

RESOLUTIONS REQUIRING SPECIAL NOTICE UNDER COMPANIES ACT 2013

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In our previous article of this series titled “Special Category of Resolutions Passed in General Meetings under Companies Act 2013” we had covered resolutions to be passed by members at General Meetings with more than 75% approval and Special cases such as Variation of Shareholder’s rights, appointment of Small Shareholder Director and Compromise and Arrangement.

In this article, we will elucidate the concept of Special Notice and the circumstances requiring the same.

What is a Special Notice?

- A special notice is given by members to Company.
- Where, by any provision contained in this Act or in the articles of a company, special notice is required of any resolution (the resolutions for which a special notice is required are detailed below),
- Notice of the intention to move such resolution shall be given to the company by such number of member(s)
 - Holding not less than one per cent of total voting power, or
 - Holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, and
 - Has been paid-up on the date of the notice.
- The members are required to send the notice to the company
 - Within 3 months, and
 - Before 14 days of the date of the meeting at which the resolution is to be moved
 - The day of giving of notice and the day of the meeting should be excluded from the above timelines.
- The company shall give its members notice of the resolution as follows:
 - The notice should be given in the same manner as that of its usual General Meetings

- It should be given at least 7 clear days before the meeting. (The day of giving of notice and the day of the meeting should be excluded the day of giving of notice and the day of the meeting should be excluded)
- If the Company is unable to send the notice in the same manner as it does for General Meetings, it should:
 - 1) Publish the notice in English Newspaper and a Vernacular Newspaper in the respective languages.
 - 2) Both the newspapers must have a wide circulation in the State where the registered office of the Company is situated
 - 3) Post the notice in its website, if any, and
 - 4) The notice shall be published at least seven days before the meeting, exclusive of the day of publication of the notice and day of the meeting.

Resolutions requiring a Special Notice

Section under Companies Act 2013	Matters requiring Special Notice
140(4)	<p><u>Resolution for appointment of Auditor other than retiring auditor or to provide that a retiring auditor shall not be re-appointed at an AGM</u></p> <p>Special notice shall be required for</p> <ol style="list-style-type: none"> 1) A resolution at an annual general meeting appointing as auditor a person other than a retiring auditor, or 2) Providing expressly that a retiring auditor shall not be re-appointed, except where the retiring auditor has completed a consecutive tenure of five years or, as the case may be, ten years, as provided under sub-section (2) of section 139. <p>Post the receipt of a special notice, the company is required to other provisions mentioned in the Section 140(4).</p>
169(2)	<p><u>Resolution to remove a director before the expiry of his period of office</u></p>

	Post the receipt of a special notice, the company is required to other provisions mentioned in the Section 169(3) and 169(4).
169(5)	<u>Resolution to appoint another director in place of the removed director.</u> If the vacancy created by the removal of a director is proposed be filled at the meeting in which he/she is removed, then a special notice is required to be given for the intended appointment under section 169(2).

Stay tuned for the next article in our series, where we will be discussing different types of approvals required in Board meetings. We hope that this series will provide valuable insights into the various types of approvals and notices mandated under the Companies Act 2013

