

Resolutions under the Companies Act, 2013

Before going further, first of all let us understand what a Resolution is.

A Company being an artificial person, any decision taken by it shall be in the form of a Resolution. Accordingly, a **resolution** may be defined as an agreement or decision made by the directors or members (or a class of members) of a company. A **proposed resolution** is a motion. When a **resolution** is passed a company is bound by it. The resolutions could be on just about any subject in case of Board meetings since they are ultimately responsible for running the Company. The Act generally specifies the matters in respect of which resolutions are required to be passed by the members in general meetings.

Basically, there are three types of resolutions: Ordinary Resolution, Special Resolution and Unanimous Resolution. In case of Board Meetings, there is no concept of Special Resolutions and also unanimous resolutions are required in very few cases. However, in case of general meetings, all three are covered.

Section 114 of the Companies Act, 2013 defines an Ordinary and Special Resolutions. It states:

“(1) A resolution shall be an ordinary resolution if the notice required under this Act has been duly given and it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote, if any, of the Chairman, by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any, cast against the resolution by members, so entitled and voting.

(2) A resolution shall be a special resolution when—

(a) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;

(b) The notice required under this Act has been duly given; and

(c) the votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.”

Other than these two, there is also a concept of a unanimous resolution implying approval of all the members present and voting, without a single vote cast against it. Initially, as per Companies Act 1956 only one resolution required unanimous approval in the general meeting and the same has also been covered under section 162 (1) of the Companies Act 2013 which states that:

“At a general meeting of a company, a motion for the appointment of two or more persons as directors of the company by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it.”

However, in addition to above, for private companies, the Companies Act 2013 also inserts one more resolution which requires unanimous approval of all the members. As per **sub-section 4 of section 5** for inclusion of “entrenchment provision” in the Articles of Association of an already existing Company, it should be “agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.” Other than these all other specified matters require either an ordinary or a special resolution. Let us further take a look into the matters which require ordinary and/or special resolutions as per the Companies Act, 2013.

Matters requiring sanction by Ordinary Resolutions (OR)

Sl. No	Sections	Details
1	4	In case a company had been incorporated by furnishing wrong or incorrect information for approval of its name, the Registrar may direct the Company to change its name within 3 months by passing an OR, after giving an opportunity of being heard.
2	16	If the name is too identical or resembles an already existing company's name or a registered trade mark, the CG shall direct the company to change its name within 3/6 months, as the case may be, by passing an OR.
3	61	A limited company having a share capital may, if so authorized by its articles, alter its memorandum in its General Meeting to— (a) increase its authorized share capital by such amount as it thinks expedient; (b) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares. (c) convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination; (d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived; (e) cancellation of uncalled share capital.
4	63	Capitalization of company's profit or reserve to issue fully paid bonus shares
5	65	Unlimited company to provide for reserve share capital on conversion into a limited company by an OR.
6	73 & 76	A company may by passing an OR in General Meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to certain conditions. or accepting deposits from public u/s 76.

7	102 read with 123, 139, 140, 142, 152,	4 main business transacted at the Annual General Meeting- (i) the consideration of financial statements and the reports of the Board of Directors and auditors; (ii) the declaration of any dividend; (iii) the appointment of directors in place of those retiring; (iv) the appointment of, and the fixing of the remuneration of, the auditors.
8	148	Remuneration of cost accountant shall also be fixed by ordinary resolution.
9	161	Pursuant to the AOA or by an OR passed in General Meeting; the Board may appoint an alternate director.
10	169	A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242 (Oppression and Mismanagement.), before the expiry of the period of his office after giving him a reasonable opportunity of being heard.
11	181	Contribution to bonafide charitable and other funds an amount >5% of its average net profits for three immediately preceding financial years, to be done by passing ordinary resolution.
12	192	Restriction on non-cash transactions involving directors of the company or its holding, subsidiary or associate company or a person connected with him without prior approval by means of an OR in General Meeting.
13	196	Subject to the provisions of section 197 (relating to managerial remuneration in case of absence or inadequacy of profits) and Schedule V, appointment of a managing director, whole-time director or manager by the Board of Directors shall be subject to approval by a resolution at the next General Meeting of the company.
14	197	The remuneration shall be paid to director subject to the provisions of section 197 and shall be determined in accordance with the provisions of Article of Association, or a resolution or if the article authorizes by a SR.
15	304	OR to be passed in a General Meeting requiring the company to be wound up voluntarily as a result of the expiry of the period for its duration, if any, fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company should be dissolved.
16	310	In case of winding up, appointment of official liquidator and fixing remuneration of liquidator.
17	311	To fill the vacancy in the office if official liquidator caused by death of liquidator, removal, resignation or otherwise.

18	314	The Company Liquidator call General Meeting for the purpose of obtaining the sanction of the company by ordinary resolution or by special resolution, as the case may require.
19	318	After considering the report of the Company Liquidator if majority of the members are satisfied that the company shall be wound up, they may pass a resolution for its dissolution.
20	366	For companies about to be registered as a company limited by guarantee, the members should have passed a resolution declaring the undertaking by each member.

Matters requiring sanction by Special Resolutions (SR)

Sl. No	Sections	Details
1	5	SR for alteration of Article of Association for including the provisions of “Entrenchment” in case of public company. In case of private company, approval of all the members required.
2	12	To change the registered office of the company outside the local limits of the city, town or village in which it is situated or from jurisdiction of one ROC to another ROC or from one state to another state.
3	13	For alteration of Memorandum of Association of the Company.
4	14	For alteration of Article of Association of the Company.
5	13 & 27	Change in the object clause of the MOA if the Company has unutilized amount of public money raised for objects as stated in the prospectus or to vary the terms of contract.
6	41	To issue Global Depository Receipt in any foreign country.
7	48	Where a company has share capital of different classes, the rights attached to any class of shares may be varied by consent of members holding $\frac{3}{4}$ th of the shares issued of that class or by a SR passed in their meeting.
8	54	Issue of Sweat Equity Shares. (Excepting this, shares cannot be issued at a discount.)
9	62	For issuing further shares to employees of the company under the scheme of employee stock option and/or issue to persons other than members. SR for determining the terms of issuing debentures convertible into shares or loans raised by the company into shares.
10	66	For reduction of Share Capital.
11	68	SR passed in General Meeting authorizing buy-back of shares.
12	71	For issuing Debenture convertible into shares, wholly or partly.
13	94	The company may keep registers; returns etc. in that place of office, where the 1/10th Members is residing and whose names have been entered in the Register of Members, if approved by SR in General Meeting.

14	140	Removal of auditor appointed u/s 139, before the expiry of his term and after obtaining approval of CG.
15	149 (1)	Company may appoint more than 15 directors after passing a SR.
16	149 (10)	Re-appointment of an independent director for a further period of 5 years after passing a SR.
17	165	The members of a company may, by SR specify any lesser number of companies in which a director of the company may act as Directors.
18	180	Restriction on power of the Board. (Effective w.e.f. 12/09/2013)
19	186	Loans and investment by a Company.
20	188	SR before entering into contracts by companies having such paid up share capital or for transactions not exceeding such sums as prescribed (in the rules).
21	196	Appointment of persons aged 70 years or more as the Managing Director, Whole Time Director or Manager.
22	197	The remuneration shall be paid to director subject to the provisions of section 197 (relating to managerial remuneration in case of absence or inadequacy of profits) and shall be determined in accordance with the provisions of Article of Association, or a resolution or if the article authorizes by a SR.
23	210	SR is required to be passed for intimation to the CG that the affairs of the Company ought to be investigated.
24	212	SR is required to be passed for intimation that the affairs of the Company ought to be investigated by the Serious Fraud Investigation Office.
25	248	SR required or consent of 75% of shares holders required for making an application to the ROC for striking off the name of the Company.
26	262	Approval of shareholders, of both the companies, in General Meeting for scheme of merger and amalgamation of sick company with other company.
27	271	SR passed resolving winding up of the Company by the Tribunal.
28	304	For Voluntary Winding Up of the Company.
29	314	The Company Liquidator call General Meeting for the purpose of obtaining the sanction of the company by OR or by SR, as the case may require.
30	319	SR granting powers to the company liquidator to accept shares etc as consideration for sale of property of the company.
		AND/OR

		In case the company liquidator elects to purchase the member's interests, the manner of raising the money must be determined by a SR.
31	321	Arrangement between the company (about to be or is in the course of being wound up) and the creditors shall be binding on both of them if it is sanctioned by a SR and acceded by creditors holding 3/4th of the total amt due.
32	343	Company Liquidator to exercise certain powers subject to sanction by a SR and prior approval of the Tribunal.
33	347	SR, in case of voluntary winding up, for determining the manner for disposing the books and papers of a company completely wound up and to be dissolved.
34	371	For adoption of Table F in Schedule I.

Moreover, the Articles of Association of a Company may prescribe more stringent provisions for a particular matter as compared to the one specified by law for that matter and the Company is bound to follow it.

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