

The Companies Act, 2013-Filing of Agreement(s) & Resolution(s)

Section 117 of the Companies Act, 2013 (hereinafter referred to as the Act) deals with filing of certain agreements and resolutions as mentioned in sub-section 3, in the manner prescribed and within the time limit specified.

The provisions of section 117 are required to be read with section 179(3), 180(1)(a) & (c), 304 and 403 of the Act along with Rule 24 of Companies (Management and Administration) Rules, 2014 and Rule 8 of Companies (Meetings of Board and its Powers) Rules, 2014.

All required filings shall have to be made to the Registrar in Form MGT-14 within 30 days of the event date.

Which resolution and agreement is required to be filed with ROC?

The matter in respect of which resolutions and agreements are required to be filed with the ROC is listed in table below.

Which other documents are required to be filed along with the resolutions and agreements listed below?

In terms of section 117(1) of the Act, explanatory statement under section 102, if any, annexed to the notice calling the meeting in which the resolution is proposed is also required to be filed.

What is the time limit within which the above documents are required to be filed?

- Within 30 days of passing the resolution or making the agreement, as the case may be with normal filing fee (Section 117(1))
- Within 270 days after the expiry of aforesaid 30 days by which it should have been filed with additional filing fee as prescribed in table of fees (first proviso to Section 403)
- After the aforesaid 270 days together with normal and additional fee along with penalty or punishment prescribed for failure and default in filing within the above prescribed time limit. (second proviso to section 403)

What is the penalty or punishment provided in the Act for such failure or default?

In terms of section 117(2) of the Act, If a company fails to file the resolution or the agreement specified in list below before the expiry of the period specified under section 403 with additional fee (refer previous question):

- (a) the company shall be punishable with fine, not less than Rs.5,00,000 but which may extend to Rs.25,00,000 and
- (b) every officer of the company who is in default, including liquidator of the company, if any, shall be punishable with fine, not less than Rs.1,00,000 but which may extend to Rs.5,00,000

Whether copy of resolution/ agreement listed below which causes any effect of altering the AoA, required to be annexed to every copy of AoA?

Yes. In terms of proviso to section 117(1) of the Act, copy of every resolution/ agreement listed in table below, which has the effect of altering the articles shall have to be embodied in or annexed to every copy of the articles issued after passing of the resolution or making of the agreement.

Table is as given hereunder:

Sl. no.	Subject Matter of Resolution/Agreement	Meeting	Provision Reference
1	All special <u>resolutions</u>	GM	117(3)(a)
2	Resolutions which have been agreed to by all the members of a company, but which, if not so agreed to, would not have been effective for their purpose unless they had been passed as special resolutions#	GM	117(3)(b)
3	Any <u>resolution</u> of the BOD relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director	BM	117(3)(c)
4	Any <u>agreement</u> executed by a company relating to the appointment, re-appointment or renewal of the appointment, or variation of the terms of appointment, of a managing director	Agreement executed by the company	117(3)(c)
5	<u>Resolutions</u> which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all resolutions which effectively bind such class of members though not agreed to by all those members	Class Meeting	117(3)(d)
6	<u>Agreements</u> which have been agreed to by any class of members but which, if not so agreed to, would not have been effective for their purpose unless they had been passed by a specified majority or otherwise in some particular manner; and all agreements which effectively bind such class of members though not agreed to by all those members	Class Meeting	117(3)(d)
7	<u>Resolution</u> passed by a company according consent to the exercise by its Board of Directors, the power to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking of the company or where the company owns more than one undertaking, of the whole or substantially the whole of any of such undertakings	GM	117(3)(e), 180(1)(a)
8	<u>Resolution</u> passed by a company according consent to the exercise by its Board of Directors, the power to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital and free reserves, apart from temporary loans obtained from the company's bankers in the ordinary course of business	GM	117(3)(e), 180(1)(c)
9	<u>Resolutions</u> requiring a company to be wound up voluntarily	GM/BM	117(3)(f), 304

10	<u>Resolutions passed at the meeting of the Board (not by circular resolution)</u> - to make calls on shareholders in respect of money unpaid on their shares - to authorise buy-back of securities under section 68; - to issue securities, including debentures, whether in or outside India; - to borrow monies (excluding day to day operations);* (In our opinion, the delegation of any of the said power also needs to be filed) - to invest the funds of the company; (In our opinion, the delegation of any of the said power also needs to be filed) - to grant loans or give guarantee or provide security in respect of loans; (In our opinion, the delegation of any of the said power also needs to be filed) - to approve financial statement and the Board's report; - to diversify the business of the company; - to approve amalgamation, merger or reconstruction; - to takeover a company or acquire controlling or substantial stake in another <u>any other matter as may be prescribed (given hereunder)</u>	BM	117(3)(g), 179(3)(a) to (j) Explanation I & II to Section 179(3)
	<u>Any other matter is as under:</u> <u>By way of Board resolution only (not by circular resolution)</u> ➤ to make political contributions; ➤ to appoint or remove KMP; ➤ to take note of appointment(s) or removal(s) of one level below the KMP; ➤ to appoint internal auditors; ➤ to appoint secretarial auditor; ➤ to take note of the disclosure of director's interest and shareholding; ➤ to buy, sell non-trade investments held by the company constituting 5% or more of the paid up share capital & free reserves of the investee company ➤ to invite or accept or renew public deposits and related matters; ➤ to review or change the terms and conditions of public deposit; ➤ to approve quarterly, half yearly and annual financial statements or financial results as the case may be.	BM	117(3)(g), 179(3)(k), Rule 8 of Companies (Meetings of Board and its Powers) Rules, 2014

Unanimous assent of all the members without resolution on matters which can be passed only by SR

*Nothing in clause (d) shall apply to borrowings by a banking company from other banking companies or from the Reserve Bank of India, the State Bank of India or any other banks established by or under any Act.

*In respect of dealings between a company and its bankers, the exercise by the company of the power specified in clause (d) shall mean the arrangement made by the company with its bankers for the borrowing of money by way of overdraft or cash credit or otherwise and not the actual day-to-day operation on overdraft, cash credit or other accounts by means of which the arrangement so made is actually availed of.