

ENTRENCHMENT OF AOA

by Team Akshayam

In the last article of this series of articles on Special Types of Resolutions passed in a company we will be dealing with the concept of Entrenchment of Articles of Association.

What is Entrenchment?

The word Entrenchment is not defined under the Companies Act, 2013, however, through the use of the word, it can be understood that for certain situations as identified by the subscribers to the Memorandum during incorporation of the company or resulting in the amendment of the existing Articles of Association requiring approval of the of shareholders by way of conditions stricter than that of a Special Resolution, (i.e.,) by obtaining 76%-100% of the shareholder's votes.

So, what does entrenchment of the Articles of Association do? Entrenchment of articles ensures that certain clause(s) of the AoA that cannot be amended or can only be amended by way of a super majority.

When can the Articles of Association be entrenched?

1. During incorporation of a company, the entrenchment provisions can be included while creating the Articles of Association.
2. If the company is a going concern, the entrenchment provisions can be included in the AoA through amendment as follows:

Section under CA 2013	Provision	Conditions (If any)	Required Percentage out of total Voting power for approval
5(4)	Entrenchment of Articles of Association (AOA)	A <u>Private Limited Company</u> amending its Articles of Association for Inclusion of Entrenchment Provisions	100% its members

5(4)	Entrenchment of Articles of Association (AOA)	of A <u>Public Limited Company</u> amending its Articles of Association for Inclusion of Entrenchment Provisions	Special Resolution
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Conditions for Entrenchment of Articles of Association

Even though the Companies Act 2013 enables entrenchment, as it forms part of the Articles of Association, the entrenchment, like the entire articles must be in conformity with the Memorandum of Association of the Company as well as the provisions of Companies Act 2013.

Types of Entrenchment

1. Absolute entrenchment – the concerned clause(s) of the Articles cannot be amended at all
2. Conditional entrenchment – the concerned clause(s) of the Articles can be amended by obtaining a super majority (i.e.,) 75%-100% approval of the members. The percentage will be as specified in the concerned clause(s).

Forms to be filed with the Registrar of Companies.

1. While entrenchment of articles of association during incorporation, the same is to be notified in the SPICe+ form.
2. While entrenchment of articles of association in an already formed company, the same is to be notified by way of Form MGT 14 within thirty days from the date of entrenchment of the articles.
3. While amending the entrenched clause(s) of the AoA, Form MGT 14 within thirty days from the date of amendment.

We can conclude that entrenchment of articles of association of a company is a provision that will protect the minority shareholders of a company and also closely held companies.

Concluding thoughts

Here we come to the end of our series on approvals that go beyond Ordinary and Special Resolutions. While these types of resolutions are not commonly passed in general and board meetings and situations warranting special notice, they carry significant importance and legal implications for companies and their Boards.

As a result, it is crucial for companies to exercise prudence and ensure compliance with the law regarding matters related to the aforementioned resolutions. Ultimately, the Board is accountable to the stakeholders, and any missteps in this regard can have serious repercussions.

We hope that our attempt to throw light on the special cases of approval that must be considered when dealing with these specific situations was useful. It is essential to have a clear understanding of these types of resolutions to ensure that the company is compliant and operating in the best interests of its stakeholders.

The logo for AKSHAYAM Business Support Solutions features a large, stylized letter 'A' in the center. The 'A' is composed of two overlapping shapes: a light blue one in the foreground and a slightly darker blue one behind it. The wings of the 'A' are spread wide, resembling a bird or a pair of wings. Below the 'A', the word 'AKSHAYAM' is written in a large, bold, light blue sans-serif font. Underneath 'AKSHAYAM', the phrase 'Business Support Solutions' is written in a smaller, italicized, light blue serif font.

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