

Lecture - 8

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

PARTS			
Sections dealing with Board Meetings and Committees of Board	Sections dealing with Powers of Board - General and Specific	Sections dealing with Powers of Board as to Loans and Investments and Related Party Transactions	Misc.
- Sec. 173 and 174 - Sec. 175 and 176 - Sec. 177 and 178	- Sec. 179 and 180 - Sec. 181, 182 and 183 - Sec. 184	- Sec. 185 and 186 - Sec. 188	- Sec. 187 - Sec. 189 to 193
PART - I (Sections dealing with Board Meetings and Committees)			
Board Meetings	Committees of Board		
Sec. 173 - Meetings of Board (Rule 3 and 4)	Sec. 177 - Audit Committee (Rule 6, 6A and 7)		
Sec. 174 - Quorum for Meetings of Board	Sec. 178 - Nomination and Remuneration Committee and Stakeholder's Relationship Committee		
Sec. 175 - Passing of Resolution by Circulation (Rule 5)			
Sec. 176 - Defects in appointment of directors not to invalidate actions taken.			

(i) Meetings of Board: (Sec. 173 and Rules 3 & 4)

Number of Board Meetings and its exceptions

Sec. 173(1) and 173(5)

Participation in Board Meetings

Sec. 173(2) and Rule 3 and 4

Notice of Board Meetings

Sec. 173(3) and 173(4)

(A) Number of Board Meetings and its exceptions:

Sec. 173(1)

First Board Meeting

Subsequent Board Meetings

***year implies calendar year.**

Exception:

Sec. 8 Companies: Board Meeting in every 6 calendar months ≥ 1

to be held within 30 days of Incorporation

≥ 4 Board Meetings every year*

Gap between two consecutive meetings ≤ 120 days

Sec. 173(5)

In case of:

- (a) OPC#**
- (b) Small Co.**
- (c) Dormant Co.**
- (d) Private Co. (Start-up)**

BM in each half of a calendar year ≥ 1

Gap between two Consecutive meetings ≥ 90 days

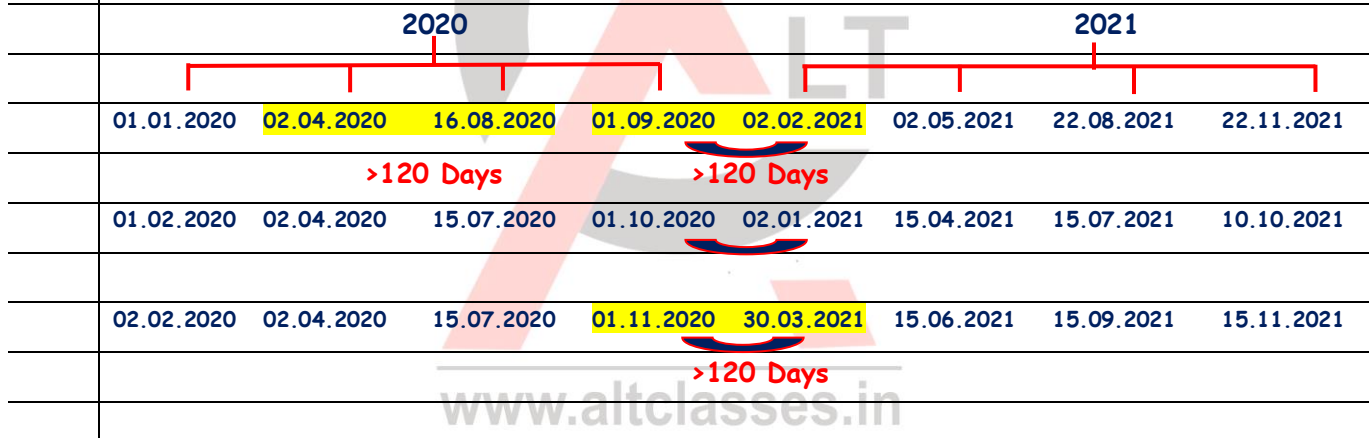
#OPC having only One director is exempted from compliance of Sec. 173(5) & 174

Examples:

(i) Calendar year 2021: [Other than Sec.8, OPC, Small, Dormant Co. Pvt. Co. (Start up)]

Date of 1 st BM	2 nd BM	3 rd BM	4 th BM	Is Sec. 173(1) Contravened
- 01.02.2021	01.05.2021	01.08.2021	01.11.2021	No
- 02.01.2021	15.04.2021	15.09.2021	16.12.2021	Yes (2-3)
- 10.03.2021	15.04.2021	15.06.2021	15.09.2021	No
- 01.01.2021	01.02.2021	01.03.2021	01.04.2021	No
- 31.03.2021	01.04.2021	15.07.2021	30.09.2021	No

(ii) Calendar year 2020 and 2021: [Other than Sec. 8, OPC, Small Co, Dormant Co, Pvt. Co. (start up)]



(iii) Calendar year - 2021 (Small Company)

Date of First BM	Second BM	Third BM	
- 15.06.2021	19.09.2021	-	No Contravention
- 01.02.2021	01.06.2021	-	No BM in 2 nd Half
- 01.02.2021	01.06.2021	01.10.2021	No Contravention
- 30.04.2021	02.07.2021	-	Gap < 90 days

<p>(B) <u>Participation in Board Meeting: Sec. 173(2)</u></p>
<p>Participation of directors in a meeting of the Board</p>
<p style="text-align: center;">↓</p>
<p style="text-align: center;">may be</p>
<p style="text-align: center;">↓</p>
<p style="text-align: center;">either</p>
<p style="text-align: center;">↓</p>
<p style="text-align: center;">in person OR through Video OR other audio visual</p>
<p style="text-align: center;">Conferencing means as prescribed.</p>
<p style="text-align: right; color: red;">(Refer Rule 3)</p>
<p>First Proviso: C.G. may specify matters which shall not be dealt through</p>
<p>Video-conferencing or other audio - visual means. (Refer Rule 4)</p>
<p>Second Proviso: In respect of matters covered in first proviso</p>
<p style="text-align: center;">↓</p>
<p style="text-align: center;">if Quorum is present through physical presence of directors</p>
<p style="text-align: center;">↓</p>
<p style="text-align: center;">any other director may participate through video conferencing</p>
<p style="text-align: center;">or other audio visual means.</p>
<p>Example: Whether in a Board meeting, in respect of matters covered under Rule</p>
<p>4, discussion can be made, if</p>
<p>(a) Quorum is present through → Yes</p>
<p>Physical presence of directors</p>
<p>(b) Quorum is present through → No</p>
<p>Video - Conferencing</p>
<p>(c) <u>Meetings of the Board through Video Conferencing (Rule 3):</u></p>
<p style="text-align: center;">Self Study from Main Book</p>
<p>(d) <u>Matters not to be dealt with in a meeting through video conferencing (Rule 4):</u></p>
<p style="text-align: center;">Omitted by the Companies (Meetings of Board & its Powers) Amendment Rules, 2021</p>
<p style="text-align: center;">(w.e.f. 15.06.2021)</p>

(C) <u>Notice of Board Meetings: Sec. 173(3) and 173(4)</u>	
↓	↓
Sec. 173(3)	Sec. 173(4)
↓	↓
- Board Meeting shall be called by giving ≥ 7 days Notice	Every director whose duty is to give notice under this Sec.
- Notice is to be in <u>writing</u> .	AND who fails to do so
- Notice is to be given to <u>Every Director</u> .	↓ shall be liable to a penalty of
- Notice is to be served at <u>address registered</u> with the Company	<u>₹ 25,000</u>
- Notice may be served by - Hand delivery, Post or Electronic means (e-mail)	
Note: Board Meeting may be called at shorter notice to transact urgent business	
↓	
↓	↓
≥ 1 Independent director if any	Provided
↓	↓
shall be present at the meeting	in absence of I.D.
	↓
	decisions taken at such meeting shall be circulated to all directors and shall be final only on ratification thereof by atleast 1 I.D. if any.
Note: Any resolution passed in Board Meeting shall not be valid, if requirements of Sec. 173(3) not complied with.	
Note: It is not mandatory to specify in the notice, the business to be transacted.	
DO PRACTICE - Questions on Sec. 173 and Rule 3 & 4	

(ii) <u>Quorum for meetings of Board: (Sec. 174)</u>		
↓		
Sec. 8 Company	Other than Sec. 8 Company	
↓	↓	
Quorum: Lower of:	Quorum: Higher of	
(a) 8 directors; Or	↓	
(b) 25% of total strength	1/3 rd of total strength	or 2 directors
(Subject to Minimum 2)	(to be checked at time of commencement of meeting)	
↓		
<u>Quorum present</u>	<u>Quorum not present</u>	
↓	↓	
During the meeting, while considering any agenda item	Sec. 174 (4) shall apply	
↓		
No. of Interested directors < 2/3 of total strength	No. of Interested director ≥ 2/3 of total strength	Unless Articles Otherwise provide, meeting stand adjourned to
↓	↓	- same day
Quorum remains same i.e. 1/3 rd of total strength	Sec. 174 (3) shall apply	- same time
or	↓	- same place
2 directors whichever is higher	No. of disinterested directors, being not less than 2 shall be Quorum during such time.	in next week
		If that day is a national holdiday, till next succeeding day which is not a national Holdiday.
<p>Note: Any fraction - to be rounded off as One.</p> <p>Note: Total Strength - exclude vacant positions</p> <p>Note: Director's participation through Video Conferencing - considered as part of quorum.</p>		

Note: In case of private companies, interested directors may also be counted towards quorum in such meeting after disclosure of his interest.

Examples:

Total strength of directors	Present	Interested directors	Disinterested directors	Quorum	
				Sec. 174(1)	Sec. 174(3)
12	12	4	8	4	N.A.
12	12	5	7	4	N.A.
12	10	6	4	4	N.A.
12	10	7	3	4	N.A.
15	15	8	7	5	N.A.
15	15	9	6	5	N.A.
15	14	10*	4	5	4
15	13	11*	2	5	2
15	13	12*	1	5	1 (Invalid)

* No. of Interested directors $\geq 2/3^{\text{rd}}$ of total strength.

Example: Articles of ABC Ltd. provides that in case of adjournment of meeting, due to quorum not being present at the Commencement of meeting, meeting stand

adjourned to: Situation - I: Immediate next day.

Situation - II: 10 days after at same time & place.

Whether such articles are valid: YES

Position as to Continuing directors - Sec. 174(2):

The continuing directors may act notwithstanding any vacancy in the Board. If and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board,

the continuing directors or director may act for the purpose of

- increasing the number of directors to that fixed for the quorum

or

- summoning a general meeting of the company

and for no other purpose.

DO PRACTICE - Questions on Section 174