

RESOLUTIONS UNDER COMPANIES ACT, 1956

RESOLUTIONS WHICH ARE REQUIRED TO BE PASSED AS SPECIAL RESOLUTIONS

Some important sanctions requiring special resolution are as follows -

Section No.	Details
17 and 17A	Alter object clause, name of company, registered office to other State. Change to other State requires confirmation of Central Government (postal ballot required in case of listed companies). Change within the State but under jurisdiction of different ROC requires permission of RD u/s 17A – see 146(2))
21	Change name of Company, subject to approval of Central Government.
25(3)	To omit the name 'Limited' or 'Private Limited' in case of licensed company.
31(1)	Alter Articles of Association (postal ballot required in case of listed companies for insertion of provisions relating to private company).
77A	Buy back of securities (postal ballot required in case of listed companies, if in excess of 10% of total paid up capital in a year).
79A	Issue of sweat equity shares (postal ballot required in case of listed companies).
81(1A) and 81(3)	Offer further shares to persons other than existing members (i.e. not to make a rights issue)
81(3)	Convert loans or debentures into shares, if approved before issue of debentures or raising of loans.
99	To determine that any portion of share capital shall not be called up except in winding up.
100(1)	Reduction in share capital (subject to confirmation by Court)
106	Varying rights of holders of class of shares (postal ballot required in case of listed companies for variation of rights attached to class of shares or debentures or other securities).
146(2)	Remove registered office out of city limits, but within the State (postal ballot required in case of listed companies).
149(2A)(b)	To commence new business.
163(1)	Keep statutory registers at any place within city / town other than the registered office.
208(2)	Authorise payment of interest out of capital - approval of Central Government is required
224(A)(1)	Appoint statutory auditors when share-holding of Government, financial institutions and nationalised banks is 25% or more.
237(a)(i)	Have affairs of the company investigated by inspector appointed by Central Government.
269 (read with Schedule XIII)	Approval of minimum remuneration to MD/WD/Manager, if more than prescribed 'normal' limit.
294AA(3)	Appoint sole selling agents in certain cases if paid-up capital is Rs 50

	lakhs or more.
309(1)	Determine remuneration payable to a director (other than MD) - necessary only if Articles require a special resolution - applicable only to a public company or its subsidiary.
309(4)	Authorising payment by way of commission on basis of percentage of profit, to a director who is not MD or whole time director - applicable only to a public company or its subsidiary.
314(1), (1B)	Approval for holding office of profit under the company or subsidiary for director or his relative or partner, firm, private company etc. in certain cases.
323(1)	To alter memorandum of association so as to render unlimited liability of its directors or manager - resolution can be passed only if articles so authorise - such resolution can only apply to future director/s and manager. It does not apply to existing director / directors / manager during his current term, unless he has accorded his consent to his liability becoming unlimited.
372A(1)	Make / give investment / loans / guarantee / security beyond 60% / 100% limit (postal ballot required in case of listed companies for giving loans or extending guarantee or providing security in excess of limits).
433(a)	To get the company wound up by Court.
484(1)(b)	To have the company voluntarily wound up.
494(1)	To authorise liquidator in a voluntary winding up to accept shares as consideration for company's property.
512(1)(a)	To authorise liquidator in a members' winding up to exercise powers specified in section 457(1)(a) to (d).
517(1)	To accord sanction for any agreement between company and its creditors so as to bind company and its creditors.
546(1)(b)	To authorise liquidator to exercise certain powers in a voluntary winding up.
550(1)(b)	To direct disposal of books and papers after completion of winding up and about to be dissolved, in case of members' voluntary winding up.
579(1)	To alter form of constitution of a company registered under part IX of the Act, e.g. a partnership firm registered as a company.
581H to 581ZL	Resolutions relating to producer company.
SEBI	Resolution that acquirer need not make public offer to take 20% shares of target company (Required as per SEBI Takeover Regulations) (postal ballot required in case of listed companies).

In addition, in some cases, approval of Central Government, Court or CLB is required.

Resolutions requiring special notice

Special notice is required for following resolutions - (a) Resolution appointing an auditor other than the retiring auditor or resolution that the retiring auditor shall not be appointed (section 225) (b) Resolution to remove director before expiry of his period and a resolution to appoint another director in place of removed director (section 284). - - Interestingly, in both the cases, only ordinary resolution is required to pass the motion and not special resolution.

As per section 190 of Companies Act, a member intending to move such resolution has to give at least 14 days' clear notice to the company before the general meeting. 'Clear notice' means date

of giving notice and date of the general notice will have to be excluded for calculating period of 14 days. On receipt of such intimation, the company must give its members notice of the resolution in the same manner as notice of general meeting is given. If this is not practicable, notice should be given by advertisement or other mode as may be prescribed in Articles of Association. Such notice must be given at least seven clear days before the meeting.

Resolutions which can be passed as ordinary resolutions

Some important sanctions requiring ordinary resolution are as follows—

Section No.	Details
22(1)(a)	Rectify name of company with approval of Central Government
61	Vary terms of contract referred to in prospectus or statement in lieu of prospectus.
79(2)	Issue shares at discount subject to sanction of CLB
81(1A)(b)	Issue further shares without making rights issue with approval of Central Government.
86(a)(ii)	Issue of shares with differential voting rights as to voting or dividend or otherwise. (postal ballot required in case of listed companies).
94(2)	Alter company's share capital, if authorised by articles.
98	Increase nominal capital by an unlimited company.
121(1)	Reissue redeemed debentures.
149(2B)	Commencement of new Business with approval of Central Government.
165	Adopt statutory report.
173 and Article 85 of table A	Declare dividend.
210	Adopt balance sheet and report of Board of Directors and Auditors at AGM.
214(1)	Authorisation by holding company to its representative to inspect books of account of its subsidiaries.
224(1)	Appoint auditors and fix their remuneration (power to fix remuneration can be delegated to Board of Directors).
224(5)	Remove auditor and appoint another nominated by any member.
224(6)	Fill casual vacancy in the office of auditor caused by resignation.
252(1) <i>proviso</i>	Election of small shareholders' director (postal ballot required in case of listed companies).
255(1)	Appoint first directors who are liable to retire by rotation.
256(3)	Fill vacancy created by retiring director – same or other person can be appointed as director
257(1)	Appoint person other than the retiring director or regularise appointment of additional director or director appointed in casual vacancy.
258	Increase or reduce number of directors within limits of Articles of company.
269	Appoint MD/WD/Manager and approving his remuneration [If proposed minimum remuneration is more than prescribed 'normal' limit special resolution is required as per Schedule XIII to Companies Act]
284(1)	Remove director before expiry of his term and appoint another in his place.
292(5)	Restrict powers of Board u/s 292(1).
293(1)	Approval when Board's powers are restricted e.g. (a) to give consent to dispose

	of whole or substantially whole of undertaking of the company (b) to remit or give time for debt due from a director (c) to invest otherwise than in trust securities amount of compensation received by the company in respect of compulsory acquisition of its properties (d) to borrow money in excess of aggregate of paid up capital and free reserves (e) to contribute to charitable funds beyond Rs 50,000 or 5% of company's average net profit. (postal ballot required in case of listed companies for consent to dispose of whole or substantially whole undertaking of company).
294	Approve or disapprove appointment of sole selling agent – special resolution required if capital exceeds Rs 50 lakhs and Government approval is required.
309(1)	Determine remuneration of directors [special resolution required only if Articles require]
313(1)	To appoint an alternate director in the absence of any power given in the Articles.
391(2)	Approve arrangement and compromise subject to Court's approval.
484(1)(a)	Wind up company voluntarily.
490(1)	Appoint liquidator and fix his remuneration in members' voluntary winding up.
491	To authorise directors to exercise some of their powers even after appointment of a liquidator in members' voluntary winding up.
492(1)	Fill vacancy in the office liquidator in members' voluntary winding up.
502(1) and 503(2)	In case of creditors' winding up (a) To nominate liquidator (b) Nominate members of committee of inspection and (c) to consider and pass accounts laid in meeting.
565	To register an existing company under 1956 Act.
581S to 581ZN	Resolutions relating to producer company.

Board Resolutions that cannot be passed by circulation

Some resolutions cannot be passed by circulation by Board. These must be passed only at the Board meeting. Such resolutions are as follows –

Section No.	Details
58A	Acceptance or invitation of public deposits [This is because as per Deposit Rules, date of approval by the Board of text of advertisement/statement in lieu of advertisement has to be specified. It has to be signed by majority of directors].

77A(2)(b) <i>proviso</i>	Authorising buy back upto 10% of paid up equity capital and free reserves as per <i>proviso</i> to section [section 292(1)(aa) added w.e.f. 23-10-2001]
77A(6)	Adoption of declaration of solvency in case of company intends to buy back its shares.
262(1)	Filling of casual vacancy in Board.
292(1)(a)	Make calls on shareholders in respect of money unpaid on their shares.
292(1)(aa)	Authorising buy back upto 10% of paid up equity capital and free reserves as per <i>proviso</i> to section 77A(2)(b)
292(1)(b)	Issue debentures.
292(1)(c)	Borrow moneys otherwise than on debentures
292(1)(d)	Invest funds of the company.
292(1)(e)	Make loans.
292(1) <i>proviso</i>	Delegation of powers to borrow moneys, invest funds of the company or to make loans to the extent permissible u/s 292(2), 292(3) and 292(4) - proviso to section 292(1).
293A(2)	Approve contributions to political party or for political purposes.
297(4)	Approval of contracts in which a particular director or his relative or his partner is interested.
299(3)(c)	Taking note of general notice given by director in respect of companies or firms in which he is director or a member and should be regarded as interested in any contract or arrangement with it.
308(2)	To receive notice of disclosure of interest by a deemed director u/s 307(10).
316(2)	Appointing a person as Managing Director who is already Managing Director or Manager of another company - special notice of proposed resolution has to be given to all directors, and resolution must be passed with consent of all the directors present at the meeting.
372A(2)	Making / giving Investment / loan / guarantee / security to other companies. [However, delegation within limits is permissible].
386(2)	Appointing a person as Manager who is already Managing Director / Manager of another company - special notice of proposed resolution has to be given to all directors, and resolution must be passed with consent of all the directors present at the meeting.
488(1)	Declaration of solvency in case of members' voluntary winding up. All directors or majority of directors have to make such declaration at the meeting of Board of Directors.
SEBI	Approving quarterly unaudited operating results of the listed company for publication. However, such recording can be done in a meeting of committee of Board of Directors consisting at least one-third of total number of directors. [This is as per clause 41(II)(a) of Listing Agreement – same stipulation in Secretarial Standard (SS-1) of ICSI (which is presently recommendatory in nature)].
	Approving annexure and proforma prescribed with Cost Audit Report (Rule 7 of Cost Audit Report Rules).
SS-1	As per Secretarial Standard (SS-1) of ICSI (which is presently recommendatory in nature), Annual Accounts should be approved at a Meeting of Board and not by a circular resolution. Similarly, in case of listed company, if there is more than 20% variance between un-audited and audited results, or half yearly report and the limited review report of auditors, reasons are required to be given to stock exchange. This should be discussed

	in Board meeting and should not be approved by circular resolution.
SS-3	As per Secretarial Standard (SS-3) of ICSI on Dividend (which is presently recommendatory in nature), recommendation of dividend/declaration of interim dividend should be done at the Board Meeting. It should not be done by circular resolution or by committee of Board.
SEBI	Constitution of Audit Committee, Remuneration Committee, Shareholders Grievance Committee and Nomination Committee and fixing their authorities/responsibilities should be done in Board meeting, as a good corporate governance practice (though there is no such statutory provision).

Excluding these, any other resolution can be passed by circulation e.g. - * Authorising officers to file suits, signing tax returns, sales tax forms * Fixing record date * Forming sub-committees (other than audit committee, shareholders' grievance committee and nomination committee) * Appointing additional director, alternate director * Authorising officer to file criminal complaint for dishonour of cheque * Appointing cost Auditor/Practising company Secretary.