

CHAPTER

3

DIRECTORS – BOARD MEETING

Covering-

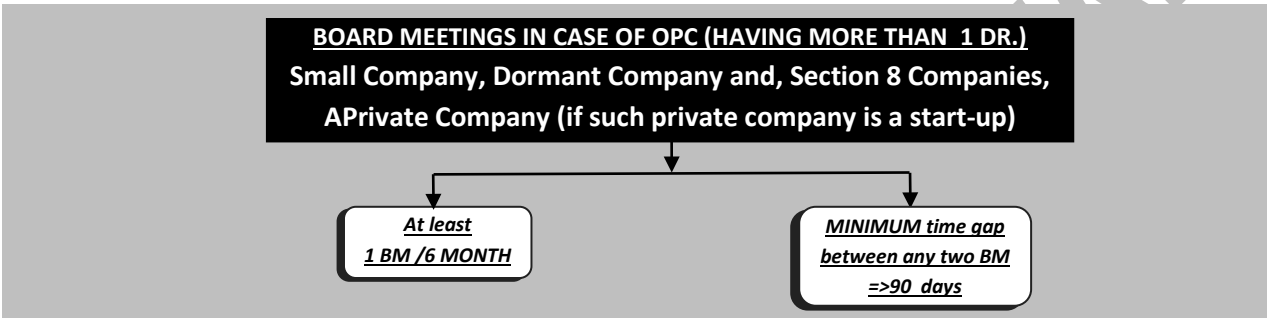
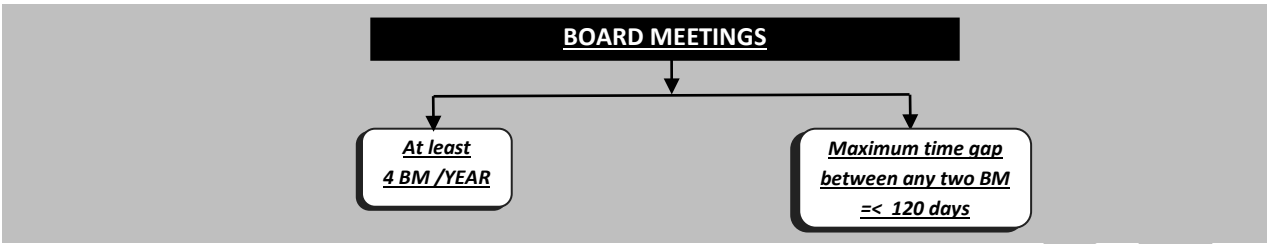
- Essentials of a board meeting
- Frequency/number of board meetings
- Notice of board meetings
- Quorum of board meeting
- Resolution by circulation
- Defects in appointment of directors not to invalidate actions taken
- Appointment of chairman
- Matters not to be dealt in a meeting though video-conferencing or other audio-visual means
- Compliance with secretarial standards relating to board meeting
- Advance Your Knowledge
- Self Test Questions
 - From Past CS Exams
 - From ICSI Module

**EXPECTED
MARKS COVERAGE
(5 to 10)**

Space for

CHART NO.

Live Lecture



Space for
Additional Writing
Live Lectures

DIRECTORS – BOARD MEETING

The **affairs of a company are managed by Board of directors**. It is, therefore, **necessary that the directors should often meet** to discuss various matters regarding the **management and administration** of the affairs of the company in the **best interests of the shareholders and the public interest**.

ESSENTIALS OF A BOARD MEETING

For an **effective board meetings** *it required to:*

1. have a purpose ;
2. members of the board must be provided with adequate notice and appropriate materials <i>in advance</i> ;
3. be chaired effectively;
4. follow proper meeting procedures and respect the time of board members;
5. have clear supporting documents such as an agenda, minutes and other reports;
6. have action taken reports ;
7. be documented with minutes .

FREQUENCY/NUMBER OF BOARD MEETINGS

SECTION 173

The Act provides that the **first Board meeting** should be held within thirty days of the date of incorporation.

There shall be minimum of **four Board meetings every year** and not more **one hundred and twenty days** shall intervene between two consecutive Board meetings.

However, In case of:-

1. One Person Company (OPC),
2. Small company
3. Dormant company and
4. Section 8 companies
5. a private company (<i>if such private company is a start-up</i>)
at least one Board meeting should be conducted in each half of the calendar year and the gap between two meetings should <u>not be less than Ninety days</u> .

Furthermore, **Secretarial Standard on Board Meetings (SS-1) states that**

the company shall hold **first meeting of its Board** within thirty days of the date of incorporation.

It shall be sufficient if subsequent Meetings are held with a maximum interval of one hundred and twenty days between any two consecutive Meetings

NOTICE OF BOARD MEETINGS

The Act requires that not less than **seven days' notice** in writing shall be given to every director at the registered address as available with the company. The notice can be given by hand delivery or by post or by electronic means.

Every officer of the company, whose duty is to give notice and who fails to do so, shall be punishable with fine which may extend to ₹25,000/-

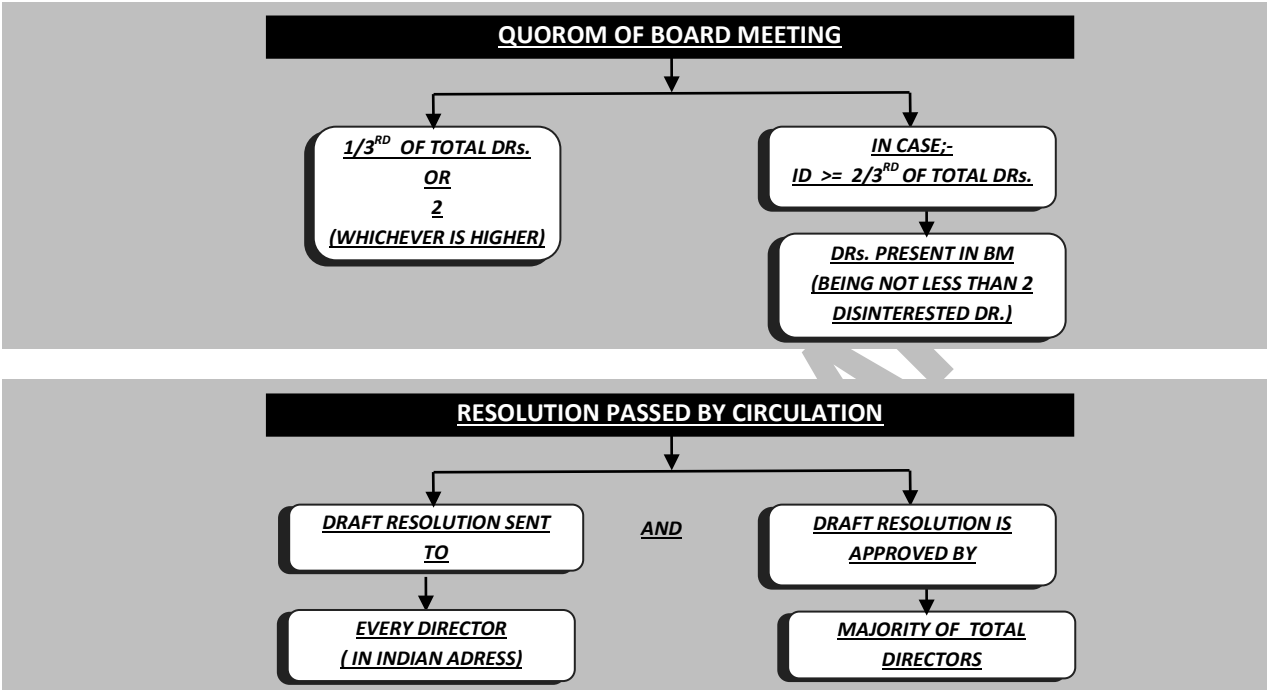
BOARD MEETING AT SHORTER NOTICE

Board meeting to transact urgent business, the Notice, Agenda and Notes on Agenda **may be given at shorter period of time** than stated above, subject to following conditions:

Space for

CHART NO.

Live Lecture



Space for
Additional Writing
Live Lectures

(A) If the company is required to have independent director: Presence of **at least one Independent director** is required.

In case of absence of independent director, decision taken at such meeting shall be circulated to all the directors, and shall be final only on **ratification thereof by at least one Independent director**.

(B) If the company does not require appointing independent director, meeting can be called up at a shorter notice **without any conditions to be complied with**.

As per SS-1,

In case the company **does not have an Independent Director**, the decisions shall be final only on ratification thereof by a **majority of the Directors** of the company, unless such decisions were approved at the Meeting itself by a **majority of Directors** of the company.

The fact that the meeting is being held at a shorter notice shall be stated in the notice.

QUORUM OF BOARD MEETING

SECTION 174

Quorum is the minimum number of the directors required to be present to validity transact any Business.
In case of board meetings, quorum is required throughout the meeting.

According to Section 174

1. The quorum for meeting of the board of Directors of a company shall be

one-third (any fraction contained in that one-third being rounded off as one) of its total strength or

two directors,

whichever is higher,

and the participation of the directors by video conferencing or by other audio visual means **also shall be counted** for the purpose of quorum under the sub-section.

2. Where at any time the

number of interested directors **exceeds or is equal to two-thirds** of the total strength of Board of Directors,

the **number of directors who are not interested directors and present at the meeting, being not less than two** shall be the quorum during such time.

Thus, it follows that quorum at a board meeting **must be a “disinterested quorum”**.

Provided that the interested director may also be counted towards quorum in such meeting after disclosure of his interest pursuant to section 184.”

3. The continuing directors may act **notwithstanding any vacancy in the Board**; but, **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 directors may act for the purpose of

increasing the number of directors to that fixed for the quorum, or

of summoning a general meeting of the company and

for no other purpose.

4. Where a meeting of the Board could not be held for want of quorum, then, *unless the articles of the company otherwise provide*, the meeting shall **automatically stand adjourned to the same day at the same time and place in the next week** or if that day is a national holiday, *till the next Succeeding day*, which is not a national holiday, at the same time at the place.

Space for

CHART NO.

Live Lecture



Space for
Additional Writing
Live Lectures

5. Section 174 is not applicable to One Person Company in **which there is only one director**.

*However, in case of **section 8 companies**, the quorum for meeting of the board of Directors of a company shall be*

either eight members or

twenty five percent of its total strength,

whichever is less.

Provided that quorum shall not be less than two members.

RESOLUTION BY CIRCULATION

SECTION 175

A resolution shall be deemed to have been duly passed by the Board or by a committee there of **by circulation, only if** :-

(a) the resolution has been **circulated in draft**, together with the necessary papers, if any, **to all the directors**, or members of the committee, as the case may be, at their addresses registered with the company in India by hand delivery or by post or by courier, or through such electronic means as may be prescribed **and**

(b) has been approved by a **majority of the directors** or members, who are entitled to vote on the resolution.

However, where not less than **one-third** of the total number of directors of the company for the time being **require that any resolution under circulation must be decided at a meeting**, the chairperson shall put the resolution to be decided at a **meeting of the Board**.

A resolution passed by circulation **shall be noted at a subsequent meeting of the Board** or the committee thereof, as the case may be, and **made part of the minutes of such meeting**.

DEFECTS IN APPOINTMENT OF DIRECTORS NOT TO INVALIDATE ACTIONS TAKEN

SECTION 176

Acts done by a person, as a director shall be **valid, notwithstanding that it may afterwards be discovered that his appointment was invalid** by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the articles.

However, nothing in this section shall be deemed to give validity to acts done by a director after his appointment has been noticed by a company to be invalid or to have terminated.

APPOINTMENT OF CHAIRMAN

Companies generally name, in their **articles of association**, the chairman of the Board of the directors.

However, Certain other companies incorporate in their articles a provision corresponding to the provision of **regulation 70 of Table F** of Schedule I to the Companies Act, 2013, which provides the following:-

(a) The **board may elect a chairperson** of its meeting and determine the period for which he is to hold office.

(b) If no **such chairperson is elected** or if at any meeting, the **chairman is not present within 5 minutes** after the time appointed for holding the meeting, the **directors present may choose one of their members to be chairperson of the meeting**.

Space for

CHART NO.

Live Lecture



Space for
Additional Writing
Live Lectures

CASTING VOTE OF CHAIRMAN

Regulation 68 of Table F of Schedule I to the Companies Act, 2013 provides **that in the case of an equality of votes**, the Chairman of the Board shall have a second or casting vote.

MATTERS NOT TO BE DEALT IN A MEETING THROUGH VIDEO-CONFERENCEING OR OTHER AUDIO-VISUAL MEANS

Directors may participate in the meeting **either in person** or through video conferencing or other audio visual means.

Rule 4 of the Companies (Meeting of Board and its Power) Rules, 2014 , however, provides that the following matters shall not be dealt with any meeting through video conferencing or other audio visual means:-	(a) the approved of the annual financial statements;
	(b) the approval of the Boards, s report;
	(c) the approval of the prospectus;
	(d) the Audit Committee Meetings for consideration of accounts; and
	(e) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

*“Provided that where **there is quorum in a meeting through physical presence of directors**, any other director may participate through video conferencing or other audio visual means.”*

LEAVE OF ABSENCE

Leave of absence shall be granted to a Director **only when a request for** such leave has been communicated to the Company Secretary or to the Chairman or to any other person authorised by the Board to issue Notice of the Meeting.

The office of a director **shall become vacant** in case the director absents himself from **all the meetings of the Board held during a period of twelve months** with or without seeking leave of absence of the Board.

COMPLIANCE WITH SECRETARIAL STANDARDS RELATING TO BOARD MEETING

According to **Section 118 every company** shall observe secretarial standards with respect to **general and Board meetings(SS-1 & SS-2)** specified by the Institute of Company Secretaries of India constituted under section 3 of the company secretaries Act, 1980, **and approved** as such by the Central Government.

In the light of this provision, observance of Secretarial Standards issued by the Institute of Company Secretaries of India (ICSI) assumes special relevance and companies will have to ensure that there is compliance with these standards on their part.

ATTENDANCE REGISTERS

SS-1 provides that

1. Every company shall maintain separate attendance registers for the meetings of the Board and meetings of the committee.
2. The pages of the respective attendance registers shall be serially numbered .
3. If an attendance register is maintained in loose leaf form , it shall be bound periodically, at least once in every three years .
4. The attendance register shall be maintained at the Registered Office of the company or such other place as may be approved by the Board.
5. The attendance register shall be preserved for a period of at least eight financial years from the date of last entry made therein and may be destroyed thereafter with the approval of the Board.
6. It shall be in the custody of the Company Secretary .

Space for

CHART NO.

Live Lecture



Space for
Additional Writing
Live Lectures

" CASE LAW–CASE BASED " WRITING PRACTICE



Q. 1. Out of 9 directors in Rooftop Ltd., 5 are Indian nationals, 3 are foreign residents and one is a person of Indian origin. The articles of the company stipulate that quorum for a Board meeting shall be 5 directors of which at least one director shall be a foreign resident. Referring to the provisions of the Companies Act, 2013, examine the validity of the above provision in the articles. [Dec. 2016; 4 Marks]

Ans.

1.	Section 174	Section 174 states that quorum for a meeting of the Board of Directors of a company shall be one third of its total strength or two directors whichever is higher. Any fraction of a number shall be rounded off as one. Further according to Secretarial Standard on Board Meeting (SS-1), where the Quorum requirement provided in the Articles is higher than one-third of the total strength, the company shall conform to such higher requirement.
2.	Conclusion	Hence, in the given case of Rooftop Ltd, the quorum as given in the articles of the Company stands valid.

" CASE LAW–CASE BASED " WRITING PRACTICE



Q. 1. A Board meeting of a listed public company was called at shorter notice to transact an urgent business. None of the Independent directors could attend the meeting. Examine the validity of resolution(s) passed at the meeting referring to the provisions of the Companies Act, 2013. [Dec. 2018; 4 Marks]

Ans. Accordingly to Section 173(3) of the Companies Act, 2013 a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting.

In case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

Accordingly, all decisions taken at the meeting needs to be circulated to all the directors and shall be final only on ratification of atleast one independent director.

Space for

CHART NO.

Live Lecture



Space for
Additional Writing
Live Lectures

Q. 1. XYZ Ltd. has 6 directors on its Board of Directors. Out of 6 directors, 5 are foreigners and they reside in America. The company wants to convene its Boards meeting in Mumbai but all the 5 directors are pre-occupied and are not in a position to travel to India. Advice the company regarding conduct of such a Board meeting as per provisions of the Companies Act, 2013 and relevant Rules. Will the same Rules or provisions be applicable in case the company wants to approve annual financial statements in the Board meeting ?

Ans. The directors of the company may participate in a meeting of Board/Committee of Directors under the Companies Act, 2013 through video conferencing or other audio visual mean. "Video conferencing or other audio visual means" means audio-visual electronic communication facility employed which enables all the persons participating in the meeting to communicate currently with each other without an intermediary and to participate effectively in the meeting.

A director participating in meeting through use of video conferencing shall be counted for the purpose of quorum. The minutes shall also discuss the particulars of the directors who is attending meeting through electronic mode. Therefore, to convene Board meeting, the director present in India shall at Chairman and shall be physically present in Mumbai.

According to rule 4 of the following dealt with in any meeting held through video conferencing or other audiovisual means-

- (i) the approval of the annual financial statements;
- (ii) the approval of the Board's report;
- (iii) the approval of the prospectus;
- (iv) the Audit Committee meeting for 2consideration of financial statement including considered financial statement if any, to be approved by the border under sub-section (1) of Section 134 of the Act; and
- (v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover

Therefore, Annual financial statement cannot be approved in a meeting conducted through video conferencing.

SELF TEST QUESTIONS

FROM PAST CS EXAMS



FROM ICSI MODULE



CS NITESH KR. JAISWAL

