

Ordinary and Special Resolutions under Companies Act, 2013



Indian Case Laws

In this compilation, Indian Case Laws lists out major corporate actions for which ordinary and special resolutions are required to be passed under the relevant provisions of the Companies Act, 2013 and rules made thereunder.

Indian Case Laws

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CORPORATE ACTIONS FOR WHICH ORDINARY RESOLUTION IS REQUIRED

S. No.	Corporate Action	Applicable Section	Description
1.	Change of name after reservation of the name by furnishing wrong incorrect information	4(5)(i)	Where after reservation of name under Section 4(5)(i), it is found that name was applied by furnishing wrong or incorrect information, then if the company has been incorporated, the Registrar may, after giving the company an opportunity of being heard, direct the company to change its name within a period of three months, after passing an ordinary resolution.
2.	Change of Name if the Company's name resembles the name of some other company and has been registered with such name	16(1)	When central govt. directs the company to change its name and the company is required to change its name.
3.	Issue of Preference Shares on the terms that they are to be redeemed	Clause 8 of Table F in Schedule -I	Subject to the provisions of section 55, when a company issue any preference shares on the terms that they are to be redeemed on such terms and in such manner as the company before the issue of the shares may, by special resolution , determine.
4.	Alteration of MoA	61(1)	When a limited company, having a share capital and authorised by its AoA, has to alter its memorandum in its general meeting to- <ul style="list-style-type: none"> • Increase in Share Capital: when it has to increase the share capital

			<p>by certain sum, to be divided into shares of certain amount, as specified in the resolution.</p> <ul style="list-style-type: none"> • Consolidation and Division of Share Capital: Subject to the provisions of section 61, when it has to consolidate and divide all or any of its share capital into shares of larger amount than its existing shares. • Conversion or reconversion of fully paid-up shares into stock: When it has to convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination; • Sub-division of existing shares into shares of smaller amount: When it has to sub-divide its existing shares or any of them into shares of smaller amount than is fixed by the memorandum. • Cancellation of Shares: When it has to cancel any shares which, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person.
5.	Capitalization of Profit or reservation of the same for issuing fully paid-up bonus shares	63(2)(b)	When a company capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares to its members u/s 63(1).
6.	Acceptance of Deposits	73(2)	When a company accepts deposits from its members subject to rules as may be prescribed in consultation with the RBI and fulfilment of certain other conditions as enumerated in Section 73(2).

7.	Declaration of Dividend pursuant to Section 123	-	-
8.	Approval for appointment of auditor on casual vacancy created after resignation of an auditor	139(8)	When any casual vacancy is created after the resignation of the company's auditor. For this purpose, a general meeting has to be convened within three months of the recommendation of the Board on appointment of auditor and such auditor shall hold the office till the conclusion of the next AGM. This requirement is, however, not applicable for companies whose accounts are subject to audit by CAG.
9.	Fixing remuneration of the Auditor	142(1)	When the remuneration of the auditor of a company is to be fixed.
10.	Appointment of Directors	152(2)	When any director is to be appointed by the company.
11.	Appointment of Additional Director	161(1)	When the BoD of a company has to appoint any person (other than a person who fails to get appointed as a director in a general meeting) as an additional director at any time to hold office up to the date of the next AGM or the last date on which the AGM should have been held, whichever earlier.
12.	Appointment of Alternate Director	161(2)	When the BoD of a company has to appoint a person (not being a person holding any alternate directorship for any other director in the company) to act as an alternate director for a director during his absence for a period of not less than three months from India, in a case where such an act is not authorized by its Articles, subject to the provisos mentioned in

			Section 161(2).
13.	Removal of Director	169(1)	Removal of a director (not a director appointed by the Tribunal u/s 242) before the expiry of the period of his office after giving him a reasonable opportunity of being heard (except when the company has availed itself of the option given to it u/s 163 to appoint not less than 2/3 of the total number of directors according to the principle of proportional representation).
14.	Contribution to bona fide charitable and other funds	181	When the BoD of a company has to make contribution to bona fide charitable and other funds of such an amount the aggregate of which, in any financial year, exceed 5% of its average net profits for the three immediately preceding financial years.
15.	Payment of remuneration by a public company beyond certain limit u/s 197		
	Payment of remuneration exceeding 11% to the directors of a public company	197(1)	When the total managerial remuneration payable by a public company, to its directors and its manager in respect of any financial year is to be increased beyond 11% of the net profits of that company for that financial year with the with the approval of the Central Government.
	Payment of remuneration exceeding 5% to any one managing director, whole-time director or manager of a public	197(1)(i)	When the individual remuneration payable to any one managing director, whole-time director or manager of a public company is to be increased beyond 5% of the net profits of that company.

	company		
	Payment of remuneration beyond a certain limit to any director of a public company who is neither MD nor whole-time director	197(1)(ii)	(a) When the remuneration payable to any such director of a public company, having managing or whole-time director or manager, is to be increased beyond 1% of the net profits of that company, (b) When the remuneration payable to any such director of a public company, without any managing or whole-time director or manager, is to be increased beyond 3% of the net profits of that company.
16.	Voluntary Winding Up	304(a)	When a company is 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.
17.	Appointment of Company Liquidator	310(1)	When a Company is required to appoint a Company Liquidator from the panel prepared by the Central Government for the purpose of winding up its affairs and distributing the assets of the company and recommend the fee to be paid to the Company Liquidator.
18.	Appointment of Committee to supervise voluntary liquidation	315	When there are no creditors and the company has to appoint a committee to supervise the voluntary liquidation and assist the Company Liquidator in discharging his or its functions.
19.	Laying the final winding up accounts	318(1)	When the affairs of a company are fully wound up, and the Company Liquidator has to lay the final winding up accounts.

CORPORATE ACTIONS FOR WHICH SPECIAL RESOLUTION IS REQUIRED

S. No.	Corporate Action	Applicable Section	Description
1.	Entrenchment	5(3)	Provisions for entrenchment by a public company u/s 5(3) is to be made either on formation of a company, or by an amendment in the articles agreed to by a special resolution.
2.	Change in registered office of the Company	12(5)	When a company has to change the registered office of the Company in accordance with Section 12(5).
3.	Alteration of MoA	13(1)	Save as provided in section 61, when a company has to alter the provisions of its memorandum.
4.	Change in object of a public company which has raised money from public through prospectus and still has unutilised amount.	13(8)	When a company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, intends to change its objects for which it raised the money through prospectus.
5.	Alteration of AoA	14	When a company intends to alter its articles including alterations having the effect of conversion of – (a) a private company into a public company; or (b) a public company into a private company, subject to the provisions of the Act and the conditions contained in Company's MoA, if any.
6.	Variation in terms of a contract referred to in the prospectus or objects for which the prospectus was issued	27(1)	When a company at any time has to vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued.

7.	Issue of depository receipts in any foreign country	41	When a company has to issue depository receipts in any foreign country.
8.	Vary rights attached to the shares of any class	48(1)	When share capital of the company is divided into different classes of shares, and the company intends to vary the rights attached to the shares of any class in accordance with Section 48(1), if (a) such action is permitted under the AoA or MoA of the company, or (b) such variation is not prohibited by the terms of issue of the shares of that class.
9.	Issue of Sweat Equity Shares	54(1)	When a company has to issue sweat equity shares of a class of shares already issued, subject to the conditions mentioned in Section 54(b), (c) and (d).
10.	Increase in subscribed capital by the issue of further shares	62(1)(b) and (c)	When a company having a share capital proposes to increase its subscribed capital by the issue of further shares and such shares are to be offered to- (a) employees under a scheme of employees' stock option, or (b) to any persons either for cash or for a consideration other than cash (when the price of such shares is determined by the valuation report of a registered valuer), as per Section 62.
11.	Reducing Share Capital	66(1)	When a company limited by shares or limited by guarantee and having a share capital, intends to reduce its share capital in any manner, (subject to confirmation by the Tribunal). For example, (a) extinguishing or reducing the liability on any of its shares in respect of the share capital not paid-up; (b) cancelling any paid-up share capital which is lost or is unrepresented by available assets, (c) pay off any paid-up share capital which is in excess of the wants of the company.
12.	Purchase of its own shares or other specified securities (buy-	68	When a company intends to purchase its own shares or other specified securities out of – (a) its free reserves; (b) the securities premium account;

	back)		or (c) the proceeds of the issue of any shares or other specified securities and such buy-back is authorised by its articles. The requirement for special resolution is not applicable in the following cases- (i) where the buy-back is, 10% or less of the total paid-up equity capital and free reserves of the company; and (ii) such buy-back has been authorised by the Board by means of a resolution passed at its meeting;
13.	Issue of debentures with an option to convert such debentures into shares	71(1)	When a company intends to issue debentures with an option to convert such debentures into shares wholly or partly.
14.	Registers of the Company to be kept at a place other than the Registered Office	94(1)	When registers or copies of return of a company is to be kept at a place in India, other than the registered office of the company, in which more than one-tenth of the total number of members entered in the register of members reside.
15.	Removal of auditor appointed u/s 139 before the expiry of his term	140(1)	When the auditor appointed u/s 139 is to be removed from his office before the expiry of his term, after obtaining the prior approval of the Central Government to that effect and giving the auditor a reasonable opportunity of being heard.
16.	Appointment of more than 15 directors	149(1)	When a company intends to appoint more than fifteen directors, i.e. number of directors beyond statutory limit provided under Section 149(1)(b).
17.	Reappointment of Independent Director	149(10)	When a company intends to reappoint an independent director after he has served for a term up to five consecutive years on the Board of the company.

18.	Specify any lesser number of companies in which a director of the company may act as director	165(2)	Section 165(1) provides that no person can hold office as a director, including any alternate directorship, in more than twenty companies (if it is a private company) and in more than ten companies (if it is a public company) at the same time. When a company intends to specify any lesser number of companies for this purpose (i.e. less than 20 or 10) special resolution is required to be passed.
19.	Exercise of certain powers by BoD	180(1)	<p>A special resolution is required to be passed when BoD of a company intends to exercise the following powers-</p> <ul style="list-style-type: none"> • 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; • to invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation; • 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; • to remit, or give time for the repayment of, any debt due from a director;
20.	Giving of any loan or guarantee or providing any security or the acquisition beyond certain	186(3)	When a company intends to- (a) give any loan to any person or other body corporate; (b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and (c) acquire by way of subscription, purchase or otherwise, the securities of any other body corporate, exceeding 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities

			premium account.
21.	Related Party Transaction	Section 188(1) read with Section 188(3)	When a director or any other employee of a company (having a paid-up share capital of not less than such amount, or for transactions not exceeding such sums, as may be prescribed) has to seek approval and the company has to grant such prior approval for entering into any contract or arrangement with a related party with respect to matter enumerated in Section 188(1).
22.	Appointment of a Managing Director, whole-time director, or manager.	196(3)	When a company has to appoint a person as its Managing Director, whole-time director, or manager who has attained the age of seventy years. In such a case, explanatory statement annexed to the notice for such motion should indicate the justification for appointing such person.
23.	Fixing of remuneration of director	197(4)	When a company has to fix the remuneration payable to the directors of a company, including any managing or whole-time director or manager (if the Articles so requires).
24.	Investigation by Central Government	210(1)(b)	When a company desires to intimate central government that the affairs of the company ought to be investigated.
25.	Removal of names of companies from the Register of Companies	248	When a company intends to extinguish all its liabilities for the purpose of filing an application to the RoC for removing the name of the company from the register of companies on all or any of the grounds specified in Section 248(1) and the Registrar.
26.	Approval for Scheme of Amalgamation of a sick company	Proviso to Section 262	When a company intends to approve a scheme relating to amalgamation of the sick company with any other company.
27.	Winding up by Tribunal	271(1)(b)	When a company has to take a resolution that the company be wound up by the Tribunal.

28.	Voluntary Winding Up	304(b)	When a company is to be wound up voluntarily for any other reasons not covered Section 304(a).
29.	Conferring certain powers on the Company Liquidator	319(1)	When a company intends to confer general authority or power on the Company Liquidator to accept shares, etc., as consideration for sale/transfer of whole or any of its business property in the course of being wound.
30.	Authorizing Company Liquidator to exercise certain powers	343(1)(b)	When in the course of voluntary winding up, a company intends to authorize Company Liquidator for exercising the following powers- (a) pay any class of creditors in full; (b) make any compromise or arrangement with creditors or persons claiming to be creditors, or having or alleging themselves to have any claim, against the company, (c) compromise any call or liability to call, debt, and liability capable of resulting in a debt, and any claim, present or future, certain or contingent, ascertained or sounding only in damages, subsisting or alleged to subsist between the company and a contributory or alleged contributory or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets or liabilities or the winding up of the company, on such terms as may be agreed, and take any security for the discharge of any such call, debt, liability or claim, and give a complete discharge in respect thereof.
31.	Disposal of books and papers of the company upon winding up	347(1)(b)	In the case of voluntary winding up, when the affairs of a company have been completely wound up and it is about to be dissolved, then its books and papers and those of the Company Liquidator has to be disposed in the manner as the company by special resolution with the prior approval of the creditors direct.
32.	Application of Table-F in Schedule-I	371(3)(a):	When the company intends to make provisions of Table F in Schedule I applicable to it to any particular extent.



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