

## Ordinary and Special Resolution (Sec 114)

### 1. Legislative background

The notes on clauses to the Companies Bill, 2011 read as follows:

“Clause 114. – This clause corresponds to section 189 of the Companies Act, 1956 and seeks to provide that a resolution shall be an ordinary resolution if the votes cast in favour of the resolution exceeds the votes, if any, cast against the resolution by the members. A resolution shall be special when it is duly specified in the notice, calling the general meeting and votes cast in favour is three times the votes cast against the resolution.”

### 2. Passing of ordinary resolution

Ordinary resolution is a resolution passed by simple majority of votes. As provided in sub-section (1) of section 114, a resolution shall be an ordinary resolution if notice of such resolution is duly given and the votes cast in favour of the resolution exceed the votes cast against the resolution, if any. The casting vote of the Chairman, if exercised, shall be counted for deciding the resolution as ordinary resolution. The method of voting might be through show of hands, electronic voting, poll or any other permitted method or postal ballot. The number of votes of only the members who are ‘entitled and voting’ are to be counted. Hence, the persons who abstain from voting or are not allowed to vote (whether under the provisions of this Act or otherwise) are not to be counted.

Wherever a provision of the Act or articles simply provides for passing a resolution by the company or authority given by the company in general meeting or approval of the company without mentioning the nature of the resolution to be passed, an ordinary resolution is required to be passed. Further, the notice required to be given may be given either by the company or the member proposing the resolution.

### 3. Passing of special resolution

For passing a special resolution the essential requirements are,

- a) The intention to propose the resolution as a special resolution has been duly specified in the notice.
- b) Notice required under the Act has been given.
- c) The votes cast in favour of the resolution are not less than three times the number of the votes, if any, cast against the resolution by members. In other words, the resolution is carried out with 75% of the valid votes in its favour.

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#### 4. Other types of resolutions

The provisions of the Act require passing of resolutions which have certain different compliances. The example of such resolutions is sub-section (6) of section 230 of the Act for approving the scheme of compromise arrangement. The said resolution requires the approval of majority of persons representing three fourth in value of shares.

#### 5. Process of passing the resolutions

The resolution is proposed as a 'motion'. A motion becomes a resolution only after the requisite majority of members have adopted it. A motion should be in writing and signed by the mover and put to the vote at the meeting by the chairman. In case of company meetings, only such motions are proposed as are covered by the agenda. However, certain motions may arise out of the discussion and may be allowed where no special resolution is mandated in the Act. Para 7.1 of Secretarial Standard-2 provides that every resolution shall be proposed by a member and seconded by another member.

The motion being discussed may undergo an amendment in the course of discussion. An amendment is any alteration to the main motion proposed by a member before it is voted upon and adopted. Amendment may be proposed by any member who has not already spoken on the main motion or has not previously moved an amendment, but a formal motion cannot be amended. Like the main motion, an amendment should ordinarily be in writing, signed by the mover. The terms of the amendment should be definite and in the affirmative and it should not raise any question already decided upon at the same meeting. It should be relevant to and in keeping with the main motion which it seeks to amend and must not merely negate the main motion or introduce entirely a new subject.

The Chairman has the absolute discretion to accept or reject an amendment on various grounds such as inconsistency, redundancy, irrelevance etc. When an amendment has been moved, admitted and seconded discussion on the main motion ceases and discussion on the amendment starts. Any one may speak on the amendment even if he has already spoken on the main motion, but no one is

allowed to speak twice on the same amendment. After the amendment has been thoroughly discussed, it is put to vote. If the amendment is carried, it is incorporated in the body of the main motion. The altered motion which is known as “substantive motion” is then put before the meeting. If the amendment is lost, discussion on the main motion is resumed, but if the substantive motion is put to vote and lost, the original motion cannot be revived.

Any number of amendments to the main motion can be moved. An amendment to alter another amendment can also be moved, but an amendment can be amended only once. When a large number of amendments to the main motion have been moved, the original motion may be withdrawn by common consent and a new motion incorporating all the amendments may be taken up. The Chairman has the discretion to decide in what order the various amendments should be taken up for consideration.

*Contents of Geeta Saar, as extracted from ICSI Premier on Company Law, is as per notified law as on 30<sup>th</sup> September, 2016.*