EXIT WITHOUT A PRICE: DISSENTING SHAREHOLDERS AND FAST-TRACK MERGERS UNDER THE CORPORATE LAWS (AMENDMENT) BILL, 2026

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ABSTRACT

The Corporate Laws (Amendment) Bill, 2026 proposes to lower the shareholder approval required for a fast-track merger under Section 233 of the Companies Act, 2013 from ninety per cent of a company's total shares to seventy-five per cent in value of the shares held by members present and voting. The change follows an expansion of the fast-track route in 2025 to mergers between holding companies and subsidiaries that are not wholly owned, and between fellow subsidiaries. Read together, the two reforms turn a housekeeping procedure for consensual restructurings into one that a controlling shareholder can carry on its own vote, without the prior scrutiny of the National Company Law Tribunal. The Joint Committee that examined the Bill accepted the lower threshold but recommended a fair-value exit for dissenting shareholders, in a manner to be prescribed. This article argues that an exit right framed in those terms is necessary but incomplete. Drawing on the exit mechanisms already found in Sections 230(11), 232(3)(h), 235 and 236 of the Act, on Indian case law on minority buy-outs, and on the appraisal remedy in Delaware and the squeeze-out provisions in the United Kingdom, it identifies six questions that the statute itself must answer, and proposes how each should be answered.

Keywords: Fast-track merger; Section 233; dissenting shareholders; exit right; fair value; minority protection; Corporate Laws (Amendment) Bill, 2026.

I. INTRODUCTION

The Companies Act, 2013 provides two routes for effecting a merger. The ordinary route under Sections 230-232 involves the scheme having to go through the National Company Law Tribunal (NCLT) where objections are heard and the arrangement sanctioned[1] A separate fast-track procedure is established in Section 233, which does not involve the Tribunal. This will involve a scheme being approved by a majority of members and creditors, and confirmed by the Central Government on behalf of the Regional Director.[2] The fast-track mechanism eliminated the need for scrutiny by the Tribunal as it needed to be approved by the holders of at least 90 per cent of the total number of shares.[3] The high threshold was thus designed to give a degree of consensus in exchange for a less cumbersome approval process.

The Corporate Laws (Amendment) Bill, 2026 suggests a change in that balance. The existing requirement of 90 per cent is removed and is replaced by a 'majority of the members present and voting' holding at least '75 per cent in value of the shares present and voted'.[4] The changes significantly widen the grounds under which a merger can take place without Tribunal review via the fast-track process. It also raises a parallel issue for the minority shareholders who might not approve of the deal, but would no longer have to give it their stamp of approval. The Bill has been referred to the Joint Committee of Parliament which reported it on 3 August 2026. It affirmed the need for greater safeguards for minority shareholders, but suggested that Section 233(1)(b) be amended by adding a proviso allowing, in appropriate terms, a dissenting shareholder to exit or have the value of their holdings bought out.[5]

The central question then, is whether the proposed exit right is sufficient to compensate for the diminished protection afforded minority shareholders as the approval threshold is lowered. This article assumes that the threshold will be reduced and considers the design of the proposed remedy. It says that a fair-value exit is the correct way to go because then the merger can go forward and the dissenting shareholders aren't forced to hold on to the stock on terms they

[1] The Companies Act, 2013, §§ 230–232, No. 18, Acts of Parliament, 2013 (India).
[2] *Id.* § 233.
[3] *Id.* § 233(1)(b).
[4] The Corporate Laws (Amendment) Bill, 2026, Bill No. 85 of 2026, cl. 69(a)(i) (India) (introduced in the Lok Sabha on Mar. 23, 2026).
[5] JOINT COMM. ON THE CORPORATE LAWS (AMENDMENT) BILL, 2026, REPORT OF THE JOINT COMMITTEE ON THE CORPORATE LAWS (AMENDMENT) BILL, 2026 (Aug. 3, 2026) [hereinafter JPC REPORT]; *see also* Fox Mandal, *Joint Committee Recommends Changes to Corporate Laws (Amendment) Bill, 2026*, https://foxmandal.in/News/joint-committee-recommends-changes-to-corporate-laws-amendment-bill-2026/ (last visited Oct. 7, 2026) (summarising the recommendation on Section 233).

didn't agree to. The problems are that the proposed language leaves the key elements of the remedy to delegated legislation. Whether the right offers meaningful protection will depend on questions of who might have the right, how fair value would be determined, the date of valuation, and how a challenge to the valuation would be accomplished.

II. THE FAST-TRACK ROUTE AND ITS EXPANSION

Section 233 has been added to the Companies Act, 2013 as a simplified process for mergers which otherwise would not have required the full Tribunal process. In 2005, the Expert Committee on Company Law had proposed that mergers among companies in a corporate group and between small companies should be allowed without the need for a court to supervise them because these transactions typically involved only a limited number of outside interests and were not justifiable in terms of the time and expense of a court-supervised process.[6] The provision was as enacted limited to two types of mergers: the merger of two or more small businesses, and the merger of a holding company with its wholly-owned subsidiary.[7] In either situation, there was minimal room for dissent by the minority. The small companies had the majority of their shareholders who were generally held by their wholly owned subsidiaries.

The companies will first be required to publish a notice of the proposed scheme for objections, which must be made by the Registrar and the Official Liquidator as well as by persons affected by the merger. The plan is thereafter put to the members and creditors for approval. It must be agreed to by those members who have a majority of not less than 90 per cent in number and 90 per cent in value and by creditors representing not less than 90 per cent in value.[8] On approval the transferee registers the scheme with the Regional Director when no objections are offered.[9] However, the Regional Director can refer the matter to the Tribunal within sixty days if he thinks that the scheme is not in the public interest or the interest of the creditors. The Tribunal can then make an order to be served that the scheme be considered under Section 232.[10]

The framework of the procedure also highlights the extent of the protection that shareholders have. The powers of the Regional Director in referring a scheme to the Tribunal are limited to

[6] Expert Comm. On Company Law, Ministry of Company Affairs, Report on Company Law (2005) (chaired by Dr. J.J. Irani).
[7] The Companies Act, 2013, § 233(1).
[8] *Id.* § 233(1)(a)–(d).
[9] *Id.* § 233(2)–(3).
[10] *Id.* § 233(5)--(6).

those when the scheme "seems to be contrary to public interest or to the interests of the creditors". No specific mention is made of the interests of members in the provision. Secondly, the Regional Director's position is a supervisory, not an adjudicatory one. The Hon'ble Bombay High Court has held that he is not allowed to reject a scheme where it meets the statutory requirements, and that, if he has some concerns, it is his duty to make a reference to the Tribunal under Section 233(5).[11] The member who refuses to be part of a fast-track scheme thus has no independent forum to challenge the scheme. In the original design, the high approval threshold was a crucial element for the protection of minorities.

This dependence on the high approval rate has grown more pronounced with the enlargement of the scope of Section 233. The number of companies able to access the fast-track route has gradually increased. Start-ups were added in 2021.[12] This was followed by a more substantial expansion in September 2025, where the rules were expanded to apply to unlisted companies that had no default, holding companies and their unlisted subsidiaries, and fellow subsidiaries of the holding company for which the transferor was unlisted and no default. The amendment also included the demergers in the fast-track system.[13] The path thus now extends to transactions with the companies in which minority shareholders might exist and in which their interests may not be in line with the controlling shareholder.

It is here where the initial assumption ceases to be true. By definition, a subsidiary that is not a wholly owned subsidiary will have outside shareholders. They can be a partnership of a joint venture, an early investor, employees who own stock through a stock option program, or be a part of the founding family. When such a subsidiary is merged into its parent (or into a sister company), the controlling shareholder will be on both sides of the transaction and the share exchange ratio will determine the distribution of value. The threshold was still ninety per cent of total shares but a minority of over a tenth would have the power to block the scheme and bring it to the Tribunal.[14]

[11] Asset Auto India Pvt. Ltd. v. Union of India (Bom. H.C. 2024) (India), *discussed in* Dagar & Sharma, *supra* note 6.
[12] The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, r. 25 (India), as amended by the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2021.
[13] The Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2025 (India) (notified Sept. 2025); *see Fast-Track Mergers Reimagined: The 2025 MCA Amendment*, INDIACORPLAW (Nov. 11, 2025), https://indiacorplaw.in/2025/11/11/fast-track-mergers-reimagined-the-2025-mca-amendment/.
[14] *See* Sarthak Goyal, *Recalibrating Section 233: Fast-Track Restructurings, Demergers and Minority Protection*, IRCCL BLOG (Feb. 2026), https://www.irccl.in/post/recalibrating-section-233-fast-track-restructurings-demergers-and-minority-protection.

III. WHAT THE BILL CHANGES, AND WHY IT MATTERS

The ninety per cent threshold, however, created a practical difficulty. The calculation was based on all the shares and shares which were not voted effectively were counted against the scheme. This problem was discussed in the case of Mallcom (India) Ltd. which was a listed company which wanted to merge with its wholly-owned subsidiary. The votes cast were by 99.98 per cent in favour, but the votes counted only 82.19 per cent of the paid-up capital. The Regional Director thus disagreed that the threshold had been met. The NCLT, Kolkata agreed, saying that the term "total number of shares" meant "total issued and paid-up capital."[15] If a merger is opposed by almost no one, then it can fail due to stockholders not being involved. Where the shareholding in a company is spread out, the requirement might make it hard to exploit the fast-track option even if the overwhelming majority of shareholders voted for the scheme.

The problem had already been recognised by the Company Law Committee of 2022. It stated that the requirement must be onerous and proposed a twin test, which would require approval from a simple majority of the members present and voting (seventy-five per cent in value of the shares held by the members present and voting), and approval also from members representing more than fifty per cent in value of the total shares of the company.[16] The idea behind the second limb was to make sure that the poor attendance at a meeting of the company could not be the sole reason for the company's failure.

That the Clause 69 in Bill incorporates the first part of that proposal, but not the second. For the scheme to be approved, a majority of members or class of members present at any meeting and entitled and voting to approve the scheme must vote to approve it, and seventy-five per cent of the members or class of members who vote, must vote to approve the scheme.[17] The threshold of the creditor is also lowered from nine tenths to three fourths of the value.[18] The similarity only extends to the vote, however, with schemes that are sanctioned by the

[15] Reg'l Dir., E. Region, Ministry of Corp. Affairs v. Mallcom (India) Ltd., C.P. No. 172/KB/2025 (NCLT Kolkata 2025) (India), *discussed in* Majmudar & Partners, *Fast-Track Mergers in India: Will the Proposed Company Law Amendments Help Speed the Process?* (Sept. 25, 2026), https://www.majmudarindia.com/fast-track-mergers-in-india/.

[16] Ministry Of Corp. Affairs, Report of The Company Law Committee (Mar. 2022); *see* Vinod Kothari Consultants, *CLC Recommends Major Reforms in Corporate Laws for Ease of Doing Business* (Apr. 15, 2022), https://vinodkothari.com/2022/04/clc-recommends-major-reforms-in-corporate-laws-for-ease-of-doing-business/.

[17] The Corporate Laws (Amendment) Bill, 2026, cl. 69(a)(i).

[18] *Id.* cl. 69(a)(ii).

Tribunal.[19] Section 230 is part of a wider regime which also provides for the Tribunal to determine classes, circulate a valuation report along with the notice and permit objections to be raised by those who hold ten per cent of the shares, and have a hearing at which the Tribunal will consider whether the scheme is fair and reasonable.[20] Section 233 adopts the lower voting threshold without these surrounding safeguards.

The effect becomes clearer when expressed numerically. Assume that a parent company has 60 per cent of an unlisted subsidiary and wants to affect a consolidation of the subsidiary with the parent. It has to acquire another 30% of the capital, which basically means that it needs three-quarters of the minority shareholders to back its acquisition. With the approval of shareholders representing eighty per cent of the shares, the scheme will pass if sixty per cent of the parent's shares are represented. Without the participation of minorities, even a parent with a majority of 51 per cent could get the same outcome. The second prong of the test under the Committee on Company Law **(CLC)** would have had no impact as the parent's total holding is already more than 50% of the total shares. The second level, then, protects against low participation, but not control.

In addition, the designation of "a majority of members" could also trigger a count requirement, such as that found in Section 230(6). If they do, a controlling member with a smaller number of shares could be outvoted by a larger minority in terms of numbers but not share value. However, the protection would be limited. It requires a higher number of dispersed shareholders to attend a meeting when they do not have a significant chance of changing the outcome, and could even give a controller who holds stock through multiple entities an edge in meeting the numbers requirement. For practical purposes, then, the seventy-five per cent threshold might easily give the controller enough control, in a fast-track merger of a controlled company, to be the deciding factor nor does the general remedy of winding up under the Companies Act do so.

One hundred-member Petition, one-tenth of members or holder of one tenth of the issued share capital may file a petition for oppression and mismanagement, or the Tribunal can waive this requirement. It also needs evidence of conduct that is oppressive or prejudicial, but not that a share exchange ratio was insufficient. Rights of the Shareholder to be acquired at the price

[19] The Companies Act, 2013, § 230(6).
[20] *Id.* § 230(3)–(4); Miheer H. Mafatlal v. Mafatlal Indus. Ltd., (1997) 1 SCC 579 (India); Hindustan Lever Emps.' Union v. Hindustan Lever Ltd., 1995 Supp (1) SCC 499 (India).

fixed by the Tribunal are not available even where relief has been granted. Courts have further consistently refused to get involved with valuations unless the valuation was deemed to be unfair. These remedies are thus not a direct substitute for the statutory rights of exiting at the fair value.

IV. THE JOINT COMMITTEE'S RESPONSE

The Joint Committee proposed three key changes to Section 233 to make the fast-track merger process more efficient while protecting minority and creditor interests. It suggested that the lower threshold for creditors be applied based on the voting and presence of creditors, in order to align with Section 230. It also recommended a sixty-day period to decide on an application and when it is not decided within that time, it will be deemed to be approved, to prevent delays in the approval process. Lastly, the Committee felt that the rights of dissenting shareholders deserved to be safeguarded and that a fair value exit or buyout option be provided to them as may be prescribed.[21]

The proposed remedy is appropriate since it takes care of the concern of minority shareholders without disturbing the transaction. The main problem for the minority shareholder in a controlled company is generally not that they wish to prevent the reorganisation but that they do not want to be forced into a new company on the majority's terms. The appraisal remedy helps satisfy this concern by letting the majority carry out fundamental changes while giving dissenting shareholders the opportunity to exit the company and collect the value of the shares they've purchased.[22] This method also helps prevent the Regional Director from having to make an assessment of the commercial fairness of the transaction, an assessment that is beyond the scope of the office. At the same time, an exit right is not a time delay in the transaction process and thus does away with the concern that led to the amendment. The remedy, in this sense, does not result in a review of the commercial merits of the reorganisation and spares minority shareholders.

The real difficulty, however, lies in the words “in such manner as may be prescribed.” Although these words imply a remedy in principle, they do not explain the operation of the exit right, and

[21] JPC REPORT, *supra* note 5; Fox Mandal, *supra* note 5.
[22] Bayless Manning, *The Shareholder’s Appraisal Remedy: An Essay for Frank Coker*, 72 YALE L.J. 223 (1962); Hideki Kanda & Saul Levmore, *The Appraisal Remedy and the Goals of Corporate Law*, 32 UCLA L. REV. 429 (1985).

leave important questions about it to the rules. It's not clear if the rights would be granted to those who voted against the scheme or not. Also, it is not clear who would have to make the payment, the transferee company or the controlling shareholder or on what basis fair value would be calculated, such as the date of the valuation and who would be responsible for the valuation. What's equally important is that there is no clarity about how a shareholder can challenge the valuation, and whether such challenge would delay the merger. These are far from issues related to drafting, as what matters most is how the value of an exit is calculated and whether such a calculation can be reasonably contested.

V. MINORITY EXIT AT FAIR VALUE UNDER THEEXISTING INDIAN LAW

The Joint Committee's questions are not completely fresh in the realm of Indian Companies law. By now, minority shareholders are already known to be saleable under the Companies Act in a number of scenarios. More importantly, these provisions do not give the controlling shareholder complete freedom of action with regard to such exits. Depending on the way the exit is achieved they tie various means of protection to the process.

The most similar provision in the statutes is S. 230(11). It was introduced in 2020 and gives a group of members with at least three-fourths of the shares an opportunity to go to the Tribunal for an arrangement to buy the other shares. The proposal is therefore parallel to what is proposed in the above scheme (provided the CEO is going to have a 75% stake in the company), where a 75% shareholder can buy up the minority shareholders in a speedy merger. The safeguards are, however, of a very different substance. The application has to be accompanied by a report from a registered valuer, which takes into account the highest price for the shares in the previous twelve months and other financial conditions prescribed. The applicant is also required to ensure that 50% or more of the consideration is paid into a separate bank account prior to making the application.[23] The arrangement is also subject to approval by the Tribunal. The independent valuation and the requirement for a recent price, the security of consideration, and the judicial oversight are then all combined into Section 230(11).

Individual aspects of this approach are used in other provisions of the Companies Act. Section 235 allows for the acquisition of dissenting shareholders' shares in the event that a scheme or

[23] The Companies Act, 2013, § 230(11)–(12); The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, r. 3(5)–(6), inserted by the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2020.

contract for the transfer of shares has been approved by the shareholders holding at least 90% (in value) of the shares concerned. The dissenting shareholders can make an application to the Tribunal in thirty days.[24] In this instance, the protection is mainly related to the shareholder approval. The nine-tenths threshold excludes the stock owned by the transferee, its nominees and their subsidiaries, so that a majority would be decided by the majority of independent shareholders. The overwhelming acceptance of the terms by independent shareholders in turn strengthens the fairness of the terms.

Section 236 adopts a different mechanism. If the acquirer has a stake of ninety per cent or more in the shares issued, the acquirer shall make an offer to purchase the remaining shares at a price determined by the registered valuer, through valuation. The minority can demand the same thing, that is, that the majority must buy its stock.[25] The rules outline the considerations that must be taken into account by the valuer.[26] This is not based on shareholder consent as in Section 235 for the determination of fairness. Rather it replaces that protection with independent valuation.

There is also an exit specifically in the Act in relation to merger. For a listed transferor company that merges with an unlisted transferee company, the Tribunal can allow a shareholder opting out to receive the value of his/her shares pursuant to Section 232(3)(h). This should not be less than per SEBI regulations.[27] This is important as it reflects the recognition of the need for an exit mechanism in provisions of the Indian Company Law where a merger results in a material change in the investment position of the shareholders. It also sets a regulatory minimum price on consideration that may be offered to the ones who opt to leave.

It is the same concern that is voiced in judicial rulings on minority buy-outs via reduction of capital. The Hon'ble Bombay High Court in *Sandvik Asia Ltd. v. Bharat Kumar Padamsi* upheld the proposal for cancellation of shares of non-promoter shareholders for consideration of amount charged as fair price and in the absence of any dissenting voice from majority shareholders.[28] The Court on the other hand took a more conservative stance in *Cadbury India Ltd*. It rejected the company's valuation and insisted on an independent valuation before giving its consent to the reduction. The Court was keen to ensure that it was satisfied with the price

[24] The Companies Act, 2013, § 235(1)–(2).
[25] *Id.* § 236(1)–(3).
[26] The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, r. 27.
[27] The Companies Act, 2013, § 232(3)(h).
[28] *Sandvik Asia Ltd. v. Bharat Kumar Padamsi*, 2009 SCC OnLine Bom 541 (India).

being offered to the affected shareholders.[29] These decisions demonstrate that judicial approval of a compulsory minority exit is not merely procedural. The fairness of the consideration remains an important part of the Court's scrutiny.

These provisions and decisions reflect one of the hallmarks of Indian company law. There is generally some independent basis in the law for a shareholder to protect his or herself against an unfair price or process for the purposes of requiring the minority to tell up. This protection could be provided by the approval of independent shareholders, independent valuation, a prescribed valuation benchmark, advance security for the consideration or court or tribunal review. In some provisions, more than one of these safeguards is in force.

This distinction is further bolstered by the position of listed companies. Besides the requirements under the Companies Act, SEBI mandates that in a specified scheme, approval is obtained by the majority of the votes from public shareholders.[30] Public shareholders will thus have an immediate chance to approve or reject a scheme before it is implemented. There is no similar voting protection for minority shareholders of an unlisted subsidiary. This disparity is especially pronounced in the context of the 2025 framework, which deems certain subsidiaries to be "fast track" mergers, meaning that their minority stockholders are not required to give approval. The exit right proposed in this case is consequently of heightened importance. Whereas where the minority cannot stop the merger by their vote, the terms under which they can leave become the primary protection from being forced to stay in an entity or structure which they may not have approved.

VI. LESSONS FROM DELAWARE AND THE UNITED KINGDOM

The protection afforded by Indian law demonstrates that in a situation where the minority shareholders can be forced to leave, there is normally some independent protection from an unfair outcome. The issue here is that: what if a merger happens without minority approval?

There are two solutions to this problem, ***one*** in Delaware, the other in the United Kingdom. Neither of these allow for a corporate reorganisation to go ahead without the consent of each and every minority shareholder, but neither leaves the minority completely to the wishes of the

[29] *In re Cadbury India Ltd.*, Company Petition No. 1072 of 2009 (Bom. H.C. July 9, 2014) (India).
[30] Sec. & Exch. Bd. Of India, Master Circular on Scheme of Arrangement By Listed Entities, SEBI/HO/CFD/POD-2/P/CIR/2023/93 (June 20, 2023).

majority. Rather they make use of appraisal, valuation or judicial supervision to offer protection post or in addition to the sale. These methods can thus give a good indication of whether the proposed fair-value exit under Section 233 will be an adequate replacement of the minority's voting protection.

The closest comparison is provided by Delaware. It has a short-form merger statute that allows the parent to do a merger without the consent of the subsidiary's shareholders if the parent owns ninety per cent of each class of stock in the subsidiary.[31] The absence of shareholder approval is accompanied by an appraisal remedy. A shareholder who has not voted in favour of the merger may require the Court of Chancery to determine the fair value of the shares, together with interest.[32] In *Glassman v. Unocal Exploration Corp*., the Delaware Supreme Court ruled that, in a short-form merger, the appraisal remedy is the minority shareholder's sole remedy, absent fraud or illegality.[33] The importance of the Delaware model is the inclusion of safeguards in the appraisal process. First, the remedy is extended to a shareholder who did not vote in favor of the merger, not just to those who voted expressly against the merger.

Secondly, Delaware has reached a practical understanding of "fair value." It recognizes the fair value of the company as a going concern based on the shareholder's proportionate share in the company, as determined by the relevant factors and accepted methods of valuation. The usual practice is not to apply discounts based on minority status or lack of marketability.[34] Third, the merger will be effective even if the property is appraised. The transaction goes ahead, and the issue of the consideration is dealt with independently in the Court of Chancery. The valuation remedy thus preserves the interests of the shareholder while avoiding that any individual disagreement regarding valuation can stall the transaction.

Another critical aspect of the Delaware plan is the 90 percent standard. The short form procedure is only available at the parent's level of ownership. Delaware does not, however, view the default of a majority as it will annul minority protection. In deals that fall short of the threshold, it's the full-fairness standard unless the transaction is predicated from the beginning on the independent committee's approval and majority of minority shareholders.[35] In Delaware,

[31] DEL. CODE ANN. tit. 8, § 253 (2024).
[32] *Id.* § 262(a), (h).
[33] Glassman v. Unocal Expl. Corp., 777 A.2d 242 (Del. 2001).
[34] Weinberger v. UOP, Inc., 457 A.2d 701 (Del. 1983); Cavalier Oil Corp. v. Harnett, 564 A.2d 1137 (Del. 1989).
[35] Kahn v. M & F Worldwide Corp., 88 A.3d 635 (Del. 2014).

the minority is thus compensated for being denied a meaningful role in approving the transaction by the institution of more robust procedural or substantive protections.

It is structured differently in the United Kingdom. The scheme of arrangement must be approved by 75 per cent by value of the members present and voting and then approved by the court. Without that court proceeding, compulsory acquisition is possible only in instances in which an offeror obtains at least ninety per cent in value of the shares to which the offer applies. A shareholder whose shares are to be compulsorily acquired may apply for the court to refuse to compel his/her shares to be acquired or to set conditions.[36] In terms of the 90% threshold of Section 235 of the Companies Act 2013, the threshold is based on the shares to which the offer relates, not on those already held by the offeror.

The two jurisdictions thus have different ways of dealing with the same issue. Delaware does not require a vote by minorities to approve the transaction, but does offer an appraisal remedy in front of a specialist court. In the UK, the threshold for compulsory acquisition is high and there is judicial supervision. The minority party in neither system is completely without any recourse against the controlling party. The absence of individual consent results in the protection being replaced by an independent mechanism to test the transaction or the consideration received.

In this comparison, it is clear how important the proposed Section 233 framework is. The proposed seventy-five per cent would allow a fast-track merger without minority approval with a degree of control far lower than the Delaware ninety per cent. It should also run without the approval of the courts as is the case with a scheme of arrangement in the UK. The proposed fair-value exit would, therefore, have more weight than the corresponding protection in either system. If it is to replace the protection of the minority vote, the law must include a reasonable way to calculate a fair value and a viable process for fighting the determination that it is fair, while not unnecessarily delaying the merger itself.

VII. WHAT THE STATUTE SHOULD SAY

The comparative analysis indicates that a fair-value exit may only be an alternative to minority voting protection where such a remedy incorporates substantive protection. They should be included within Section 233 and not delegated to legislation. The right to be forced to give up

[36] *Id.* §§ 979, 986.

property, and at what price, should be determined by Parliament. The Joint Committee is concerned with excessive delegation in other provisions, which bolsters this approach.[37] Six matters should therefore be addressed in the provision itself.

1. ***Scope:*** The right can't be used in all fast-track mergers. There is no minority protection issue in a wholly-owned subsidiary merger and many small company mergers may be unanimous. The right should rather be created where a scheme of arrangement is called for under Section 233, but is not agreed unanimously, and the transferee or the holding company or a person acting in concert with the transferee holds shares of the transferor. But this would be directed at the conflicted transactions that would fall under the ambit of fast-track regime under the rules for 2025, including intra-group demergers.

2. ***Who may exit:*** The right can be exercised by any member who did not vote in favour of the scheme whether they voted against it or did not vote. This is because of the philosophy of how the Bill is made. The change to a 'present and voting' test was to avoid the imputation that a non-participant shareholder was opposing the scheme. They should not, for that reason, be considered as consenting to the transaction when deciding on access to the exit remedy. The member should exercise the right within a specified time frame (typically 30 days after notice of the result is received), which gives the company an opportunity to determine, early on, what it may be subject to

3. ***What fair value mean:*** The definition of fair value should be as the member's proportionate share of the value of the transferor as a going concern, with no discount for minority status or lack of marketability. The value should be determined based on the value prescribed already by a registered valuer who has not acted upon the part of either the registered company or the promoters of the registered company in the last three years.[38] Two statutory floors would further discipline the valuation: The fair value should not be less than the value indicated by the exchange ratio under the scheme or the highest price paid for the shares by the controller or its affiliates in the prior 12 months. The valuation report should also be provided with the notice of the meeting so that the members can appreciate the valuation at which they can leave the company before voting for the scheme.

[37] *See* Bhanote, *supra* note 26 (noting the Committee's objection to delegated power in relation to directors' qualifications and CSR thresholds).
[38] The Companies Act, 2013, § 247; The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, r. 27.

4. ***Who pays:*** The provision should specify who is buying the provision and prevent any uncertainty about the rules governing a company buying its own provision. A company normally is not allowed to buy its stock except in a buy-back or reduction of capital, which are distinct events with their own statutory requirements.[39] It might be simpler to impose the obligation on the transferee company and specifically state that a purchase under the proviso does not amount to a buy-back or a reduction in capital; and that the shares are cancelled on such a purchase. In line with Rule 3(6), the transferee should also be required to pay interest on any consideration that remains unpaid after 60 days and deposit a prescribed percentage of the estimated amount of consideration prior to filing the scheme with the Regional Director.[40]

5. ***Disputes:*** One member who disputes the valuation shall have the right to petition the Tribunal within a prescribed time but it shall be for the purpose of determining the price only. The application should NOT be left as the scheme. This would leave the merger speed as it was sought by the amendment intact, and would also provide for the valuation disputes to be settled after the merger. This is consistent with the reasoning of Section 236 and the Delaware appraisal process. It should be for the company to prove that the price is fair, as they have the relevant information and have chosen the valuer. The Tribunal should also be empowered to appoint an independent valuer as was done by the Bombay High Court in *Cadbury India Ltd*.[41]

6. ***A safety valve****:* The exit mechanism should also include a threshold that, when reached, will lead to increased investigation when minorities oppose. If the members of the outside group representing more than a certain percentage vote to withdraw, then the terms proposed are not acceptable by a significant number of the minority. If this is the case, the Regional Director should be obligated to refer the scheme to the Tribunal under Section 233(5) which would include the interests of the members as one of the statutory grounds for reference. With a twenty-five per cent threshold, a single shareholder would not be able to undermine or defeat the fast-track process, yet would still provide some of the screening that was rendered under the ninety per cent threshold.

These protections do not necessarily have to duplicate the delay and expense that the Bill

[39] The Companies Act, 2013, §§ 66–68.
[40] The Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, r. 3(6).
[41] *In re* Cadbury India Ltd., Company Petition No. 1072 of 2009.

purports to remove. When the exit right is consensual, the only added burden would be the circulation of a valuation report, which a reasonable board would seek anyway. If a scheme is a contested merger, the scheme may proceed under the fast-track merger process and only the final consideration will be subject to determination. It would then be the responsibility of the party not to choose that option and so be responsible for the additional expense.

VIII. CONCLUSION

Section 233 ninety level served two purposes. It was a voting threshold and it also ruled out the need to have Tribunal oversight. The Bill is correct to change the first function. Mallcom shows that a threshold based on the aggregate of the voters' shares would have defeated a merger which had the overwhelming support of the participating shareholders. However, if the fast-track mechanism is applicable to subsidiaries having outside shareholders, the second safeguard is eliminated by lowering the threshold to seventy-five per cent of shares held by those in attendance and voting. There is no substitute for such protection placed. The practical outcome in a controlled company may then be a merger for which the controller is the determining body, and which is approved on the basis of the controller's vote and confirmed by an authority that is not expressly given a statutory role to protect the interests of the members.

It was, therefore, appropriate that the Joint Committee found a fair value exit to be the right thing to do. The problem is the proviso doesn't identify the nature of that right. The laws in India indicate that minority protection is usually based on either of three safeguards: meaningful approval by a majority of independent shareholders, independent valuation on the basis of specified criteria, or judicial or tribunal review. The proposed Section 233 framework ought to include the latter two and allow for Tribunal review when there is significant minority disagreement that the “independent shareholder approval” is simply not taking place.

Minority shareholders in unlisted group companies will have a “bare exit right” if the Bill is passed without giving statutory backing to that right and leaves the terms of the right to be defined by delegated legislation. The reform should therefore maintain the efficient operation of the fast-track track and guarantee that the elimination of minority voting power is balanced by a legally binding and subject to an independent review right to unenforceable depart at a fair price.