

De Jure

March 30, 2023

Majority of Minority Approval



BACKGROUND

While it is a settled position that the decision of the majority shareholders shall prevail over minority shareholders in the company, it is equally important to strike a balance between them. On one hand, the power of the majority shareholders should not result in the oppression of the minority shareholders and mismanagement of the company, on the other hand, the minority shareholders should not needlessly interfere in the decision-making process of the company by raising frivolous claims which even the courts try to avoid interfering in relation to the internal management and decisions taken by the majority shareholders¹.

With the aim to protect the genuine interests and rights of the minority shareholders, the concept of the "majority of minority" approval and dual approval requirements has evolved over a period of time.

MAJORITY, MINORITY SHAREHOLDERS, APPROVAL REQUIREMENTS

While the terms 'majority shareholders' and 'minority shareholders' are not statutorily defined, in general parlance, majority shareholders may refer to those shareholders who hold more than 50% stake in the company, and the shareholders with less than 50% stake are referred to as the minority shareholders.

The threshold limit for the approval of majority shareholders and minority shareholders may however differ under different statutes and regulations or for that matter even under the same statute.

¹ [Foss v. Harbottle \(1843\) 2 Hare 461](#), lays down the basics of the non-interference principle.

As an example, if the discussion is around the provisions of the (Indian) Companies Act, then, the threshold limit of more than 50% will be relevant for passing a resolution with a simple majority or not less than 75% for passing of a special resolution. Whereas in case of oppression and mismanagement², the rights of the minority shareholders are recognized at (a) 10% shareholding or not less than 100 members of the company or 10% of the total number of its members, whichever is less, in case of companies having share capital³ and (b) 20% of the total number of members, in case of a company without share capital⁴. The Companies Act also provides rights to a group of the affected class of shareholders for initiating class action suits⁵.

After understanding who the majority and minority shareholders are, another point to be analyzed is whether the shareholder approval is with a simple or a special majority. Also, whether there is any requirement of a "majority of minority" approval under the Indian laws and whether the same is with a simple or special majority.

A majority of minority approval with "simple majority" would mean approval obtained with the bare majority of more than 50% of minority shareholders who are present in the meeting. The majority of minority approval with "special majority" on the other hand may mean approval of more than 90% or 75% of the minority shareholders who are present in the meeting.

REQUIREMENT OF MAJORITY OF MINORITY APPROVAL

There are certain transactions for which majority of minority approval is required.

² Oppression is defined to mean conducting the affairs of the company in a manner prejudicial to the public interest or in a manner oppressive to any member or members. Mismanagement is defined to mean conducting the affairs of the company in a manner prejudicial to the public interest or in a manner prejudicial to the interests of the company.

³ Section 244(1)(a) of the Companies Act, 2013.

⁴ Section 244(1)(b) of the Companies Act, 2013.

⁵ Section 245 of the Companies Act, 2013.

In case of a slump sale through a scheme of arrangements, wherein, one company is a listed company, then SEBI mandates the requirement of obtaining the approval of the public shareholding⁶ such that the votes cast by the public shareholders in favour of the proposal are more than the number of votes cast by the public shareholders against it⁷. Here, the approval of the public shareholders is required by a simple majority.

Another transaction that requires the majority of minority approval is a related party transaction⁸. The test of materiality as prescribed by SEBI will be applicable to ascertain whether such approval is required or not. This approval requirement is over and above other requirements specified by the SEBI to oversee and implement RPTs, such as a review of these transactions by the audit committee and their disclosure in the annual report under the heading of the report of the corporate governance⁹.

Even for the appointment and removal of independent directors, approval of the majority of the minority shareholders is required, in case where a special resolution for the appointment of an independent director fails to get the requisite majority of votes¹⁰.

Against the backdrop of the allegations of corporate misgovernance, fraud, and other wrongdoings, SEBI recently issued a consultation paper¹¹ to amend the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 by empowering the shareholders to address the issues encountered in relation to certain matters like agreements binding listed

⁶ As defined under Section 2(1)(y) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

⁷ SEBI master circular dated November 23, 2021 bearing number SEBI/HO/CFD/DIL1/CIR/P/2021/0000000665.

⁸ Regulation 23 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

⁹ Regulation 23 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

¹⁰ Regulation 25 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

¹¹ https://www.sebi.gov.in/reports-and-statistics/reports/feb-2023/consultation-paper-on-strengthening-corporate-governance-at-listed-entities-by-empowering-shareholders-amendments-to-the-sebi-lodr-regulations-2015_68261.html.

entities, special rights granted to certain shareholders and sale, disposal or lease of assets of a listed entity. The amendments propose a dual approval i.e. the approval through special resolution and a majority of minority shareholders approval for any future agreements concerning the listed entity. If these amendments are implemented, this approval will be required whether or not the listed entity is a party to such an agreement; if it imposes or has the effect of imposing any restriction or liability on a listed entity. Such dual approval is also proposed for the sale, disposal, or lease of an undertaking of the listed entity.

CONCLUSION

Both the Companies Act and the SEBI have several provisions to protect and balance the rights of the majority and minority shareholders. In order to protect the rights of the minority shareholders of the listed entities there are also certain disclosure and reporting requirements prescribed by the SEBI. However, there are no specific provisions under the Companies Act that mandate the requirement of majority of minority approval for any transaction. Although the expert committee has expressed its strong views to strike balance between the rule of majority and the rights of minority¹², this majority of minority approval rule is currently not applicable to private and unlisted companies. However, with changing times and recommendations of the expert committee some amendments may be expected to the provisions of the Companies Act by allowing representation of the minority shareholders for certain transactions undertaken even by these companies.

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¹² <https://www.mca.gov.in/MinistryV2/minority+interests.html>.

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