



SPECIAL CATEGORY OF RESOLUTIONS PASSED IN BOARD MEETINGS UNDER COMPANIES ACT 2013

by Team Akshayam

In the previous articles of this series, we had delved into special types of resolutions passed by the members of a company at its General Meetings.

In this article we will identify and explain the special types of resolutions to be passed at the Meetings of the Board of Directors of a company and when the need for the same arises.

In general, the resolutions passed by the Directors of a Company in a Board Meeting is required to be passed by a simple majority, (i.e.,) by obtaining assent from 51% of the directors present in a meeting.

Based on the provisions of the Articles of Association and Shareholder's Agreement or other similar agreements, there might be situations where a specific kind of approval is required to be obtained in addition to the simple majority. However, these situations are company specific and may not apply to all companies. In this article however, we will focus on the resolutions that will require a Unanimous approval (i.e.,) an assent from 100% of the Directors present in the meeting as per the Companies Act 2013.

What constitutes Unanimous Approval?

For an approval to be considered as a Unanimous approval, the following conditions are to be met:

- It should be passed in a duly convened Board Meeting, and
- All the directors who have attended the meeting must vote "For" the resolution
 - No attending director should vote "Against" the resolution, and
 - No attending director must abstain themselves from voting.

Resolutions requiring Unanimous approval at the Board meeting:

Section under CA 2013	Provision	Proviso (If any)	Conditions (If any)	Required Consent by Directors
203	A whole-time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time	<p><u>Proviso to section 203(3)</u></p> <p>Provided also that a company may appoint or employ a person as its managing director, if he is the managing director or manager of one, and of not more than one, other company and such appointment or employment is made or approved by a resolution passed at a meeting of the Board with the consent of all the directors present at the meeting and of which meeting, and of the resolution to be moved thereat, <i>specific notice has been given to all the directors then in India.</i></p>	Not Applicable	100%
186(5)	No investment shall be made or loan or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the <i>prior approval</i>	Provided that prior approval of a public financial institution shall <i>not be required</i> where the aggregate of the loans and investments so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate, along with the investments, loans,	Not Applicable	100%

of the Public financial institution* concerned where any term loan is subsisting, is obtained.

guarantee or security proposed to be made or given:

1) Does not exceed 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more.

AND

2) There is no default in repayment of loan instalments or payment of interest thereon as per the terms and conditions of such loan to the public financial institution.

Provided further that in case of a Specified IFSC public and Private Company, the Board can exercise powers under this sub-section by means of resolutions passed at meetings of the Board of Directors or through resolutions passed by circulation.

** A Public Financial Institution shall include any of the following:*

a) The Life Insurance Corporation of India.

b) The Infrastructure Development Finance Company Limited.

c) Specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 (58 of 2002).

d) Institutions notified by the Central Government under sub-section (2) of section 4A of the Companies Act, 1956 (1 of 1956) so repealed under section 465 of this Act

Section under CA 2013	Provision	Proviso (If any)	Conditions (If any)	Required Consent by Directors
73	<p><u>Rule 7(4) of Companies (Acceptance of Deposits) Rules, 2014</u></p> <p>No trustee for depositors shall be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of all the directors present at a meeting of the board.</p>	<p>Provided that in case the company is <u>required to have independent directors, at least one independent director shall be present</u> in such meeting of the Board.</p>	<p>Not Applicable</p>	<p>100%</p>

Confused about what entrenchment of Articles of Association is? Stay tuned for the last article of this series for a full understanding.