

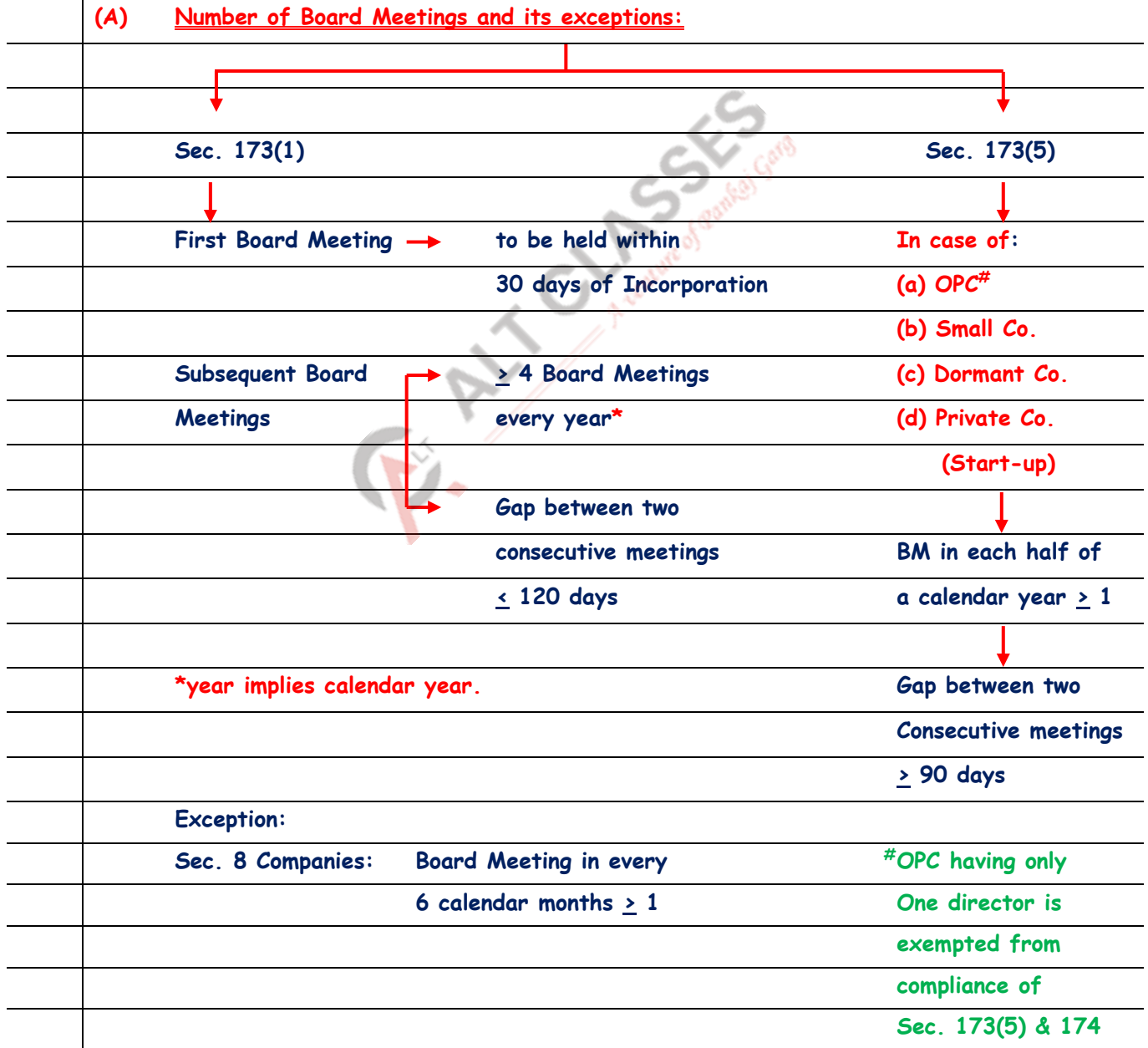
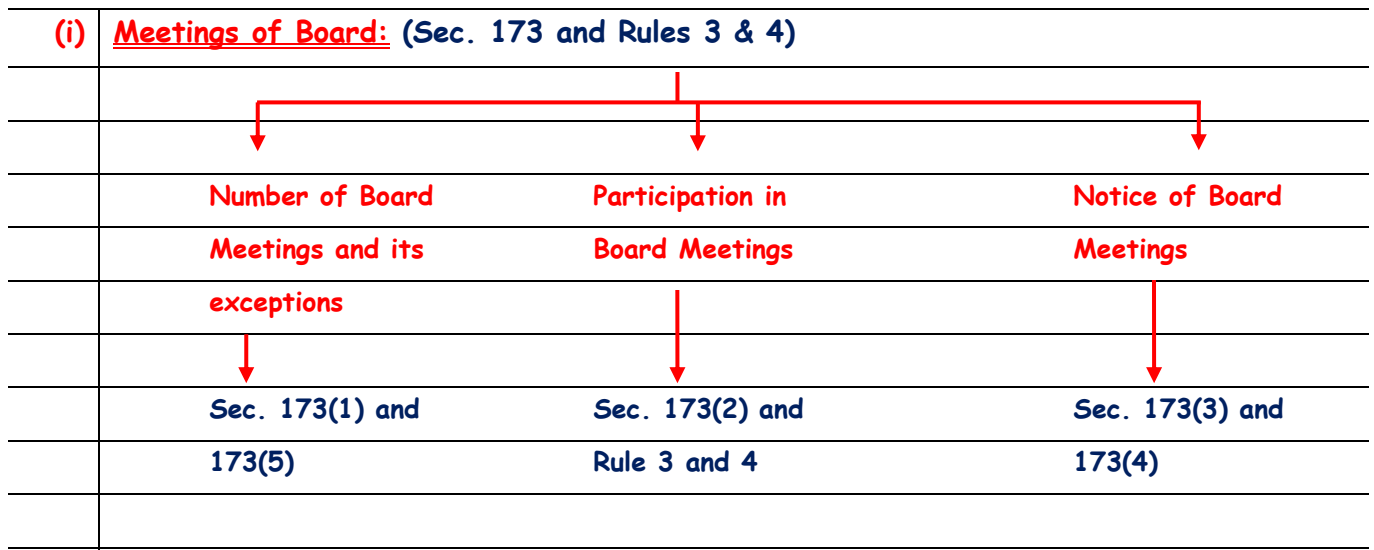
Lecture - 8

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
Sec. 175 - Passing of Resolution by Circulation (Rule 5)	and Stakeholder's Relationship Committee
Sec. 176 - Defects in appointment of directors not to invalidate actions taken.	



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)]

2020				2021			
01.01.2020	02.04.2020	16.08.2020	01.09.2020	02.02.2021	02.05.2021	22.08.2021	22.11.2021
>120 Days			>120 Days				
01.02.2020	02.04.2020	15.07.2020	01.10.2020	02.01.2021	15.04.2021	15.07.2021	10.10.2021
02.02.2020	02.04.2020	15.07.2020	01.11.2020	30.03.2021	15.06.2021	15.09.2021	15.11.2021
				>120 Days			

(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

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

(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	Provided	decisions taken at such
if any	in absence	meeting shall be circulated
↓	of I.D.	to all directors
shall be present at the meeting	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		1/3 rd of total strength or 2 directors										
(b) 25% of total strength (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										
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; text-align: center;">No. of Interested directors < 2/3 of total strength</td> <td style="width: 50%; text-align: center;">No. of Interested director ≥ 2/3 of total strength</td> </tr> <tr> <td style="text-align: center;">↓</td> <td style="text-align: center;">↓</td> </tr> <tr> <td style="text-align: center;">Quorum remains same i.e. 1/3rd of total strength</td> <td style="text-align: center;">Sec. 174 (3) shall apply</td> </tr> <tr> <td style="text-align: center;">or</td> <td style="text-align: center;">↓</td> </tr> <tr> <td style="text-align: center;">2 directors whichever is higher</td> <td style="text-align: center;">No. of disinterested directors, being not less than 2 shall be Quorum during such time.</td> </tr> </table>		No. of Interested directors < 2/3 of total strength	No. of Interested director ≥ 2/3 of total strength	↓	↓	Quorum remains same i.e. 1/3 rd of total strength	Sec. 174 (3) shall apply	or	↓	2 directors whichever is higher	No. of disinterested directors, being not less than 2 shall be Quorum during such time.	Unless Articles Othwise provide, meeting stand adjoumed to
No. of Interested directors < 2/3 of total strength	No. of Interested director ≥ 2/3 of total strength											
↓	↓											
Quorum remains same i.e. 1/3 rd of total strength	Sec. 174 (3) shall apply											
or	↓											
2 directors whichever is higher	No. of disinterested directors, being not less than 2 shall be Quorum during such time.											
		- same day										
		- same time										
		- same place										
		in next week										
		If that day is a national holdiday, till next succeeding day which is not a national Holdiay.										
<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