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ORDINARY AND SPECIAL RESOLUTION

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Section 114 Ordinary and Special Resolution

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Ordinary Resolution:

- Proper notice duly given for resolution and it is passed, where votes casted in its **favour exceeds the vote casted against it by the members.**
- The Chairperson may cast a casting vote.

Special Resolution:

- ❑ Proper notice duly given, specifying the intention to propose the resolution as a special resolution.
- ❑ The vote cast in favour of the resolution are **not less than 3times the number of votes cast against** the resolution.

Matters require sanction by Ordinary Resolution(OR)

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SECTION	PARTICULARS
4 (5)	company incorporated by furnishing wrong or incorrect information for approval of name
16	name is too identical or resembles an already existing name or a registered trade mark
61	Power of limited company to alter its Share Capital.
63	Issue of fully paid bonus shares
65	Conversion of Unlimited Company into a Limited Company

73 & 76	Acceptance of Deposits
102 (2)	<ul style="list-style-type: none">-Approval of Financial Statement-Declaration of Dividend-Appointment or Re-appointment of Auditor-Appointment of Director in place of retiring director
148	Fixation of remuneration of Cost Auditor
161	Appointment of Director
169	Removal of Director before expiry of his term

181	Contribution to bonafide and charitable funds, an amount > 5% of average net profits
192	Restrictions on non cash transactions
196	Appointment of MD, WTD or Manager
197	Remuneration to managerial personnel. Articles may provide for SR
304	Voluntary Winding up
310	In winding up, appointment of official liquidator and fixation of remuneration

Matters require sanction by Special Resolution(SR)

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SECTION	PARTICULARS
5	Articles (Entrenchment provision)
12	Shifting of registered office : <ul style="list-style-type: none">➤ outside the local limits of the city, town or village➤ from jurisdiction of one ROC➤ from one state to another
13	Alteration of MOA (except capital clause)
14	Alteration of Articles
27	Variation in terms of contract or object of prospectus
41	Issue of GDR in any foreign country

48	Variation of Shareholders right
54	Issue of Sweat Equity Shares
62	Issue of shares under ESOP scheme Issue of debentures convertible into shares or loans
66	Reduction of Share Capital
68	Buy back of shares
71	Issue of Debentures convertible into shares
94	Change of place for keeping the statutory records other than registered office.

140	Removal of Auditor
149 (1)	Appointment of Director exceeding maximum limit of 15
149 (10)	reappointment of an independent director for a further period of 5 years
165	Less than 20 companies in which director can act as Director
180	Restrictions on powers of Board
186	Loan and Investment by Company exceeding the limit prescribed

188	<ul style="list-style-type: none">-Companies having paid up capital of Rs. 10 crores or more.-Sale, purchase and supply of goods or material exceeding 25% of annual turnover-Selling, buying or disposing off property exceeding 10 % of net worth.-Leasing of property exceeding 10 % of net worth or 10% of turnover.-Availing or rendering of any services exceeding 10 % of net worth

196	appointment of person aged 70 years or more as MD, WTD or Manager
197	Remuneration to Director (Articles may not provide for SR)
210	Investigation into affairs of the Company
248	SR or consent of 75% share holders for application for striking off the name of company
262	For amalgamation or merger of sick company with other company
271	Winding up by Tribunal

304	Voluntary winding up by the company
343	company liquidator to exercise certain powers subject to sanction by SR and prior approval of tribunal

Procedure for passing Ordinary or Special Resolution

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- Board approval. (Notice, agenda, minutes)
- Shareholder approval in general meeting.
- Types of General Meetings :
 - Extra Ordinary General Meeting
 - Annual General Meeting
- Who may call meeting:
 1. EOGM - Board or Requisitionists
 2. AGM - Board

Notice of Meeting (Section 101)

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- Length of notice - 21 clear days (21 days in 1956 Act)
- Notice can be in writing or electronic mode
- Shorter notice - with consent of 95% shareholders (100% in 1956 Act)
- Notice to be given to :
 - Every Member,
 - Auditors and
 - Every director

Explanatory statement (Section 102)

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- A statement shall be annexed to notice, stating
 - a) the nature of concern or interest, financial or otherwise, if any, in respect of each items of—
 - (i) every director and the manager, if any;
 - (ii) every other key managerial personnel; and
 - (iii) relatives of the persons mentioned in sub-clauses (i) and (ii);
 - (b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

Quorum for meeting (Section 103)

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- ❖ In case of Public Company :
 - ❖ No. of members not more than 1000 : 5
 - ❖ No. of members 1000 to 5000 : 15
 - ❖ No. of members more than 5000 : 30

- ❖ In case of Private Company :
 - ❖ 2 members personally present

Chairman of meeting (Section 104)

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- ❑ Members personally present at meeting shall elect one of themselves to be chairman on show of hands.
- ❑ In case poll is demanded, shall be taken in accordance with provisions of Act
- ❑ Chairman appointed by show of hands shall continue to be chairman until some other person is elected as result of poll.
- ❑ Articles can provide different manner for appointing Chairman.

Proxies (Section 105)

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- ❑ Members of Section 8 companies shall not be entitle to appoint proxies unless such person is also a member (Rule 7.7).
- ❑ One person cannot represent proxy for more than 50 members or more than 10% of voting powers

Voting

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□ Voting through electronic means (Section 108)

Applicable to :

- The listed company or
- Company having 1000 or more shareholders may provide

□ Postal Ballot (Section 110)

Now provisions for postal ballot are applicable for all companies whether listed or unlisted.

Demand for Poll (Section 109)

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Eligibility :-

- Company having share capital : not less than $1/10^{\text{th}}$ of total voting power or aggregate value of shares not less than 5,00,000 (50,000 in 1956 act).
- Others : Not less than $1/10^{\text{th}}$ of voting power

RESOLUTION REQUIRING SPECIAL NOTICE

(Section 115)

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- ❑ Requirement: Certain businesses under the Act and some additional businesses as per the articles.
- ❑ Eligibility: Notice be given to the company by members holding not less than 1% voting power or holding shares of paid –up value of Rs. 5 Lakhs.
- ❑ On receipt of such notice from these members, the company shall give notice in prescribed manner to its members.

- As per Rule 23 of Companies (Management and Administration) Rules, 2014 :
- Length of Notice :
 - a) Not earlier than 3 months but at least 14 days before the date of the meeting.
 - b) The company on receipt of the notice, give its members notice at least 7 days before the meeting.
 - c) If not practicable to send notice in the manner prescribed, shall be published in newspaper at least 7 days before the meeting.

Date of passing of a Resolution (section 116)

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- The date of passing of a resolution is a date on which it is passed not the date on which it was proposed for consideration or moved for consideration.
- Where a resolution is passed in an adjourned meeting, it shall be treated as having passed on the date on which it was in fact passed.

RESOLUTION AND AGREEMENT TO BE FILED (SECTION 117)

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- A copy of every resolution and agreement together with the explanatory statement annexed to the notice shall be filed with the Registrar with 30days.
- The resolution and agreement which are required to be filed are –
 - a) Special resolution;
 - b) Resolution agreed by all members which otherwise have to be passed as special resolution;
 - c) Any resolution of Board of Directors or agreement relating to appointment or terms and conditions of a Managing Director;

- d) Resolution or agreements which have been agreed to by any class of members but which may otherwise need specific majority and all resolution or agreements which effectively bind all members of the class;
- e) Resolution according consent to the exercise by its Board of Directors of any power related to disposing of the undertaking and borrowing under clause (a) and(c) of Sub Sec-1 of section 180;
- f) Resolution to wound up voluntarily;
- g) Resolution relating to power of Board under Sub section (3) of Section 179;

- The powers under of Section 179 (3) are –
- 1) to make calls on shareholders in respect of money unpaid on their shares;
 - 2) to authorize buy-back of securities under section 68;
 - 3) to issue securities, including debentures, whether in or outside India;
 - 4) to borrow monies;
 - 5) to invest the funds of the company;

- 6) to grant loans or give guarantee or provide security in respect of loans;
- 7) to approve financial statement and the Board's report;
- 8) to diversify the business of the company;
- 9) to approve amalgamation, merger or reconstruction;
- 10) to take over a company or acquire a controlling or substantial stake in another company;
- 11) any other matter which may be prescribed. (Rule 8(5))

- ❖ As per Rule 8(5) of Companies (Meetings of Board and its Powers) Rules, 2014, following resolutions shall also be filed:
 - To make Political contributions
 - To appoint or remove KMP
 - To take note of Appointment or Removal of one level below of KMP
 - To appoint internal Auditors and Secretarial Auditor
 - To take note of the disclosure of director's interest and Shareholdings

- ❑ To buy, sell investment held by the company (other than Trade Investment), constituting 5% or more of Paid-Up Share Capital and 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.
- ❑ Any other resolution or agreement as may prescribed and placed in public domain.



THANK YOU