

**ON SHAREHOLDERS' RIGHTS & SHAREHOLDERS'
MEETINGS UNDER INDIAN LAW**

The rights, duties and obligations of shareholders of an Indian company is governed by the provisions of (Indian) Companies Act, 2013 and rules framed under it (**Companies Act**), the articles of association of the company and shareholders' agreement. Typically, the board of directors control and supervise the management and operations of a company. However, there are certain decisions and actions which can only be undertaken by the shareholders.

This primer gives an overview of various rights of shareholders of an Indian company

1. Who is a shareholder?

A shareholder is a person who owns a share in the capital of a company. A shareholder can be natural person / individual or any legal entity (company, trust or limited liability partnerships).

2. What are types of shareholders in a company?

Equity shareholder and preference shareholder.

3. Who is an equity shareholder?

An equity shareholder exercises ownership and they own the company and its share capital. They are entitled to vote on all matters concerning the company and can control the daily affairs of the company.

4. Who is a preference shareholder?

A preference shareholder, as the name suggests, is given 'preference' over equity shareholders with respect to distribution of dividend and repayment of capital. Unlike equity shareholders, they cannot vote on all matters but are eligible to vote on only those matters which concerns such preference shareholders.

5. What is the minimum number of shareholders required in a company?

- (i) For private limited company – at least 2 shareholders; and
- (ii) For public limited company – at least 7 shareholders

6. What are the basic shareholders' rights under Companies Act?

Some of the basic shareholders' rights are as follows:

- (i) attend general meetings of the company;
- (ii) receive notices for shareholders' meetings of the company;
- (iii) appoint proxy to attend and vote at meetings in place of the shareholders;
- (iv) appoint and remove company's directors;
- (v) appoint and remove company's auditor;
- (vi) receive financial statements and annual report;
- (vii) inspect registers maintained by the company; and
- (viii) certain other rights as prescribed under the Companies Act or as may be mentioned in the charter documents.

7. What decisions require mandatory approval of the shareholders?

As per the Companies Act, certain decisions / actions require mandatory approval of the shareholders such as:

- (i) increase or reclassification of authorized share capital of company;
- (ii) change in the registered office of the company;
- (iii) amendment to the charter documents of the company;
- (iv) issuance of shares;
- (v) appointment or removal of directors of the company;
- (vi) reduction in share capital of the company, including by way of buy back;
- (vii) declaration of dividend by the company;
- (viii) any merger, amalgamation or demerger of the company; and
- (ix) certain other decisions and actions as mentioned under the Companies Act.

8. Can a shareholder have additional rights than what is prescribed under Companies Act?

Yes, shareholders can contractually agree to additional rights, over and above as provided under the Companies Act under a shareholders' agreement.

9. What are the additional shareholders' rights which can be contractually agreed under a shareholder' agreement?

Shareholders can agree to certain additional rights under a shareholders' agreement such as:

- (i) reserve matter rights;
- (ii) management of the company;
- (iii) right to appoint a board observer;

- (iv) right to appoint key managerial personnel such as a chief executive officer or a chief financial officer;
- (v) right of first refusal, right of first offer or tag along right on transfer of shares;
- (vi) exit rights; and
- (vii) put option or call option right.

10. Who are minority shareholders?

Minority shareholders are shareholders who do not hold shares or voting power in the company to exercise influence or control over the company.

11. What are the rights of minority shareholders?

The Companies Act provides for rights of minority shareholders such as:

- (i) right to appoint small shareholders' director;
- (ii) right to file an application before the National Company Law Tribunal for oppression of the minority shareholders or mismanagement of the company;
- (iii) right to file a class action suit; and
- (iv) right to require the majority shareholders to purchase the shareholding from minority shareholders.



The above mentioned rights can be exercised by minority shareholders subject to shareholding threshold and in the manner as prescribed under the Companies Act. Further, the minority shareholders can also seek additional rights contractually under the shareholders' agreement as mentioned in question 9 above.

12. What are the different types of shareholders' meetings?

Annual general meeting – which are annual shareholders' meeting held at least once a year and extra ordinary general meeting – all other shareholders' meeting of the company.

13. What are the various modes of voting by shareholders under law?

A shareholder may exercise his / her vote by several methods such as, voting by show of hands, voting by poll, voting by electronic means and voting by poll, as prescribed under Companies Act.

14. Who can call for an annual general meeting?

A shareholders' meeting can be called by:

- (i) the board of directors; or
- (ii) any shareholder holding at least 10% of the paid-up share capital of the company.

15. What are the basic requirements for conducting an shareholders' meeting?

A company calling a shareholders' meeting has to circulate a notice of meeting to all shareholders containing an agenda and explanatory statements for the resolutions proposed to be passed at such meeting.

16. What is the notice period for calling a shareholders' meeting?

A company may call for a shareholders' meeting by giving a notice of at least 21 days. A meeting can be called at a shorter notice if at least 95% of the shareholders (who are entitled to vote) provide their consent in writing to the Company.

**17. What is the quorum requirement for a shareholders' meeting?**

The quorum requirement for shareholders' meeting are:

- (i) for private company – 2 shareholders; and
- (ii) for public company – (a) 5 shareholders, if the number of shareholders do not exceed 1,000, (b) 15 shareholders, if the number of shareholders is more than 1,000 but up to 5,000 and (c) 30 shareholders, if the number of shareholders exceeds 5,000.

18. What are the types of shareholders' resolution that are passed in a shareholders' meeting?

The types of shareholders' resolutions are:

- (i) ordinary resolution – a resolution, passed by the members of the company by a simple majority of shareholders; and
- (ii) special resolution – a resolution, that is affirmed by the members of the company by at least three-fourth majority of shareholders.

19. Which matters require special resolution of the shareholders?

Certain matters require approval from shareholders by way of special resolution such as:

- (i) change in object of the company;
- (ii) amendment of the articles of association of the company;
- (iii) reduction or buy-back of share capital;
- (iv) issuance of preference shares;
- (v) loans or investments by the company;
- (vi) approval of any merger or amalgamation of the company; and
- (vii) winding up of the company.

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