

# Lecture 9

## Chapter - 2 "Meetings of the Board and its Powers"

(iii) Passing of Resolution by Circulation: Sec. 175 and Rule 5

Conditions: A resolution shall be deemed to have been duly passed by the Board or by Committee by CIRCULATION, if

Draft resolution is circulated **AND** approved by majority of directors Or members together with necessary papers (if any)

to all directors or members of Committee

who are entitled to vote on resolution.

at their address registered with the company

**For Ex: Interested**

**directors are not entitled to vote.**

in India, by hand delivery; or

by post; or

by Courier; or

Electronic means

(Rule 5 - Email or Fax)

Resolution not to be passed by Circulation: If  $\geq 1/3^{\text{rd}}$  of total no. of directors

requires the resolution to be passed at a MEETING of the Board.

Note: Resolution passed by circulation shall be noted at subsequent meeting of the Board or the Committee, as the case may be, and included in minutes of such meeting.

DO PRACTICE - Questions or Sec. 175

(iv)	<b><u>Defects in appointment of directors not to Invalidate actions taken (Sec. 176):</u></b>
(A)	<b><u>Valid acts:</u></b> Act done by a person as a director shall be deemed valid even if it was subsequently noticed that appointment <ul style="list-style-type: none"> <li>- was invalid (due to defect or disqualification); or</li> <li>- had terminated (due to statutory provisions or articles).</li> </ul>
(B)	<b><u>Invalid acts:</u></b> Act done subsequent to notice by company of invalid appointment or termination.
<b>DO PRACTICE - Questions on Sec. 176</b>	
(v)	<b><u>Audit Committee: (Sec. 177, Rule 6, Rule 6A)</u></b>
(i)	<b><u>Requirement of audit Committee: Sec. 177(1)</u></b> Every <u>Listed Public Company</u> and <u>Other Prescribed Companies</u>
	Rule 6 - Companies prescribed in Rule 4 of Companies (Appointment & Qualifications of Directors) Rules, 2014
	<b><u>Prescribed Companies:</u></b> Public Unlisted Companies
	PUC*                      Or                      Turnover*                      Or                      Outstanding loans, deb <sup>n</sup> $\geq ₹ 10$ crore $\geq ₹ 100$ Cr                      & deposits* > ₹ 50 Cr
	* as exist on the date of last audited financial statement.
	<b>Exemptions:</b> (a) Joint Ventures (b) Wholly owned subsidiaries (c) Dormant companies
(ii)	<b><u>Composition of Audit Committee: Sec. 177(2)</u></b>
	<ul style="list-style-type: none"> <li>- Minimum <u>3 directors</u> with <u>Independent directors forming a majority</u>.</li> <li>- Majority members (including chairperson) shall be persons with ability to read and understand the financial statements.</li> </ul>

<b>Examples:</b> Examine whether audit committee is validly constituted in following cases:							
	I	II	III	IV	V	VI	VII
No. of directors in audit Committee	2	3	4	5	6	6	7
No. of I.D.	2	2	2	3	4	4	4
Persons having ability to read F.S.	2	2	2	2	3	4	4
<b>Answer:</b>							
	No	Yes	No	No	No	Yes	Yes

(iii) Functions and Powers of Audit Committee: Sec. 177(4) to Sec. 177(7)

----- Self Study from Main book -----

(iv) Disclosures in Board Report: Sec. 177(8)

The Board's report u/s 134(3) shall disclose

- the composition of an Audit Committee; and
- where the Board had not accepted any recommendation of Audit Committee, the same shall be disclosed in such report along with the reasons therefor.

(v) Vigil Mechanism: Sec. 177(9), Sec. 177(10) and Rule 7

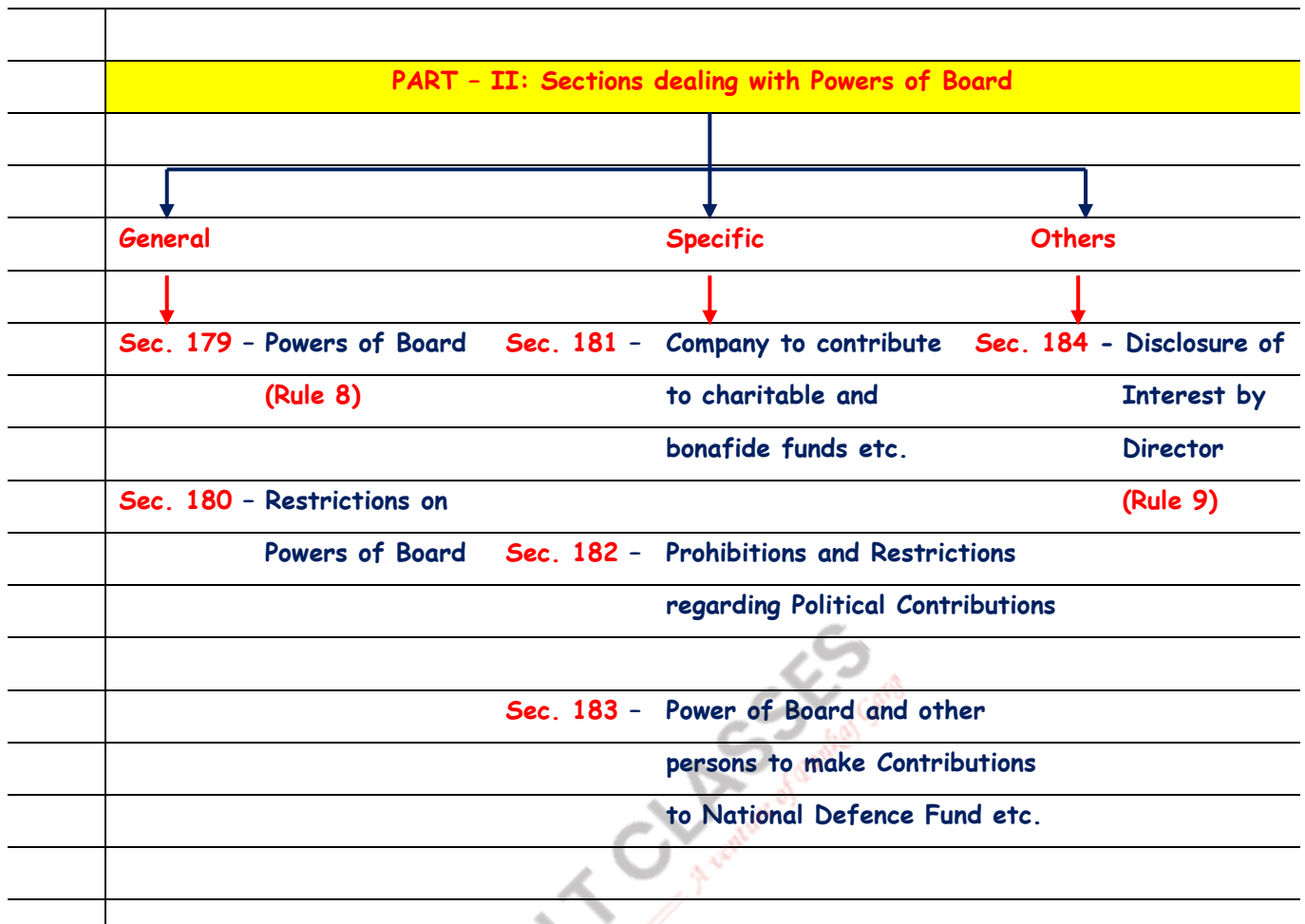
- (a) For whom: Directors and employees of company.
- (b) Purpose: To report the genuine concern or grievances.
- (c) Companies requiring to have vigil Mechanism:
- Every listed company; and
  - Unlisted companies:
    - (a) which accepts deposits from the public; or
    - (b) which have borrowed money from Bank and PFI > ₹ 50 Crores.

(d) Other requirements:

- Vigil Mechanism shall be disclosed on the website of Company as well as in Board's Report.
- Ensure direct access to the chairperson of audit committee in appropriate cases.
- Provide adequate safeguards against victimisation of the persons.

DO PRACTICE - Questions on Sec. 177

(vi)	<u>Nomination and Remuneration Committee (NRC) and stakeholder's Relationship Committee (SRC): Sec. 178</u>
(i)	<p><u>Constitution of NRC: Sec. 178(1):</u></p> <ul style="list-style-type: none"> <li>- BOD of every listed public company and other <u>prescribed companies</u> shall constitute the NRC. (Rule 6 - same as in case of audit committee)</li> <li>- Committee shall consist of <math>\geq 3</math> non executive directors out of which <math>\geq 50\%</math> shall be Independent director.</li> <li>- Chairperson of company, may be appointed as a member of NRC, but shall not chair such committee.</li> </ul>
(ii)	<p><u>Functions of NRC: Sec. 178 (2), (3) and (4)</u></p> <p>----- Self Study from Main Book -----</p>
(iii)	<p><u>Stakeholder's Relationship Committee: Sec. 178(5) and Sec. 178(6)</u></p> <ul style="list-style-type: none"> <li>- BOD of a companies having <math>&gt; 1000</math> <span style="border-left: 1px solid red; border-right: 1px solid red; padding: 0 5px;">shareholders + debenture holders + + deposit holders + other security holders</span> at any time during a financial year, shall constitute a Stakeholder relationship Committee.</li> <li>- Chairperson shall be non - executive director.</li> <li>- Other members may be decided by Board.</li> <li>- SRC shall consider and resolve the grievances of security holders of the company.</li> </ul>
(iv)	<p><u>Penalty for non compliance of Sec. 177 and 178: Sec. 178(8)</u></p> <p>(a) <u>Over the company:</u> Fine of ₹ 5 Lakhs.</p> <p>(b) <u>Over Officer in default:</u> Fine of ₹ 1 Lakh.</p> <p>Note: Sec. 178 shall not apply to Sec. 8 companies.</p>
DO PRACTICE - Questions on Sec. 178	



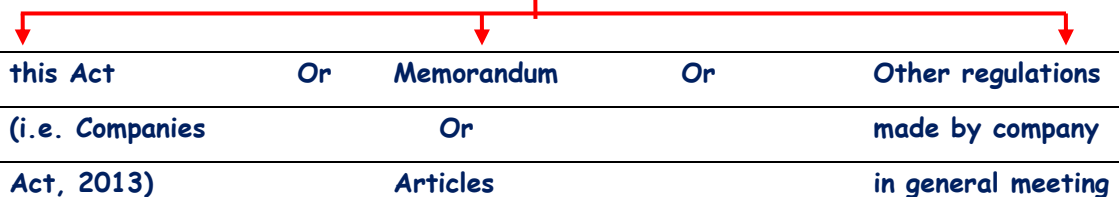
(vii)

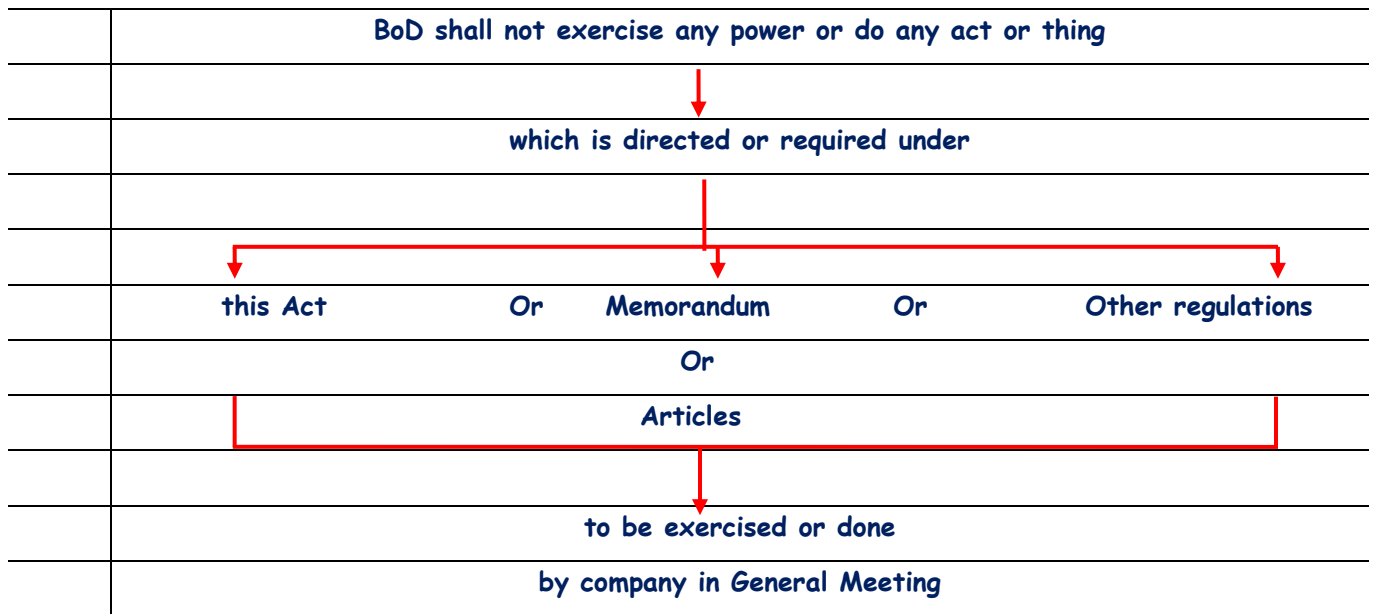
**Powers of Board: Sec. 179**

**Sec. 179(1):** BOD shall be entitled (a) to exercise all such powers and  
(b) to do all such acts and things

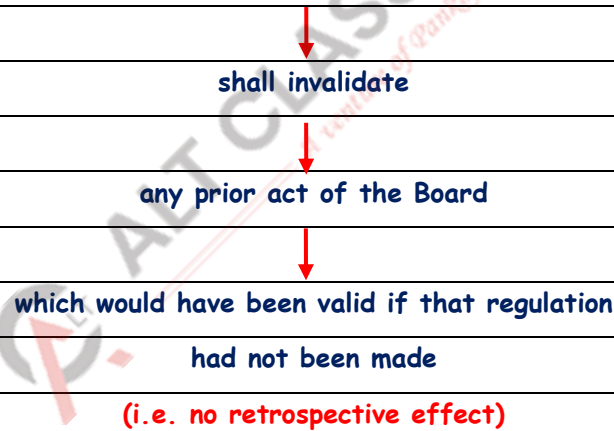
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as the company is authorised to exercised and do

↓  
subject to provisions contained in

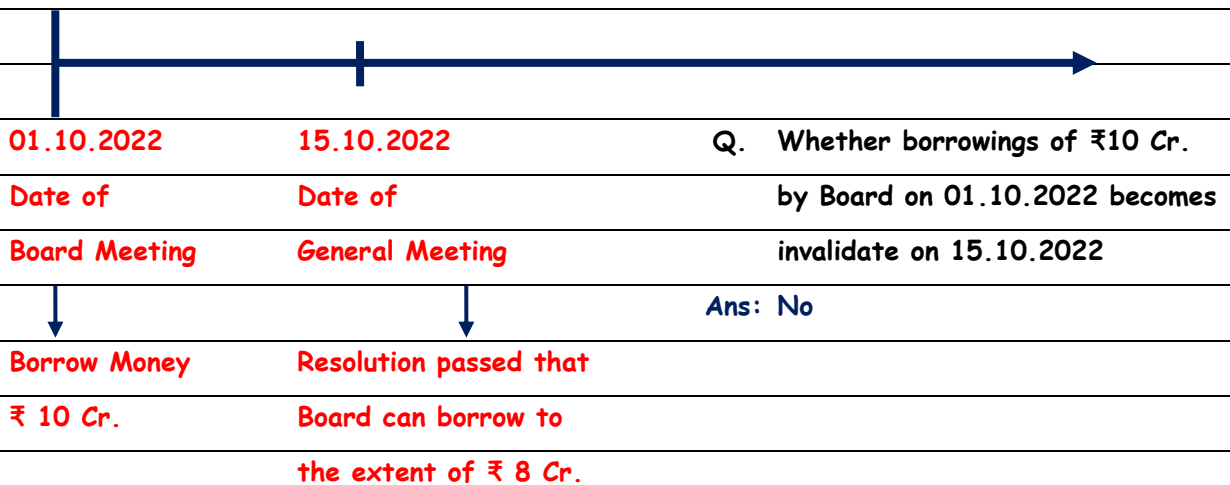




**Sec. 179(2):** No regulation made by company in general meeting



**Example:**



<u>Sec. 179(3): Powers to be exercised by Board in Meeting:</u>		
BoD shall exercise following powers by means of		
Resolutions passed at <u>Meetings of Board</u>		
↓		
(a) to make calls on shareholders in respect of unpaid money	(d) to borrow money* (e) to invest the funds* (f) to grant loans or give guarantee or provide security in respect of loans* #	(g) to approve F.S. and Board's Report. (h) to diversify business (i) to approve amalgamation merger or reconstruction (j) to takeover a company or acquire a controlling or substantial stake in another company (k) Others as prescribed
(b) to authorise buy back u/s 68		
(c) to issue securities including debentures whether in or outside India		
		↓
#Board may delegate the powers specified in clauses (d), (e) and (f) by a resolution passed at meeting to		Rule 8
		- to make political Contributions - to appoint or remove KMP - to appoint Internal and Secretarial auditors.
↓		
Committee of Directors	Managing director	Manager
		any other Principal officer of company
		Or Principal officer of Branch Office
<u>Other provisions of Sec. 179 (3) and 179 (4):</u>		
--- Self Study from Main book (Not Significant) ----		
<b>DO PRACTICE - Questions on Sec. 179</b>		