A company is free to incorporate in its article such provision in a modified form. i.e., a company may name a vice-chairman or deputy chairman in its articles, who shall preside over the meeting in the absence of the chairman.
3. Who can be a chairman?
 - No proxies allowed so only director who present at the meeting can be a chairman.
 - There is no requirement that whole time director can be chairman, even if part time director can also be a chairman.
4. Casting vote of chairman
 - Casting vote means second vote or deciding vote exercisable by the chairman when equality of votes in favor of particular regulation.
 - The chairman has a casting vote only if such power is contained in the articles.
 - As per regulation 72 of table A, the chairman of the board may use his casting vote in case of equality of votes.
 - The chairman of the board has the discretion to use his casting vote. i.e., he may decide not to use it. He may use the casting vote if it is in the interest of the company.

Minutes of Board meeting (Section 193)

- The minutes shall be prepared within 30 days of conclusion of the board meeting.
- The board minute contain the following particulars:
 - a. The names of the directors absent and asking for leave of absence
 - b. The names of the director present at the board meeting
 - c. The names of the directors dissenting from the resolution or not concurring in the resolution.
 - d. All the appointments of officers made at the board meeting.
 - e. The fact of disclosure of interest made by a director and the fact that such notice of disclosure was read in the board meeting.
 - f. The fact of unanimity of decision as required under section 316, 386 and 372A.
 - g. The fact of granting leave of absence of a director.
- The Minutes book shall be consecutively numbered and each page must be signed by the chairman of the same meeting or the chairman of the next succeeding meeting. There is no such time limit of signing the minutes book.
- The chairman has an absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes.
- If article provide that members can inspect the board minute book.

- The auditor, registrar of companies and a person appointed by government entitles to inspect the Minute book.
- If minutes are kept in accordance with the provision of section 193, following presumption can be drawn,
 - I. That the meeting was duly called and held;
 - II. That all the proceedings at the meeting were duly taken.
 - III. That all the appointments if directors or liquidators made at the meeting are valid.

Passing a resolution by circular (Section 289)

Important

- The board of directors may find It desirable to pass a resolution by circulation instead of passing it in board meeting if-
 - a. A board meeting is adjourned and some business is left unfinished, on which immediate action is required; or
 - b. The business relates to a routine matter in which not much deliberation is required; or
 - c. The cost of conducting a board meeting is very high.
- Requirements for passing a resolution by circulation
 - a. If the number of director are not present in India that required for quorum.
 - b. The draft of resolution along with all the working papers must be circulated to- all the members of the board or the committee then in India; and other remembers at theirs usual address of India.
 - c. The resolution shall be approved by the all the director who are in India or majority of the director whether in India or outside India who entitled to vote on the resolution.
- The board may pass any resolution by circulation except given list as below
 1. Filing a casual vacancy in the board.(Section 262)
 2. Making any political contribution (Section 293A)
 3. A resolution exercising power enumerated under section 292(1)(a) to (e) i.e.
 - a. Power to make calls on shares
 - aa. Power to authorize buyback of shares
 - b. Power to issue a debenture
 - c. Power to borrow money otherwise on debenture
 - d. Power to invest funds of the company
 - e. Power to make loans
 4. Disclosure of interest by a director (Section 299)
 5. Giving of a general notice by a director (Section 299)
 6. Notice by a director disclosing his shareholding in the company's subsidiary or holding company.
 7. Appointment of a person as a managing director of a company who is already a managing director or manager in other company. (Section 316)
 8. Appointment of a person as a manager of a company who is already a managing director or manager in other company. (section 386)
 9. Making interoperate loans and investments. (section 372A)
 10. Making a declaration of solvency where it is proposed to wind up the company voluntarily.