



SPECIAL CATEGORY OF RESOLUTIONS PASSED IN GENERAL MEETINGS UNDER COMPANIES ACT 2013

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As professionals, our focus is typically on Ordinary or Special Resolutions, which requires that votes cast in favour of the resolution exceeds those cast against or votes cast in favour of the resolution is not less than three times of those cast against which translates to 51% and 75% of votes to be cast in favour, respectively, to seek approval from shareholders. However, the Companies Act of 2013 provides for several instances of shareholder approval that may require

- (i) 100% approval,
- (ii) more than 75% approval (90% and 95%),
- (iii) or special cases of approval.

Similarly, while we often assume that Board Resolutions are passed by majority, there are situations that require a different type of approval even in a Board meeting.

Additionally, there are cases where a Special Notice is necessary, which differs from the typical Notices of General Meeting.

The aim of this Article is to summarize various types of approvals and notices under CA 2013. Week 1 will cover different approvals in shareholder meetings, Week 2 will focus on approvals in Board meetings, Week 3 will highlight the various types of notices required and the Week 4 will highlight the provisions of Entrenchment of Articles of Association.

Our hope is that this Article Series will achieve its intended outcome.

RESOLUTIONS PASSED IN A GENERAL MEETING:

I. More than 75% approval

Section under CA 2013	Provision	Proviso (If any)	Conditions (If any)	Required Percentage out of total Voting power for approval
62(1)(a)	<p><u>62(1)(a)(i)</u> Offer for <i>Rights issue</i> shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days (15) or such lesser number of days not being less than seven (7) days as prescribed in Rule 12A Companies (Share Capital and Debentures) Rules, 2014, and not exceeding thirty days (30) from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined.</p> <p><u>62(2)</u> The notice referred to in sub-clause (i) of clause</p>	<p><u>Provisos to 62(1)(a)(i)</u> Provided that notwithstanding anything contained in this sub-clause and sub-section (2) of this section, in case <i>ninety per cent of the members</i> of a <i>private company</i> have given their <i>consent in writing</i> or in <i>electronic mode</i>, the periods lesser than those specified in the said sub-clause or sub-section shall apply.</p> <p>Provided that notwithstanding anything contained in sub-clause</p> <p>(i), in case of a <i>Specified IFSC public company</i>, the periods</p>	<p>(i)Applicable only for <i>Private Limited Company</i> and <i>IFSC Public Company</i>.</p> <p>(ii)Members to give their consent in writing or in electronic mode</p>	90%

	<p>(a) of sub-section (1) shall be dispatched through registered post or speed post or through electronic mode or courier or any other mode having proof of delivery to all the existing shareholders at least three days (3) before the opening of the issue.</p>	<p>lesser than those specified in the said sub-clause shall apply <i>if ninety per cent</i> of the members have given their <u>consent in writing or in electronic mode</u>.</p>		
101(1)	<p>Calling of General Meeting at Shorter Notice</p> <p>A general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed:</p>	<p><u>In case of an Annual General Meeting,</u> Consent by not less than <i>ninety-five</i> percent of members entitled to vote thereat, <u>in writing or by electronic mode</u></p> <p>General meeting can be called at shorter notice.</p> <p>Therefore, the requirement of serving twenty-one clear days' notice before the date of General meeting can be dispensed.</p>	Not applicable	95%

		<p><u>In case of any other general meeting by members of the company</u></p> <p>a) If the Company has Share Capital- Consent is required from majority of members who are entitled to vote and also who represent not less than <i>ninety-five per cent (95%)</i> of such part of paid-up share capital of the company as gives a right to vote at the meeting, or</p> <p>b) If the Company has no Share Capital, not less than <i>ninety-five per cent (95%)</i> of the total voting power exercisable at the meeting</p>	<p>If the Company has Share Capital</p> <p>If the Company has no Share Capital</p>	<p>95%</p> <p>95%</p>
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I. Special Cases

a. Variation of shareholders' rights

Section under CA 2013	Provision	Proviso (If any)	Conditions (If any)	Required percentage of Total Number of Issued Shares
48(2)	<p><u>Cancellation of Variation of shareholders' rights</u></p> <p>Where the holders of not less than <i>ten per cent (10%)</i> of the issued shares of a class did not consent to such variation or vote in favour of the special resolution [<u>under section 48(1)</u>] for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal.</p>	Not Applicable	<p>Shareholders representing such percentage of Issued Capital <u>have dissented for variation in Shareholders' Rights under section 48(1)</u></p> <p>Application is made to National Company Law Tribunal (NCLT) for cancellation of variation of shareholders' rights</p>	10% or more

b. Small Shareholder Director

Section under CA 2013	Provision	Proviso (If any)	Conditions (If any)	Required Fraction/ Number out of total number of members
151(3)	<p><u>Appointment of Small Shareholder Director in a Listed Entity</u></p> <p>A listed company may have one director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed.</p> <p>“Small shareholders” means a shareholder holding shares of nominal value of not more than twenty thousand rupees.</p>	Not Applicable	<p>1. For a <u>Listed Company</u></p> <p>If the Listed company wants to appoint a Small Shareholder Director on a <u>Suo-motto basis</u></p>	Not Applicable
Rule 7 of the Companies	A Small shareholder			

(Appointment and Qualification of Directors) Rules, 2014	Director (SSD) may be appointed either on Suo motto basis or based on notice served by the small shareholders.			
151(3)	A listed entity may have a SSD elected by small shareholders upon notice served by a) not less than one-thousand small shareholder OR b) one-tenth of the total number of shareholders, whichever is lower.		2)In case <u>notice served by the small shareholders-</u> Lower of the following	a)1000 Small shareholders or more OR b)1/10 th of the total number of shareholders

c. Compromise and Arrangement [Section 230 -240]

Section under CA 2013	Provision
230(7)	Any Scheme of Compromise or Arrangement shall require the following dual-approval

In case of any scheme of compromise or arrangement with Creditors or any class of them

- a. Majority of the total no. of the (class of) creditors, **AND**
- b. Three- Fourth in Value of Creditors

In case of any scheme of compromise or arrangement with Members or any class of them

- a. Majority of the total no. of the (class of) Members, **AND**
- b. Three- Fourth in Value of Members

and if such scheme is sanctioned by the NCLT by passing an order, the same shall be binding on company/creditors/members/liquidator and the contributories of the Company.

Illustration to explain the above dual approval

Background: There is a scheme of compromise with a class of creditors of 10 creditors and the value of debt outstanding to them is Rs. 50 lakhs.

Then, at the meeting to be convened for obtaining their approval, if all the creditors attend it, the following conditions are to be satisfied to obtain the necessary approval.

- a. *Majority of the Total no. of class of creditors (i.e.,) 6-10 of the creditors have to vote in approval, AND*
- b. *Three- Fourth in Value of Creditors (i.e.,) Those 6-10 creditors who approve must be owed at-least Rs. 37,50,000.*

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Approval of Scheme under Fast track merger

Provision- Not withstanding provisions of section 230 & 232, a scheme for Fast track Merger or Amalgamation may be entered into between

- a) Two or more small companies or
- b) Holding Company and its Wholly owned subsidiary Company

Under Fast Track merger approach approval of the NCLT can be avoided if such scheme is approved by shareholders, creditors, Registrar, Official Liquidator, Regional Director and Stock Exchange.

Approval- A notice of the proposed scheme inviting for any objections or suggestions is initially issued to the Registrar and Official Liquidator where registered office of the respective companies are situated or persons affected by the scheme within thirty days by transferor and transferee Company.

The objections and suggestions if so, received are considered by the companies in their respective general meetings and the scheme is approved by the respective members or class of members at a general meeting holding at least ninety per cent of the total number of shares.

The scheme is approved by majority representing nine-tenths in value of the creditors or class of creditors of respective companies indicated in a meeting convened by the company by giving a notice of twenty-one days along with the scheme to its creditors for the purpose or otherwise approved in writing.

d. Oppression and Mismanagement [sections 241-246]

Section under CA 2013	Purpose	Condition	Requirement
244	Right to apply under section 241 to NCLT for Relief in cases of Oppression, etc	If the Company has Share Capital	The following members shall have the right to apply under section 241- a) Not less than one hundred members of the company, or b) Not less than one-tenth of the total number of its members, whichever is less, OR

				c)any member or members holding not less than one tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares.
		If the Company has no share Capital		Not less than one-fifth of the total number of its members
245 and Rule 84 of National Company Law Tribunal Rules, 2016	Class Action Suit	By Members	If the Company has Share Capital	a) Not less than one hundred members of the company or b) Not less than such percentage (i.e.,) Five percent of the total number of its members as may be prescribed, whichever is less, OR c) Any member or members holding not less than such percentage of the issued share capital of the company as may be prescribed, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares.
		By Members	If the Company	Not less than one-fifth of the total number of its members.

			has no Share Capital	
		By Depositors		<p>a) Not be less than one hundred depositors or</p> <p>b) Not less than such percentage of the total number of depositors as may be prescribed, whichever is less,</p> <p style="text-align: center;">OR</p> <p>c) Any depositor or depositors to whom the company owes such percentage of total deposits of the company as may be prescribed.</p>

We hope you found the information in this article helpful. In our next article, we will be discussing situations warranting a Special Notice. We aim to provide you with a better understanding of the types of approvals required under Companies Act, 2013 in such instances. So, stay tuned!