

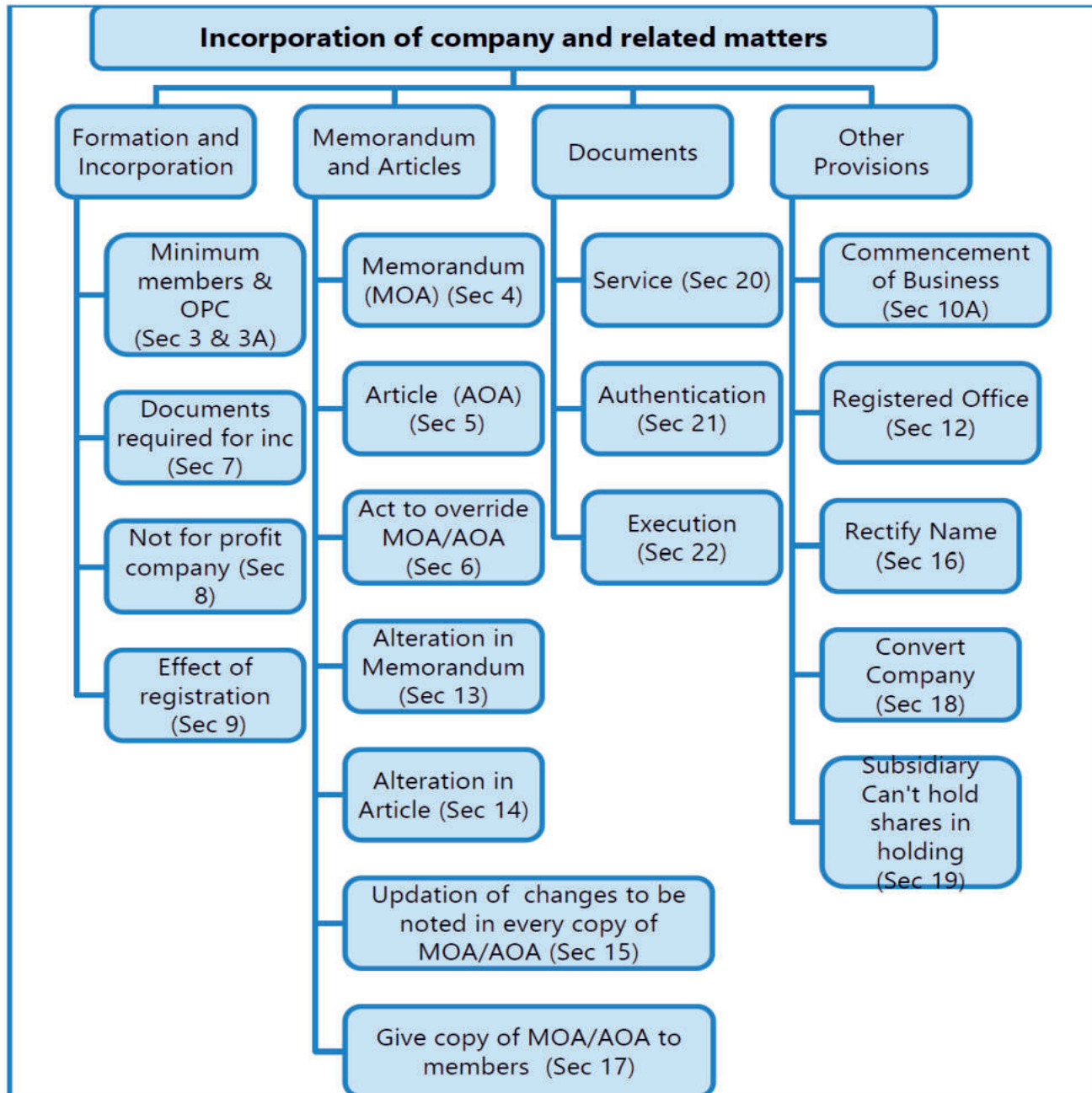
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Chapter II

IOC (Incorporation of Company)

OVERVIEW OF THE CHAPTER



1. INTRODUCTION TO INCORPORATION OF COMPANIES & PROMOTER

Chapter II : Consists of sections 3 to 22 as well as the Companies (Incorporation) Rules, 2014.

- A company is a separate legal entity from its members.
- It has perpetual succession and can be incorporated only for lawful purposes.
- Prior to incorporation, promotion activities are essential.
- Promotion signifies a number of business operations familiar to the commercial world by which a company is brought into existence

1.1 PROMOTERS UNDER SECTION 2(69) –

- Who has been **named** as such in a **prospectus or in the annual return** referred to in section 92; or
- who has **control over the affairs of the company**, directly or indirectly whether as a shareholder, director or otherwise; or
- in accordance with **whose advice, directions, or instructions the Board of Directors** of the company is accustomed to **act**.
- Persons who **form the company** are known as promoters.
- It is they who **conceive the idea** of forming the company.
- They take **all necessary steps** for its registration.

Idea दे रहा हूँ	Form the company दोस्तों का साथ सही कार्रवाई	सारे Affair Control करलो	Prospectus (रिश्ते) annual return हर साल – वापस ए जाते है	मेरी यही – advice, कहलौं या directions, or या हुक्म instructions
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It should, however, be noted that:

Persons acting only in a professional capacity e.g., the solicitor, banker, accountant etc. are not regarded as promoters.

Duty and Right of a promoter –

- Not to make secret profit,
- He can make a profit but not a secret one and should make full and fair disclosure to an independent director.
- Full and fair disclosure of his interest in every transaction or contract with company in which he is directly or indirectly interested

- **Promoter has no right to receive any remuneration from the company or recover any expenses incurred by them for incorporating the company**
 - unless the company after incorporation has contracted the same,
 - even if the article articles provide that a company shall pay remuneration to the promoters or reimburse them,
 - such a provision is not binding on the company.

Note :

 **Understanding the Role of a Promoter:**

- **The statutory definition of 'promoter' primarily serves to fix liability for fraud through misstatements — not to describe their actual role in company formation.**
- **A promoter is someone who:**
 - **Undertakes to form a company for a specific project.**
 - **Takes necessary steps to bring the company into existence and get it operational.**
- **Involvement at inception is not mandatory:**
 - **Even a person who joins later to help arrange capital or floating of shares can be considered a promoter.**
- **The term “promoter” includes:**
 - **Any individual, partnership, association, or company**

That takes all necessary steps to incorporate and organize the business

Example: Illustration (True/False)

Statement: *To be a promoter one necessarily be associated with the initial formation of the company.*

Answer: *False, one who subsequently helps company to keep going, raise fund & advice to board (other than in professional capacity) will equally be regarded as a promoter.*

1. The definition of Promoter includes all of the following except:

- a. A person named as 'Promoted' in a Prospectus or Annual Return of the company.
- b. A person who has control over the affairs of the company as a shareholder or Director.
- c. A person who is engaged in the formation in formation of a company of company in a professional capacity.
- d. A person on whose advice the Board of Company is accustomed to act.

2. The status of a Promoter in relation to the company is:

- a. An agent of the company.
- b. A trustee for the company.
- c. A person in fiduciary capacity in relation to company.
- d. None of the above

3. The duties of a promoter include:

- a. Not to make any secret profit out of the promotion of the company.
- b. To disclose his interest in any transaction entered by him, to the company.
- c. Not to make an unfair or unreasonable use of his position.
- d. All of the above

4. Which of the following statements statement is correct in relation to compensation to a Promoter?

- a. A promoter has no right to get compensation or remuneration from the company from company.
- b. A promoter can be paid remuneration or profit with full and fair disclosure to the company.
- c. A promoter can be paid for the expenses incurred by him on incorporation of the company.
- d. A promoter can be issued shares in lieu of his remuneration and expenses.

5. A and B bought a real estate property for 10 Lakh and transferred it to a company for 12 Lakh. They then formed a new company and transferred the property for 15 Lakh and disclosed the profit of 3 Lakh but did not reveal the first profit of 2 Lakh. Which of the following statements statement is correct with regard to the duty of promoters?

- a. The first profit of 2 Lakh not disclosed by promoters is a secret profit and A and B would be bound to pay it to the company.
- b. The promoters are not bound to disclose each and every transaction made by them prior to incorporation of the company of company.
- c. A and B have made disclosure of the profit of 3 Lakh made by them and therefore no further action is required.
- d. All of the above

2. Section 3 – FORMATION OF COMPANY

- In the pre-independence era, companies were granted rights by royal charter, but
- Now a company is incorporated by either a special Act of the legislature or under the Companies Act, 2013.
- Accordingly, an incorporated company may be either be
 - Chartered Company,
 - Statutory Company, or
 - Registered Company.
- Section 3 of the Act deals with registered companies.
 - In the case of a public company – Any 7 or more persons
 - In case of a private company – 2 or more persons
 - In case of one person company – 1 person can form
 - for any lawful purpose
 - by subscribing their names to memorandum and
 - complying with the requirements of this Act in respect of registration.

Note : Limited liability companies may be companies limited by guarantee as well as shares. Specified IFSC Public or Specified IFSC Private Company shall be formed only as a company limited by shares. IFSC Company means a company licensed to set up businesses in any International Financial Services Center in India, for example in Gujarat International Finance Tec-City.

1. Any contract or agreement which is made prior to incorporation of company can be enforced only if:
 - a. If the contract is warranted by the terms of its incorporation.
 - b. The contract is accepted by the company.
 - c. The company has communicated the acceptance of the contract to the third party.
 - d. All of the above

3. Section 3A – MEMBERS SEVERALLY LIABLE IN CERTAIN CASES i.e. REDUCTION IN MINIMUM MEMBERSHIP

Generally, the members are jointly liable for the debt of company, but they shall be severally (individually) liable for the payment of the debts of the company and may be severally sued if at any time:

If your number of members –

Get reduced below 2 in case of Pvt and Below 7 in case of Public company AND Company continues to carry its business for more than 6 months Then Such members are liable for the payment of the whole debts of the company contracted during that time (after elapse of six months).

Relate : Lifting of Corporate Veil

Example: Amar, Akbar, and Anthony along with five of their friends were members of Harmony Limited. Amar and Akbar died on 18th August 2022, resultantly members count reduced to 6 and everyone was aware about it. Harmony Limited continued its operation without increasing members. In March 2023, company took loan for business operations, and defaulted in payment thereof. The lender of such loan can sue company, or Anthony or any of the rest of five friends, because members shall be severally liable for said loan in the given case.

Example : True or False - Statement : Members who knowingly operating the company for more than six months with less than the minimum number of members specified in Section 3(1) are severally liable for the payment of all debts contracted by the company during the period since the number of members was first reduced.

Answer : False, refer section 3A of the Act. Such members are liable severally for the payment of the whole debts of the company contracted during that time (after elapse of six months).

4. Section 4 – MEMORANDUM OF ASSOCIATION – MOA

Statutory definition

As originally framed or altered from + + + under the act or any previous law/Act.

- The Memorandum of Association of company is in fact its charter;
- it defines its constitution and
- the scope of the powers of the company
- with which it has been established under the Act.
- It is the very foundation on which the whole edifice of the company is built

Importance of MOA :

1. Defines Company's Powers & Limits

- States the purpose for which the company is formed.
- Sets the boundary of its operations – cannot act beyond it.

2. Gives Clarity to Outsiders

- Helps shareholders, creditors, and others understand what the company can and cannot do. (*Outsider's perspective*)

3. Helps Investors Track Usage of Funds

- Informs shareholders how their money will be used and the risks involved. (*Investor's perspective*)

4.1 MOA CLAUSES UNDER Section 4 :

The name of the company with the last word "Limited" in the case of a public limited company, or "Private Limited" in the case of a private limited company.

Clause	(S.S.O.N.N.C.L.) Description
Situation / Reg. Office	Name of the state where RO
Subscription or Association	No. of shares each subscriber has agreed; at least 1 share
Object	Object for which co is incorporated
Name	Pvt/Limited; NA to section 8
Nomination	In case of OPC – event of death/incapacity
Capital	Amt of SC and its distribution
Liability	Unlimited/Limited by G – To assets & Cost in case of WP (Member or in 1 year of cessation)

4.2 APPLICATION FOR RESERVING NAME FOR PROPOSED COMPANY [SUB-SECTION 4]

4 (1) (a)	Name Clause	<ul style="list-style-type: none"> ● “Limited” = Public limited company, ● “Private Limited” = Private limited. ● Not applicable to Section 8 of the Act. ● ‘Electoral Trust’ may be allowed for Registration of companies to be formed under section 8 of the Act ● Section 8 of the Act shall include the words – foundation, Forum, Association, Federation, Chambers, Confederation, council, Electoral trust and the like etc ● A Government company’s = Must end with the word “Limited”. ● In the case of OPC, the words “One Person Company”, should be included below its name. ● In case of IFSC “IFSC”
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Note : The above clause is not applicable in case of section 8 companies. In case of Specified IFSC Public Company 10 & IFSC Private Company 11, name shall have the suffix, “International Financial Service Company” or “IFSC”.

Example: *Mr. Anil Desai, has applied for reservation of company name with a prefix “Sanwariya”. He claimed that the Prefix “Sanwariya” is a registered trademark in his name. Later on, it is found that the said prefix is not registered with Mr. Anil Desai, however, he has formed a company by giving incorrect documents/ information while applying the name of the company. In such a case, the Registrar shall take action as per the provisions of the Act after giving the opportunity of being heard.*

Provisions related to Name of a Company (Sub-sections):

Application for reserving name (New Company)	Through SPICe+ (INC-32) with prescribed fee
Application for name change (Existing Company)	Through RUN (Reserve Unique Name) web service with fee
Resubmission	Allowed within 15 days for rectification of defects
Restrictions on Names (Sub-sections 2 & 3)	Name must not: <ul style="list-style-type: none"> ● Be identical or nearly resemble another company’s name ● Be offensive or undesirable (ROC’s discretion) ● Imply connection with Government bodies (unless approved CG) ● Include restricted words (e.g. Nation, Republic, Authority, etc.)

Examples of Resembling Names	Same name despite differences in: <ul style="list-style-type: none"> • Singular/plural (Green Tech vs Greens Tech) • Punctuation/spelling/capitalisation • Tenses (Ascend vs Ascending) • Translation (Rashtriya Vidyut = National Electricity) • Phonetics (Bee Kay = BK) • Domain suffix (UltraSolutions.com = Ultra Solutions Ltd.) • Word order (Builders & Contractors = Contractors & Builders) • Articles (A, The, An) • Addition of place (if original doesn't include place) • Numerals (Thunder 11 = Thunder) unless it's a brand
Reservation Period (Sub-section 5)	<ul style="list-style-type: none"> • 20 days from date of approval (for new companies) • 60 days for existing company changing name
Extension of Reservation	Under Rule 9A: <ul style="list-style-type: none"> • Extend by 20 days (₹1,000) • Further 20 days (₹2,000) → Total 60 days OR • direct 40-day extension (₹3,000)
Cancellation of Reserved Name	If applied using wrong/false info: <ul style="list-style-type: none"> • Before incorporation – Name cancelled, penalty up to ₹1 lakh • After incorporation – Registrar may: <ul style="list-style-type: none"> • Direct name change in 3 months (Ordinary Resolution) • Strike off company • Petition for winding up
Important Note	Registrar must ensure name is not prohibited under Emblems and Names (Prevention of Improper Use) Act, 1950

4.2 APPLICATION FOR RESERVING NAME FOR PROPOSED COMPANY [SUB-SECTION 4]

4 (1) (b)	Situation clause OR Registered Office or	<p>Situation clause is important for –</p> <p>Legal Domicile – Helps determine jurisdiction for compliance (ROC, RD), judicial (NCLT, High Court), and fiscal (taxation) matters.</p> <p>The State in which the registered office of the company is to be situated</p> <p>Shall have an RO in 30 days of INC</p> <p>Statutory books are generally kept here.</p> <p>Public companies must hold general meetings at the registered office or in the same city.</p> <p>Acts as the official address for receiving all notices and communications.</p>
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4 (1) (c)	Object Clause	<p>The objects for which the company is proposed to be incorporated, and any matter considered necessary in furtherance thereof.</p> <p>Main object Ancillary or Incidental Objects</p>
4 (1) (d)	Liability clause	<p>The liability of members of the company , whether limited or unlimited, and also state,—</p> <p>Limited by shares – Liability of its members is limited to the amount unpaid, if any, on the shares held by them</p> <p>Limited by guarantee – The amount up to which each member undertakes to contribute –</p> <p>To the assets of the company in the event of its being wound–up while he is a member or Within one year after he ceases to be a member</p> <p>for Debt and liabilities of the company or contracted before he ceases to be a member, as the case may be; and</p> <p>To the costs, charges and expenses of winding–up and for adjustment of the rights of the contributories themselves</p>
4 (1) (b)	Situation clause OR Registered Office or	<p>Situation clause is important for –</p> <p>Legal Domicile – Helps determine jurisdiction for compliance (ROC, RD), judicial (NCLT, High Court), and fiscal (taxation) matters.</p> <p>The State in which the registered office of the company is to be situated</p> <p>Shall have an RO in 30 days of INC</p> <p>Statutory books are generally kept here.</p> <p>Public companies must hold general meetings at the registered office or in the same city.</p> <p>Acts as the official address for receiving all notices and communications.</p>

Note: Those shareholders who are members of the company at the time of its winding-up are included in list 'A'. They are primarily liable for making payment to the company at the time of its winding-up. While list 'B' consists of those persons who were the members of the company during the 12 months preceding the date of winding-up. B list contributories are liable to contribute if the amount realised from the contributories of list 'A' is not sufficient to discharge the liabilities of the company.

Example - Modern Furniture limited, a company limited by shares having share capital divided into shares with face value of Rs. 10 each, out of which Rs. 8 is called up. Mr. Singh who is having 200 share paid all Rs. 8 on each of share he hold, while Ms. Sarla owning 100 shares paid Rs. 10 (Rupee 2 in advance); whereas Mr. Sanju owning 250 shares paid Rs. 6 per share (Rs. 2 in arrear per share). Liability of Mr. Singh, Ms. Sarla, and Mr. Sanju shall be maximum upto Rs. 400, Nil, and Rs. 1000 only; respectively.

4 (1) (e) (i)	Capital Clause	<ul style="list-style-type: none"> ● Amount of authorized or nominal capital divided into share of fixed amounts and <ul style="list-style-type: none"> ○ On face value ○ The number of shares with the subscribers to the memorandum have agreed to take, indicated opposite their names, which shall not be less than one share <p>A company not having share capital need not have this clause.</p>
4 (1) (e) (ii)	Subscription or Association Clause	<ul style="list-style-type: none"> ● The detail of the subscribers to be formed into a company. ● The Memorandum shall conclude with the association clause. ● Every subscriber to the Memorandum shall take at least one share, and shall write against his name, the number of shares taken by him. <p>In the case of a company having a share capital.</p>
4 (1) (f)	Nominat on clause (OPC)	<ul style="list-style-type: none"> ● In the case of OPC, the name of the person who, in the event of death of the subscriber, Shall become the member of the company.

4.3 FORMS AND SCHEDULE RELATED TO MEMORANDUM [Sub-Section 6]

- Table A – Company limited by shares.
- Table B – Company limited by guarantee and not having a share capital.
- Table C – Company limited by guarantee and having a share capital.
- Table D – Unlimited company not having a share capital
- Table E – Unlimited company and having share capital.

Forms for Memorandum

- Table A - L - S
- Table B - L - G
- Table C - L - BOTH
- Table D - UL
- Table E - UL + SC

Some other important points related to MOA :

- It must be printed, divided into paragraphs, numbered consecutively, and Signed by at least:
 - 7 persons in case of a public company
 - 2 in the case of a private company
 - 1 in the case of One Person Company
- In the presence of at least one witness, who will attest the signatures.
- The particulars about the signatories to the memorandum as well as the witness, as to their address, description, occupation etc., must also be entered.
- As per section 399 of the Act, a memorandum is a public document. Consequently, every person entering into a contract with the company is presumed to have the knowledge of the conditions contained therein.
- As per section 4 (7), any provision in the memorandum or articles, in the case of a company limited by guarantee and not having a share capital, shall not give any person a right to participate in the divisible profits of the company otherwise than as a member. If the contrary is done, it shall be void.

5. Section 5 – ARTICLES OF ASSOCIATION – AOA**Statutory definition:**

As originally framed or altered from + + + under the act or any previous law/Act.

- Articles of association of a company contain internal rules and regulations of the company.
- It is complementary to Memorandum and together give effect as a charter of the company.
- Article establishes a contract between the company and the members and between the members inter se.
- The bye-laws of the company according to which director and other officers are required to perform their functions as regards the management of the company / accounts and audit.
- This contract governs the ordinary rights and obligations incidental to membership in the company Contents And Matters To Be Included [Sub-Section 1 And 2] – However, a company may also include such additional matters in its articles as may be considered necessary for its management.

5.1 PROVISION FOR ENTRENCHMENT [Sub-SECTION 3 TO 5]

Why ? – Usually an article of association may be altered by passing special resolution but entrenchment makes it more difficult to change the articles, in manner specified ahead;

S. No.	Clause	Description
1	Contains regulations	The Rules and regulations for internal management of the company.
2	Inclusion of matters	A company may also include such additional matters in its articles as may be considered necessary for its management.
3	Entrenchment provision (सखती)	To protect something or to have extra additional safeguards – Certain specified provisions can be altered to make them more restrictive and tough to override. Manner of inclusion of the entrenchment provision [Sub-section 4] <ul style="list-style-type: none"> At the time of formation By amendment – Through consent of all in Private and SR in case of Public company.
4	Notice to the registrar of the entrenchment provision [Sub-section 5]	Shall give notice to ROC for such provision in – <ul style="list-style-type: none"> SPICe + INC-32 along with the fees at the time of incorporation or In case of existing companies in form no. MGT-14 within 30 days from the date of entrenchment of the articles, along with the fee

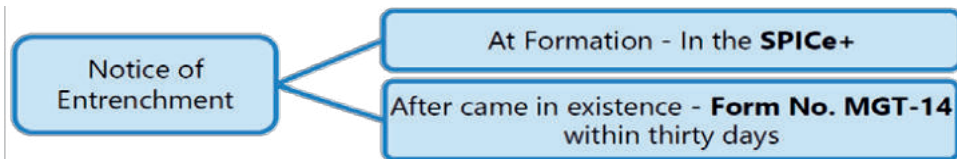
Note : Entrenchment is the chronic or deep-rooted fact of an attitude, habit, or belief that is firmly established or accustomed, therefore it becomes difficult or unlikely to change.

To illustrate – Men don't cry

Entrenchment may be possible for processes, as well as procedures in both ways; that processes are so well established, it becomes difficult to change them or make process of change so rigid that process become well established.

Students, here we are studying the word entrenchment with the sense of making the process of alteration in articles more difficult, in order to enhance the protection.

5.2 SUMMARY OF SECTION 5(5) AND RULE 10 :



5.3 MODEL FORMS OF ARTICLES [Sub-Section 6 TO 8] :

- Table F - Company limited by shares.
- Table G - Company limited by guarantee and having a share capital.
- Table H - Company limited by guarantee and not having a share capital.
- Table I - Unlimited company and having share capital.
- Table J - Unlimited company and having no share capital.

Forms for Articles

- Table F - L - S
- Table G - L - BOTH
- Table H - L - G
- Table I - UL + SC
- Table J - UL - SC

Example: Question & Answer

Question:

Highlight differences between the MOA and AOA

Answer: *The key differences between the MOA and AOA includes;*

1. **Content:** *The memorandum contains the fundamental conditions as basis of incorporation. It lays down the parameters that define relation of company with outsiders. The Articles contain internal regulations of the company; hence regulate the relationship between company and the members and members inter se.*

- 2. Supremacy: Memorandum cannot include any clause that is contrary to the provisions of the law, whereas the articles shall be subordinate to both the law and memorandum. Therefore, in case on conflict among the two, the MOA shall prevail.**
- 3. Scope: Memorandum lays down the scope beyond which the activities of the company cannot go. An act done by a company beyond the scope of the memorandum are ultra vires and void. They cannot be ratified even by all the shareholders. Articles provide for regulations inside scope established by MOA, hence acts beyond the articles can be ratified by the shareholders provided the relevant provisions are not beyond the memorandum.**

1. In case of a private company, the provisions for entrenchment may be made at the time of formation of the company or by amendment of articles, (April 22)(1 Mark)

- a. By passing a special resolution
- b. With the consent of all the members
- c. By passing a special resolution and approval of the Central Government
- d. With the consent of all the members and approval of the Central Government

2. Entrenchment enhance the protection. Modern Furniture Limited, an existing private company willing to insert the provisions for entrenchment; it

- a. Can amend the article by passing an ordinary resolution
- b. Can amend the article by passing a special resolution
- c. Can amend the article agreed by all the members
- d. Can't amend article to made the provisions for entrenchment

6. DIFFERENCE BETWEEN MOA AND AOA

Basis	MOA	AOA
Objectives	Defines and delimits the objectives of the company.	Lays down the rules and regulations for the internal management of the company. Articles determine how the objectives of the company are to be achieved.
Relationship	Company ----->> outside world	Company ----->> its members
Alteration	Can be altered only under certain circumstances and in the manner provided for in the Act. In most cases permission of the Regional Director, or the Tribunal is required.	The articles can be altered simply by passing a special resolution
Ultra Vires	Acts done by the company beyond the scope of the MOA are ultra-vires and void. These cannot be ratified even by the unanimous (100%) consent of all the shareholders.	The acts ultra-vires the articles can be ratified by a special resolution of the shareholders, provided they are not beyond the provisions of the memorandum.

7. Section 6 - ACT TO OVERRIDE MEMORANDUM, ARTICLES, ETC.

- The provisions of this Act shall have overriding effect to the provisions contained in;
 - A. MOA
 - B. AOA
 - C. Any agreement executed by it
 - D. Any resolution passed by the company in GM or by its BOD.
- Whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act
- Any provision contained in the memorandum, articles, agreement or resolution, to the extent in conflict to the provisions of the Act; shall be void.

Example: Section 123 declares that no dividend shall be paid by a company except out of profits. The force of this section cannot be undone by any provision in the articles of association, because the articles cannot sanction something which is forbidden by the Act. Even still it attempts then shall be void.

Note: This section starts with saving clause i.e. "Save as otherwise ...", means if any other section of the Act says that provisions contained in the memorandum, articles, agreement or resolution is superior then we will treat it accordingly.

Example: Section 47 of the Act deals with voting power of members. A notification dated 5th June, 2015 says that section 47 is applicable to a private company subject to its Article of Association (AOA). Now if AOA of a private company says that section 47 is not applicable to it then, in this case AOA will become superior and section 47 of the Act will not be applicable.

8. Section 10 - EFFECT OF MEMORANDUM AND ARTICLES

It aims to impart contractual force to the Memorandum and Articles.

It provides, when the memorandum and articles got registered it shall bind the :

- A. Members to the company;
- B. Company to the members;
- C. Members to the members;

To observe all the provisions of the memorandum and of the articles, as signatory thereof.

Example : (Member to the Company)

The articles of association of the Steel Bros & Co Ltd contained clauses to the effect that on the bankruptcy of a member his shares would be sold to a person and at a price fixed by the directors. Borland, a shareholder, was adjudicated bankrupt. His trustee in bankruptcy claimed that he (Borland) was not bound by these provisions and should be at liberty to sell the shares at their true value. But it was held that contracts contained in the articles of association is one of the original incidents of the shares. Shares having been purchased on those terms and conditions, it is impossible to say that those terms and conditions are not to be observed.²⁴

Example : (Company to the Member)

The articles of the Odessa Waterworks Co provided that "the directors may, with the sanction of the company at general meeting, declare a dividend to be paid to the members". Instead of paying the dividend in cash to the shareholders a resolution was passed to give them debenture bonds. In an action by Mr. Wood, a member to restrain the directors from acting on the resolution, it was held that "The question is whether that which is proposed to be done in the present case is in accordance with the articles of association of the company. Those articles provide that the directors may, with the sanction of a general meeting, declare a dividend to be paid to shareholders. Prima facie that means to be paid in cash. The debenture bonds proposed to be issued are not a payment in cash

Example : (Member to the Member)

Mr. Rayfield was a shareholder in a company. Clause 11 of the articles of company required him to inform the directors of his intention to transfer his shares in the company and which provided that the directors will take the said shares equally between them at a fair value. In accordance with this provision the Mr. Rayfield so notified the directors (who are members as well), who contended that they were not bound to take and pay for the shares. They said, articles could not impose such an obligation upon them in their capacity as directors. Their argument was set aside by the court by treating those directors as members. Accordingly, the directors (being members) were compelled to take Mr. Rayfield's shares at a fair value.

Note : *Articles bind the members to the company and the company to the members. But neither of them is bound to an outsider to give effect to the articles. "No Article can constitute a contract between the company and a third person."*

Example : *The articles of association of a company, La Trinidad contained a clause to the effect that Browne should be a director and should not be removable till after 1888. He was, however, removed earlier and had brought an action to restrain the company from excluding him. It was held that there was no contract between Browne and the company. No outsider can enforce articles against the Company even if they purport to give him certain rights.*

Further sub-section 2 to section 10 provides, all monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

Example : *A company can recover calls in arrear from a member as forcefully as it is recovering loan due.*

1. In case of conflict in the provisions contained in the Memorandum or Articles of Association of a company and the provisions of the Companies Act: -
 - a. The provisions of Companies Act shall prevail notwithstanding anything to the contrary contained in the Memorandum or Articles of the company.
 - b. The provisions contained in the Memorandum or Articles of company shall prevail notwithstanding anything to the contrary contained in the Companies Act.
 - c. The provision which is more beneficial to the company shall prevail.
 - d. The provision which is approved by Central Government shall prevail.
2. The Memorandum and Articles shall, when registered, bind to the same extent as if they, respectively, had been signed by each of them and contained covenants on its and his part to observe all the provisions of the Memorandum and of the Articles.
 - a. The company, the members and all other persons
 - b. The company, the promoters and the directors
 - c. The company and the members
 - d. The company and the directors

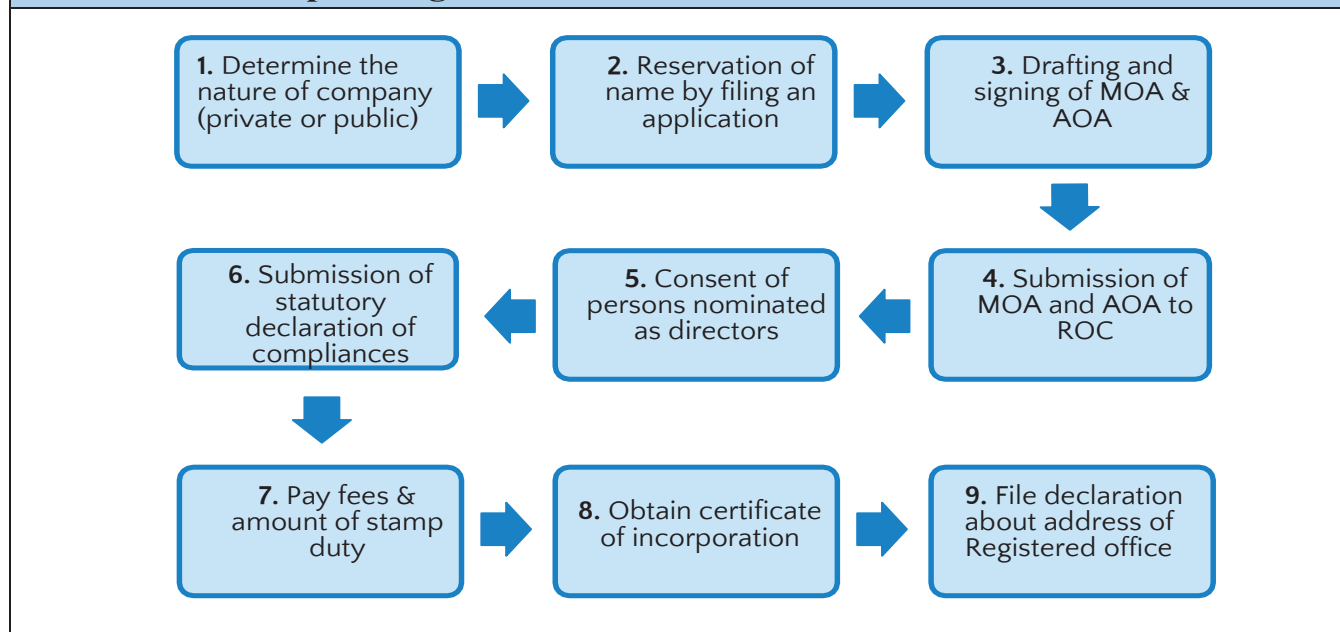
9. Section 7 - INCORPORATION OF COMPANY

For incorporating a company you need to apply to -

The hierarchy is given below:

Level	Authority	Function/Role
Ministry of Corporate Affairs	Headed by the Minister of Corporate Affairs	Apex body for corporate regulation in India
Secretary, MCA	Senior-most officer in MCA	Policy formulation and overall administration
Director General of Corporate Affairs (DGCoA)	Supervisory role over RD & ROC	Coordinates and supervises RDs and ROCs
Regional Directors (RD)	There are 7 RDs across India	Supervisory control over multiple ROCs in their region; handles specific approvals
Registrars of Companies (ROC)	Around 25 ROCs across various states	Direct interface for company registration, filings, and compliance monitoring

Process for Incorporating is as follows :



Note: Now, it is also required to submit a declaration that all the subscribers have paid the value of shares agreed to be taken by him apart from filling of verification of the registered office before the commencement of business.

STEPS TO FOLLOW FOR INCORPORATING A COMPANY (SEC.7)

Application in INC 32

- Part A - Reservation of Name (Can propose 2 names)
 - Reserved name will be valid for 20 days
 - For old companies - RUN (valid for 60 days)
 - Extension - Max 60 including original 20 days
 1. First 20 days - Rs. 1000
 2. Second 20 days - Rs. 2000 or 40 days - Rs. 3000

- Part B - All the other information

Documents

- E-MOA & E-AOA - INC 33 and INC 34
- Declarations by Professional - INC 8
- Declaration by SUBSCRIBERS and DIR - INC 9
- Director's Interest and consent - DIR 12 and 2
- Filing of RO Address INC 22 (Verification in 30 days)
- ROC scrutinizes issues COI (Central Registrar) in INC 11 (PAN /CIN)

- An application for registration of a company shall be filed, with the Registrar
- Within whose jurisdiction the registered office of the company is proposed to be situated,
- In SPICe+(Simplified Proforma for Incorporating company Electronically Plus: INC- 32)
- Along with the fee as provided under the Companies (Registration offices and fees) Rules, 2014
- Accompanied by following documents and information;

SPICe+ is an integrated Web form offering 10 services by 3 Central Govt. Ministries & Departments.

- Ministry of Corporate Affairs,
- Ministry of Labour &
- Department of Revenue in the Ministry of Finance
- thereby saving as many procedures, time and cost for starting a business in India. SPICe+ is initiatives towards Ease of Doing Business.

9.1 LIST OF DOCUMENTS TO BE FILED WITH THE REGISTRAR :

1. **MOA/AOA – Shall be duly signed by subscribers.**
2. **Declaration –**
 - a) Signed by – CA/Cost Accountant/Advocate/CS in practice and Director/Manager/Secretary as per articles.
 - b) By every subscriber & 1st directors that:
 - i. Not been convicted for promotion & related activities.
 - ii. Has not been found guilty of fraud in 5 years.
 - iii. All doc with ROC are correct and complete.
3. **Address for correspondence – Till the RO is established.**
4. **Particulars of 1st director:**
POI, Full name, Surname, Family name, Resi. Address, DIN, nationality etc.
5. **Interest held by directors** in other firms and body corporate & consent (DIR-2) with DIR-12 to act as director.
6. **Particulars of Subscribers** (Refer the detailed table)

9.2 MANNER PRESCRIBED UNDER RULE 13 OF THE COMPANIES (INCORPORATION) RULES, 2014:

S.No.	Situation	Requirement
1.	Individual (Literate)	Must sign in presence of at least one witness who shall also sign and mention name, address, description, occupation.

2.	Individual (Illiterate)	<ul style="list-style-type: none"> Affix thumb impression/mark. Scribe must write name & shares taken, sign, and state subscriber's identity.
3.	Body Corporate	MoA & AoA signed by a director/officer/employee authorized by a Board Resolution.
4.	Limited Liability Partnership (LLP)	MoA & AoA signed by a partner authorized by a resolution approved by all partners.
5.	Foreign National (Outside India)	<ul style="list-style-type: none"> Signature & address must be notarized by a Notary Public. If outside Commonwealth/Hague Convention countries, authentication by Consular Officer required.
6.	Foreign National (Visited India)	<ul style="list-style-type: none"> Intended to incorporate a company in India, Allowed if holding valid Business Visa. If PIO (Person of Indian Origin) / OCI (Overseas Citizen of India), Business Visa not required.

Note: In either case c or d stated above, the person so authorized shall not, at the same time, be a subscriber to the memorandum and articles of Association.

PRACTICAL INSIGHT / ILLUSTRATION

Extracts from Memorandum of Association of XYZ Limited (Corporate Identification Number: L85XXXKA1981PLC01XX15)

We the several persons whose names and addresses are subscribed below are desirous of being formed into a Company in pursuance of this Memorandum of Association and we respectively agree to take the number of shares in the Capital of the Company set opposite to our respective names.

Signature, Name, Address, description and occupation of Subscribers	Number of Equity Shares taken by Subscriber	Signature, Name, Address, description and occupation of Witness
Nagavara Ramarao Narayana Murthy (Son of Nagavara Ramarao) Flat 6, Padmanabhan Apartment, 1126/2,	1 (One equity)	VIPUL DEVENDRA KINKHABWALA (S/o. Devendra Vithaldas Kinkhabwala) 14, Thakurdwar


Shivajinagar, Pune - 411 016 Consultant		Road, Zaveri Building, Bombay - 400 002.
Nadathur Srinivasa Raghavan (Son of N. Sarangapani) 5, "Ravikripa", Station Road, Matunga (C. R.), Bombay- 400019. Consultant	1 (One equity)	Service
Senapathy Gopalakrishnan (Son of P. G. Senapathy) Krishna Vihar, Kalapalayam Lane, Pathenchathai, Trivandrum - 695 001. Consultant	1 (One equity)	
Nandan Mohan Nilekani (Son of M. R. Nilekani) 37, Saraswatpuri, Dharwar - 580 002. KARNATAKA Consultant	1 (One equity)	
	4 (Four equity)	

Dated this 15th day of June 1981. Amended on August 23, 2018

9.3 DETAILED PROCESS WITH THE REQUIRED DOCUMENTS FOR INCORPORATION IS LISTED BELOW :

Declaration of Compliance	<ul style="list-style-type: none"> ● A declaration in Form INC-8 shall be filed by: <ul style="list-style-type: none"> ○ An advocate, a chartered accountant, cost accountant or company secretary in practice who is engaged in the formation of the company; and ○ A person named in the articles as director, manager or secretary of the company. ● This declaration confirms that all the requirements of the Act and rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with.
Declaration by Subscribers and First Directors	<ul style="list-style-type: none"> ● Each subscriber to the memorandum and each person named as first director (if any) shall file Form INC-9, declaring that <ul style="list-style-type: none"> ○ All documents filed with the Registrar are correct, complete, and true to the best of his knowledge and belief; ○ He is not convicted of any offence related to promotion, formation or management of a company; and ○ He has not been found guilty of fraud or breach of duty during the last five years.

Address for Correspondence	<ul style="list-style-type: none"> ● The address for correspondence must be provided till the company establishes its registered office.
Details of First Directors (Form DIR-12)	<ul style="list-style-type: none"> ● The particulars of each first director named in the articles shall include: <ul style="list-style-type: none"> ○ Full name (including surname or family name), ○ DIN, ○ residential address, ○ nationality and ○ other relevant particulars ○ Proof of identity ● His interest in other firms or bodies corporate ● Consent to act as director in Form DIR-2
Particulars of Subscribers	<p>For every subscriber to the memorandum, the following shall be filed</p> <ul style="list-style-type: none"> ○ Name (with surname/family name) and ○ recent photograph ○ Parent's name, date and place of birth, ○ educational qualification and occupation ○ PAN, Email ID, Phone number ○ Permanent and present residential address with proof (e.g., electricity bill, bank statement – not older than 2 months) ○ Proof of identity (Voter ID, Passport, DL, Aadhaar for Indian nationals; Passport for foreign nationals) ○ If already a director/promoter in another company, details of company name, CIN, and nature of interest
Where Subscriber is a Body Corporate	<p>Details to be filed include:</p> <ul style="list-style-type: none"> ○ Name of body corporate, CIN or Registration No., GLN (if any), ○ principal place of business, ○ email ID ○ Certified true copy of Board resolution authorizing subscription to MOA ○ For LLPs, certified resolution approved by all partners authorizing subscription ○ For foreign body corporates, copy of COI and RO address

Special Approvals (Rule 12)	<ul style="list-style-type: none"> Where any object of the proposed company requires registration or approval from regulators like RBI, SEBI, etc., such approval must be obtained before pursuing such object. A declaration to this effect shall be submitted at incorporation.
Nidhi Company	<ul style="list-style-type: none"> If incorporating as a Nidhi, a declaration by the Central Government under Section 406 must be obtained before business commencement. A declaration in this regard must be submitted at incorporation.
Certificate of Incorporation (Form INC-11)	<ul style="list-style-type: none"> The Registrar shall, upon verification of documents and information, register them and issue a certificate of incorporation in Form INC-11, stating that the company is incorporated. It shall also mention the PAN of the company if allotted by the Income Tax Department.
 <p>The image shows a sample Certificate of Incorporation (Form INC-11) issued by the Registrar of Companies, Delhi. The certificate is framed with a decorative border and contains the following text:</p> <p>GOVERNMENT OF INDIA MINISTRY OF CORPORATE AFFAIRS Registrar of Companies, Delhi 4th Floor, IFCI Tower, 61, Nehru Place</p> <p>Certificate of Incorporation [Pursuant to sub-section (2) of section 7 of the Companies Act, 2013 and rule 8 of the Companies (Incorporation) Rules, 2014]</p> <p>I hereby certify that DARPAN TECHNOLOGIES PRIVATE LIMITED is incorporated on this Eleventh day of December Two Thousand Fifteen under the Companies Act, 2013 and that the company is limited by shares.</p> <p>The CIN of the company is: U72900DL2015PTC286378.</p> <p>Given under my hand at Delhi this Eleventh day of December Two Thousand Fifteen.</p> <p>Attn: Pratyaksh Assistant Registrar of Companies Delhi</p> <p>Mailing Address as per record available in Registrar of Companies office: DARPAN TECHNOLOGIES PRIVATE LIMITED 1-229, Jaiipur Extn., Part-1, Badliapur, NEW DELHI - 110044, Delhi, INDIA</p>	
Corporate Identity Number (CIN)	<ul style="list-style-type: none"> Upon incorporation, the Registrar shall allot a CIN, a 21-digit unique identity number which shall be included in the certificate of incorporation and will serve as the company's distinct identity.

CIN of Infosys Limited is L85110KA1981PLC013115

The first character - **L** (reveals listing status, L for listed and U for unlisted, for instance Infosys is Listed one)

The next five digits - **85110**

The next two letters - **KA** (reveals the Indian state where the company is registered, for instance KA is for Karnataka)

The next four digits - **1981** (reveals the year of incorporation of a company)

The next three characters - **PLC** (reveals the company classification - PLC for public, PTC for private, FTC for foreign, and GOI for government)

The last six digits - **013115** (reveals registration number with concerned ROC)

Maintenance of Documents	<ul style="list-style-type: none"> ● The company shall maintain and preserve copies of all documents and information filed at the time of incorporation ● at its registered office till its dissolution.
Furnishing of False or Incorrect Information (Pre-INC)	<ul style="list-style-type: none"> ● If any person furnishes false/incorrect particulars or suppresses material facts ● during incorporation, ● he shall be liable under Section 447 for action related to fraud.
False Information Discovered (Post-INC)	<ul style="list-style-type: none"> ● If at any time post incorporation it is found that: ● Company was incorporated through false information or suppression of facts or ● Any fraudulent action was involved, then ● promoters, first directors and declarants ● shall be liable under Section 447.
Order of Tribunal (NCLT)	<ul style="list-style-type: none"> ● Upon being satisfied and ● after giving the company a reasonable opportunity of being heard, (OoBH) ● the NCLT may pass any order it deems fit including: <ul style="list-style-type: none"> ○ Regulation of company management (MOA/AOA) ○ Making members' liability unlimited ○ Removal of company name from register ○ Winding up the company ● The Tribunal shall also consider the transactions and liabilities contracted by the company before passing such order.

Certificate of Incorporation is not a Conclusive Evidence

Example: *The Certificate of incorporation is not the conclusive proof with respect to the legality of the objects of the company mentioned in the objects clause of the memorandum of association. As such, if a company has been registered whose objects are illegal, the incorporation does not validate the illegal objects. In such a case, the only remedy available is to wind up the company.*

1. In case of an application for reservation of name or for change of its name by an existing company, the Registrar may reserve the name for a period of from the date of approval
 - a. 90 days
 - b. 60 days
 - c. 30 days
 - d. 20 days
2. A and B made a name reservation application accompanied by requisite fee to the Registrar for forming a new Private Company. The Registrar accorded its approval for reservation of most preferred name on 3rd March, 2020. By which date necessary documents for incorporation of the company must be submitted to the Registrar so that the reserved name does not get lapsed?
 - a. Latest by 30th March, 2020
 - b. Latest by 24th March, 2020
 - c. Latest by 2nd May, 2020
 - d. Latest by 1st June, 2020

10. Section 8 - FORMATION OF COMPANIES WITH CHARITABLE OBJECTS, ETC. :

Section 8 are formed to:

- Promote the **charitable objects** of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.
- Such company **intends to apply its profit in**
- **Promoting** its objects and
- **Prohibiting** the payment of **any dividend to its members.**

Example: *Prem Foundation (CIN U85191MH2014NPL253514) and Azim Lalji Foundation (CIN U93980KA2001NPL028740). Students are advised to take note that 5th data section of both the CIN comprises of 'NPL', which signify Not-for-Profit License Company.*

Such companies are licensed by Central Government under section 8 of the Companies Act, 2013, relevant provisions of section 8 and applicable rules thereto are described below.*

Note :

- *OPC is prohibited to be incorporated or converted into a company under section 8.*
- *Likewise, as per section 2(85), a small company cannot be incorporated or converted into a section 8 company.*
- *A firm may be a member of the company registered under section 8.*
- *Despite, members' liability is limited, the words 'Limited' or 'Private Limited' shall not be added to its name.*
- *But on registration, the company shall enjoy the same privileges and obligations as of a limited company.*
- *Licence issued may on such conditions as Central Government (ROC) deems fit.*

10.1 ADDITIONAL DOCUMENT ALONG WITH APPLICATION UNDER INC-32 IN SPICE+ :

The application furnished as specified above shall be accompanied by the following documents:

For Incorporation of Section 8 Company	
Memorandum & Articles of Association	Drafted in conformity with Section 8 and applicable rules in INC-13
Declaration by a Professional	Advocate / CA / CS / CMA in practice declaring MOA & AOA conform to Section 8 and all legal requirements are fulfilled in INC-14
Estimate of Income & Expenditure	An estimate or Projected for next 3 years and sources of income & objects of expenditure.
Declaration by Applicants	Declaration from each person making the application in INC-15
For Alteration of MOA & AOA	
Prior Permission for Alteration	<ul style="list-style-type: none"> ● MOA – Approval from Regional Director (RD) ● AOA – Approval from Registrar of Companies (ROC)
For Conversion into Any Other Kind of Company	
Special Resolution	Passed in a general meeting approving conversion with explanatory statement stating reasons.
Application to RD (Form INC-18)	With fee, copy of SR, explanatory statement, and notice.

Notices to Authorities	Proof of service to: <ul style="list-style-type: none"> • Chief Commissioner & ITO • Charity Commissioner • Chief Secretary of the State • Relevant Departments under whom Co. operates
Public Notice (Form INC-19)	Publish in: <ul style="list-style-type: none"> • One vernacular newspaper • One English newspaper • Company's website (if any)
Filing Status	All financials, annual returns, and statutory filings should be up-to-date.
Hearing & Approval by RD	RD to grant approval after giving opportunity of being heard; may impose conditions.
Post-Approval Action	<ul style="list-style-type: none"> • Call GM to amend MOA & AOA • File updated docs with ROC along with • declaration to comply with RD conditions
Fresh Certificate of Incorporation	Issued by Registrar upon registration of updated MOA & AOA.

11. Section 9 - EFFECT OF REGISTRATION

From the date of incorporation :

(mentioned in the certificate of incorporation),

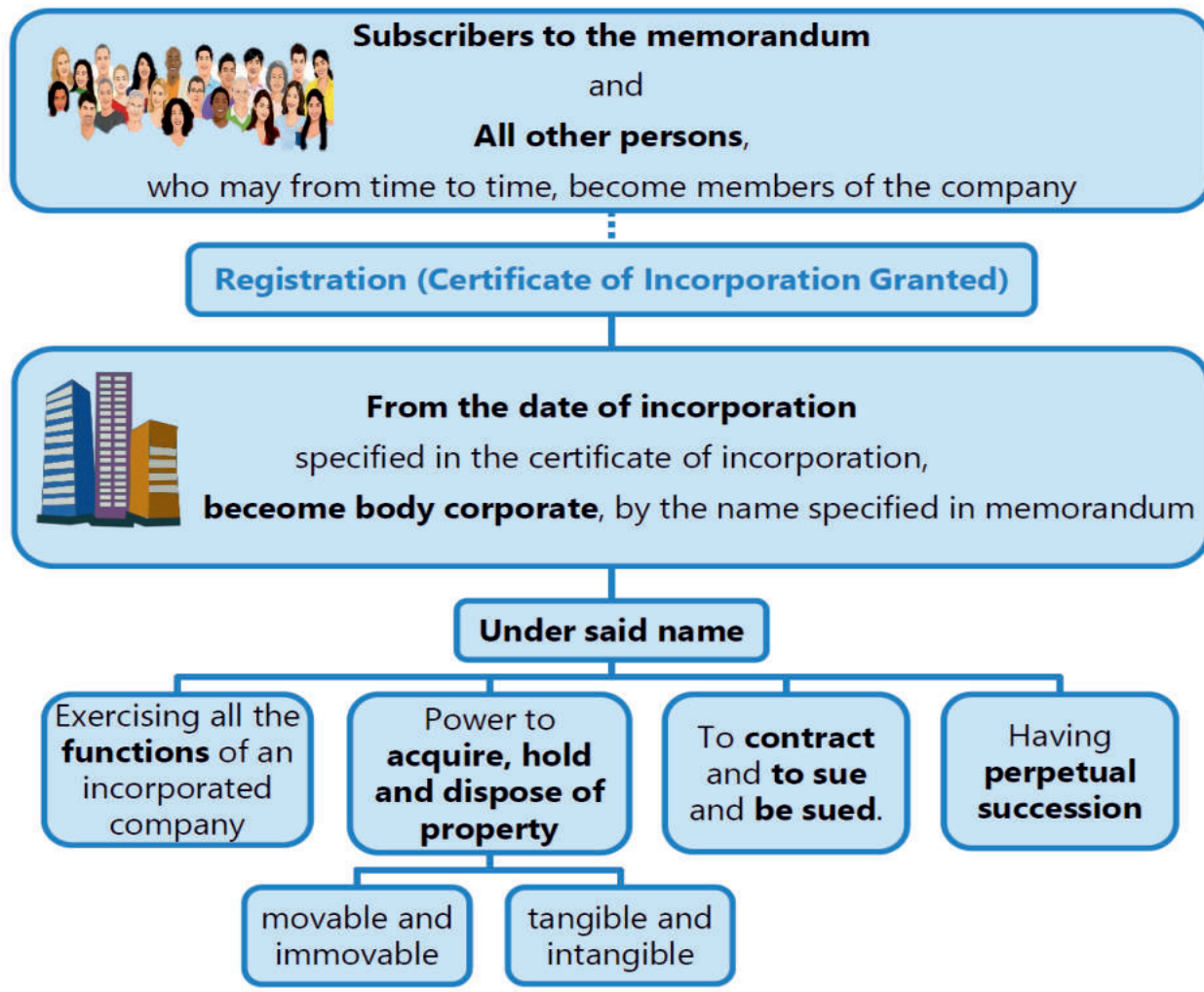
SUBSCRIBERS ----->> MEMBERS OF THE COMPANY

COMPANY ----->> BODY CORPORATE

Thereafter such body corporate, by the said name, shall be capable of:

- Perpetual succession**
- Power to contract**
- Can sue and be sued**
- Date in COI = Date of Incorporation**
- Power to acquire property**
- Name mentioned in the memorandum**
- Common seal**
- Capacity to function as a BC**

SUMMARY OF SECTION 9



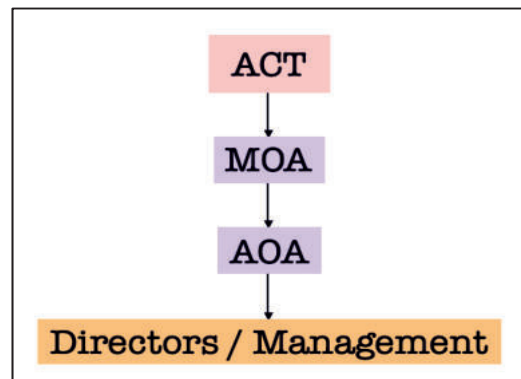
12. DOCTRINE OF ULTRA VIRES

- Doctrine = Theory
- Ultra = Beyond
- Vires = Power

Meaning :

Any act(s) done BEYOND THE POWERS or in excess of the legal powers of the company.

WHY Something like this needs to be discussed ? Because - The powers in their nature are limited. The objects of a company in its memorandum can be departed from only to the extent permitted by the Act, thus far and no further.

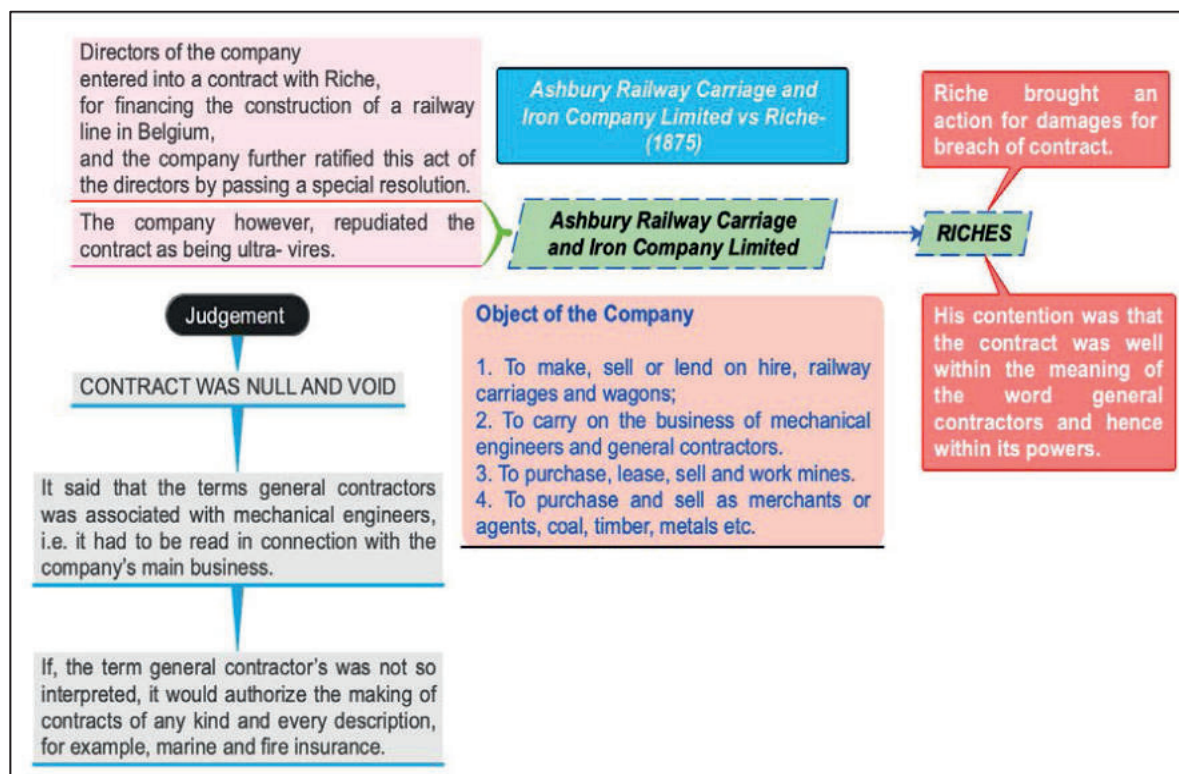


12.1 CONSEQUENCES OR IMPACT OF ULTRA VIRES ACTS :

Acts or contracts → Beyond the powers of not only of the directors but → company also

- ❖ **Void-ab-initio** and **Inoperative** in law and
- ❖ **Not binding** on the company.
- ❖ Can't **MISAPPLY** the **funds** for purposes **other than** those **sanctioned** by the MOA. If done then directors are personally liable.
- ❖ Can't carry on a **trade different** from the one it is **authorised** to carry on.
- ❖ A company can neither be **sued** on an ultra vires transaction, **nor can it sue on it.**

Ashbury Railway Carriage and Iron Co. Ltd. v. Riche.



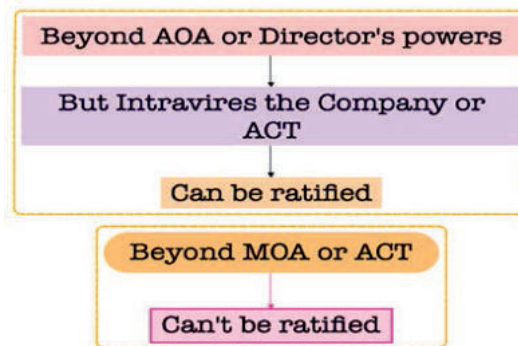
Since the memorandum is a “public document”, it is open to public inspection.

Therefore, when someone deals with a company - it is deemed (presumed) to know about the powers of the company.

If in spite of this you enter into a transaction which is ultra vires the company, **you cannot enforce it against the company.**

Specified IFSC Public Company & IFSC Private company shall state its objects to do financial services activities as permitted under the Special Economic Zones Act, 2005 read with SEZ Rules, 2006 and any matter considered necessary in furtherance thereof in accordance with license to operate, from International Financial Services Centre located in an approved multi services Special Economic Zone, granted by the RBI, SEBI, or IRDA.

12.2 RATIFICATION OF AN ULTRA VIRES ACT :



- A company can't depart away to do anything beyond or outside its objects stated in memorandum and
- if any act done beyond that will be ultra vires and void,
- The same can't be ratified even by the assent of the whole body of shareholders. (Not even by unanimous voting which is 100%)

Note:

- *Acts ultra-vires to the authority of the directors may be ratified by the company.*
- *Articles provide for regulations inside scope established by MOA, hence acts beyond (ultra-vires) the articles, can be ratified by the shareholders provided the relevant provisions are not beyond the memorandum.*

To illustrate -

One of the directors is authorised to issue a cheque of Rs. 10000, but he issued for Rs. 12000; company can ratify so.

- *It is worth noting here that Memorandum of company can be altered to widen the scope of objects, but such alteration shall have prospective effect only; not the retrospective, hence an act once ultra-vires remain so ever.*
- *A company may do anything which is incidental to and consequential upon the objects specified and such act will not be an ultra vires act.*

To illustrate -

- *For trade one have rent or own a building, issue invoices, make and receive payments.*

13. DOCTRINE OF CONSTRUCTIVE NOTICE

In the favour of company
Creates a presumption in the favour of the company

Section 399 - Since MOA and AOA is a “public document”, it is open to public inspection - For electronic check, copy, extract including COI of the company on payment of prescribed fees.

It is therefore, the duty of every person dealing with a company to inspect its documents and make sure that his contract is in conformity with their provisions.

EFFECT -

Whether a person reads them or not, **it will be presumed that he knows** the contents of the documents.

This kind of presumed/implied notice is called constructive notice.

Example: One of the articles of a Modern Furniture Limited provides that a cheque below Rs. 1 lakh may be signed by single director but if above Rs. 1 lakh shall be signed by at-least two directors. Similar instructions issued to bank with which MFL have account, as well. M/s Sagwan Wood Works, a vendor accepts a cheque of Rs. 2.20 lakh, signed only by single director. Considering Doctrine of Constructive Notice, the M/s Sagwan Wood Works (payee) has no right to claim, when cheque will be returned without payment by bank.

Ernest v Nicholls	
Main Principle	Any person dealing with a company is deemed to know the contents of its public documents (MoA & AoA).
Nature of Documents	Memorandum and Articles are public documents filed with Registrar of Companies (public office).
Legal Implication	A person is presumed to have read and understood these documents, even if they haven't.
Observation by Court	Lord Hatherley: A person is in the same position as if they had read the public documents.
Criticism	<ul style="list-style-type: none"> ● Considered unrealistic in practice. ● People interact with officers, not documents. ● Not aligned with realities of business operations.
Illustrative Problem	Outsiders cannot confirm if internal approvals (e.g., from shareholders) were obtained before officers act, though required by Articles.
Solution / Exception	Doctrine of Indoor Management (Turquand's Rule): Outsiders may assume internal approvals were obtained if officers are acting within their apparent authority.
Foreign Influence	UK's European Communities Act, 1972 (Section 9) abrogated the doctrine.
Indian Case Example	Calcutta High Court upheld a security even though it wasn't signed as per company's Articles.

14. DOCTRINE OF INDOOR MANAGEMENT

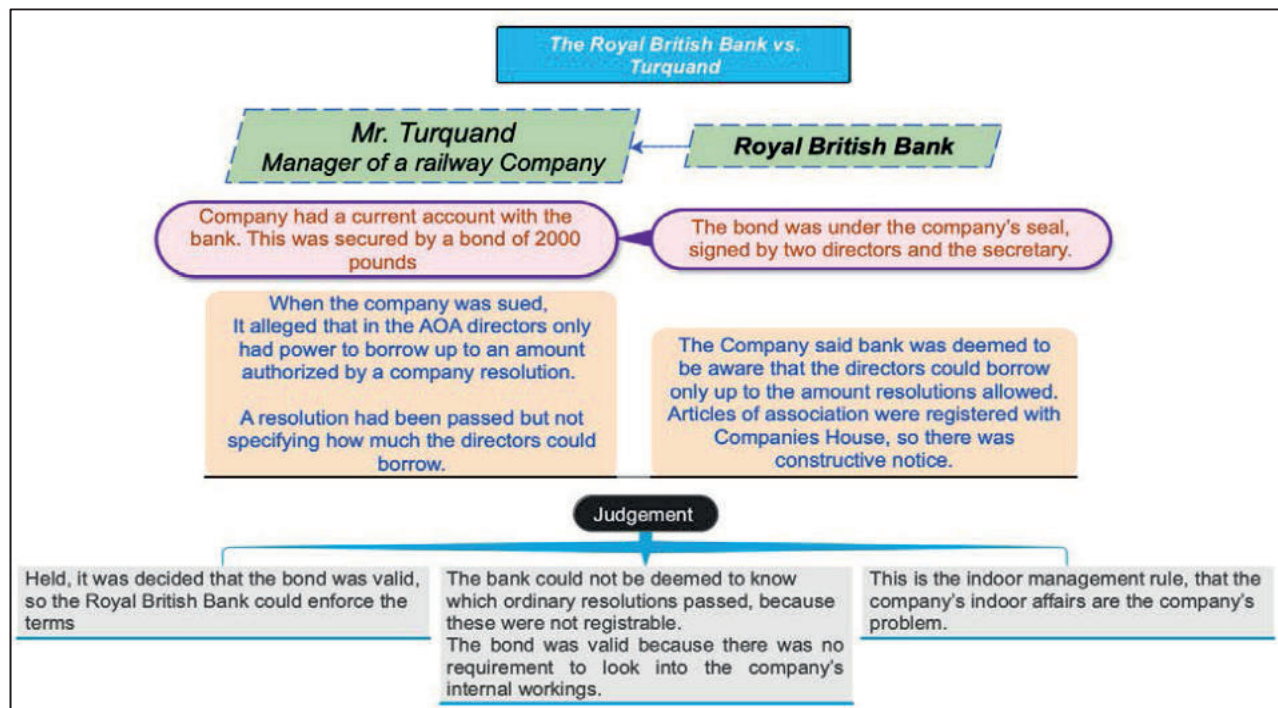
In the favour of outsiders
Creates a presumption in the favour of the outsiders

The Doctrine of Indoor Management is the exception to the doctrine of constructive notice.

- An outsiders are NOT deemed to have notice of the internal affairs of the company.
- An outsider is entitled to assume and presume that all the detailed internal formalities for doing any act have been observed and taken care of.
- What happens internally in a company is not a matter of public knowledge.
- If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

Thus doctrine protects innocent outsiders from any irregularities in company

FACTS of the Royal British Bank vs. Turquand:



Exceptions to Doctrine of Indoor Management :

Relief on the ground of 'indoor management' cannot be claimed by an outsider dealing with the company in the following circumstances;

Actual or constructive knowledge of irregularity:

The rule does not protect any person when the person dealing with the company has notice, whether actual or constructive, of the irregularity.

(आपको कमी या गलती का पहले से पता था तो आप इस Doctrine को खुदके प्रोटेक्शन के लिए use नहीं कर सकते)

Howard vs. Patent Ivory Manufacturing Co. :

- *The directors could not defend themselves where they lent money and*
- *got issued debentures to themselves without the resolution because*
- *they should have known that the extent to which they were lending money to the company required the assent of the general meeting which they had not obtained.*

Morris v Kanssen :

- *A director could not defend himself where*
 - *an allotment of shares to him*
 - *as he participated in the meeting, which made the allotment.*
- His appointment as a director also fell through because none of the directors appointed him was validly in office.*

Negligence

The doctrine in no way, rewards those who behave negligently.

(बेवकूफो के लिए कोई जगह नहीं है)

- *If with a minimum of effort,*
- *the irregularities within a company could be discovered,*
- *the benefit of the rule of indoor management would not apply.*
- *The protection of the rule is also not available where the circumstances surrounding the contract are so suspicious as to invite inquiry, and*
- *the outsider dealing with the company does not make proper inquiry.*

Anand Bihari Lal vs. Dinshaw & Co. :

- *A person accepted a transfer of a company's property from its accountant,*
- *The transfer was held void.*
- *The plaintiff could not have supposed, in absence of a power of attorney that the accountant had authority to transfer the company's property.*

Haughton & Co. v. Nothard, Lowe & Wills Ltd :

- *where a person holding directorship in two companies*
- *agreed to apply the money of one company in payment of the debt to other,*
- *the court said that it was something so unusual*
- *that the plaintiff were put upon inquiry*
- *to ascertain whether the persons making the contract*
- *had any authority in fact to make it*

Forgery :

- The rule does not apply where a person relies upon a document that turns out to be forged
- since nothing can validate forgery.
- A company can never be held bound for forgeries committed by its officers
- Where the question is in regard to the very existence of an agency.
- Where a pre-condition is required to be fulfilled before the company itself can exercise a particular power. In other words, the act done is not merely ultra vires the directors/officers but ultra vires the company itself.

Ruben v Great Fingall Consolidated. :

- *In this case the plaintiff was the transferee of a share certificate*
- *issued under the seal of the defendant's company.*
- *The company's secretary, who had affixed the seal of the company and forged the signature of the two directors, issued the certificate.*
- *The plaintiff contended that whether the signature were genuine or forged was a part of the internal management, and*
- *therefore, the company should be estopped from denying genuineness of the document.*
- *But it was held that the rule has never been extended to cover such a complete forgery.*

Example:

The doctrine of indoor management is considered to be the doctrine of constructive notice.

- Exception*
- Extension*
- Alternative*
- Not related*

Answer: a. Exception

15. DIFFERENCE BETWEEN CONSTRUCTIVE NOTICE AND INDOOR MANAGEMENT

Aspect	Constructive Notice	Indoor Management
Protection Offered To	Company – by presuming outsiders are aware of public documents	Outsiders – by allowing them to assume internal procedures are followed

Obligation on Outsiders	Must check & verify company's public documents (MOA, AOA, etc.)	Can rely on regularity of internal procedures without verifying them
Core Assumption	Outsiders know and understand all public rules of the company	Internal company actions are assumed to be done in a valid and regular manner
Primary Focus	External rules – MOA & AOA as available in public domain	Internal processes – resolutions, meetings, approvals, etc.

16. Section 13- ALTERNATION OF MEMORANDUM

16.1 PROCEDURE OF ALTERATION OF MEMORANDUM

Provision	Details
Alteration of Memorandum [Section 13(1) & 13(6)(a)]	<ul style="list-style-type: none"> Company may alter its Memorandum with SR passed by members. Such special resolution must be filed with the Registrar (ROC).
Name Change Approval Required [Section 13(2) & (3)]	<ul style="list-style-type: none"> Change in company name requires approval of CG (delegated to ROC). Application is made in Form INC-24 with prescribed fee.
Name Change No Approval Needed	<ul style="list-style-type: none"> No CG approval needed when change is limited to addition or deletion of "Private" during conversion from one class to another (e.g., Pvt. Ltd. to Ltd.).
Filing of CG Approval [Section 13(6)(b)]	<ul style="list-style-type: none"> Approval from the Central Government (ROC) must also be filed with the Registrar by the company. Special Resolution + Approval of Central Government in MGT-14 to ROC in 30 days.

<p>Effectiveness of Name Change</p> <p>[Section 13(2)]</p>	<ul style="list-style-type: none"> ● Registrar updates the ROC with the new name. ● Issues fresh Certificate of Incorporation in Form INC-25. ● Change is effective only on the issue of this certificate.
<p><i>Note: The change of name shall not be allowed to a company which has not filed annual returns or financial statements due for filing with the Registrar or which has failed to pay or repay matured deposits or debentures or interest thereon. Once the necessary documents are filled or payment or repayment made then change shall be allowed.</i></p>	
<p><i>Example: Tata Sky Limited changed its Name to Tata Play Limited (CIN U92120MH2001PLC130365).</i></p>	
<p>Note: Industrial Insight</p> <p><i>On August 24, 1910, a company was registered in India under the name Imperial Tobacco Company of India Limited. As the Company's ownership progressively Indianised, the name of the Company was changed to India Tobacco Company Limited in 1970 and then to I.T.C. Limited in 1974. In recognition of the ITC's multi- business portfolio encompassing a wide range of businesses, the full stops in the Company's name were removed effective September 18, 2001. The Company now stands rechristened 'ITC Limited,' where 'ITC' is today no longer an acronym or an initialised form.</i></p>	

Section 16 – Rectification of Name of Company	
<p>Who can initiate rectification?</p>	<ul style="list-style-type: none"> ● Central Government (powers delegated to Regional Directors under Section 458) ● Proprietor of a registered trademark under the Trade Marks Act, 1999
<p>When?</p>	<ul style="list-style-type: none"> ● If the company's original or new name is identical with or too similar to an existing company's name or registered trademark.
<p>Application Time Limit (Trademark case)</p>	<ul style="list-style-type: none"> ● Application by trademark proprietor must be made within 3 years of incorporation, registration, or name change.
<p>Direction by CG/RD</p>	<ul style="list-style-type: none"> ● The company is directed to change its name.

Time Limit to Comply	<ul style="list-style-type: none"> • The company must change its name within 3 months of such direction by passing an Ordinary Resolution.
Post-change Filing	<ul style="list-style-type: none"> • Notice of name change along with RD's order to be filed with ROC within 15 days of name change.
ROC's Role	<ul style="list-style-type: none"> • ROC makes necessary changes in Certificate of Incorporation and Memorandum.
If Company Fails to Comply	<ul style="list-style-type: none"> • The Central Government will allot a new name. • ROC enters a new name in Register and issues a fresh Certificate of Incorporation.
Further Name Change	<ul style="list-style-type: none"> • The company may subsequently change its name as per Section 13.

16.2 Section 13(8) – (11) ALTERNATION IN OBJECT CLAUSE OF THE COMPANY

Company which raised money from the public via prospectus and has unutilised funds and wants to alter the object.	
Mode of Approval	Special Resolution via Postal Ballot only
Disclosures in Postal Ballot Notice	<ul style="list-style-type: none"> • Total money received • Total money utilized • Unutilised amount • Details of proposed alteration • Justification for change • Amount to be used for new objects • Estimated financial impact • Any other relevant info • Place for inspecting resolution copy
Advertisement Requirements	<ul style="list-style-type: none"> • Simultaneous with dispatch of postal ballot notice • In 1 English + 1 Vernacular newspaper (of the registered office location) • On company's website (if any)
Exit Opportunity for Dissenting Shareholders	Promoters/controlling shareholders must provide exit in accordance with SEBI regulations

Filing & Registration	<ul style="list-style-type: none"> 📄 SR to be filed with ROC under Section 13(6)(a) 🕒 ROC shall register the change within 30 days
When Change is Effective?	Alteration takes effect only after registration with ROC under Section 13(10)
Prohibited Alteration [Section 13(11)]	If a company is limited by guarantee & no share capital, alteration giving profit-sharing right to non-members is void.

16.3 Section 13(11) ALTERNATION IN LIABILITY CLAUSE OF THE COMPANY

Mode of Approval	Special Resolution
Requirements	<ul style="list-style-type: none"> ● Copy of SR and ● Altered MOA with ROC in ● MGT 14 ● within 30 days
In case of Co limited by Guarantee and not having SC wanting to give right to other non-member in divisible profits is restricted and void	

1. Namita Ceramic Goods Limited having 152 members was incorporated with the main objects of manufacture of ceramic goods, glazed, unglazed floor and wall tiles, etc. and to carry on trading in such products. After three years of successful operation, it wants to diversify its business by entering into the field of manufacturing electronic goods for which it is required to alter its objects clause. Advise the company in relation to alteration of Memorandum.
 - a. The company can alter its Memorandum of Association by passing an ordinary resolution and obtaining the confirmation of the Regional Director (RD).
 - b. The company can alter its Memorandum of Association by passing a special resolution at the shareholders' meeting.
 - c. The company can alter its Memorandum of Association in relation to the objects clause by passing a special resolution at the shareholders' meeting and obtaining the confirmation of the Regional Director (RD).
 - d. The company can alter its Memorandum of Association in relation to the objects clause by passing a special resolution at the shareholders' meeting and simultaneously publishing the contents of the special resolution in two newspapers (one in English and the other one in vernacular language) circulating in that area.

16.4 Section 61 ALTERNATION IN CAPITAL CLAUSE OF THE COMPANY







A company limited by share capital can :-

- Increase Authorised SC
- Consolidate-divide-larger amount per share
- Convert all fully paid-up shares in stock and reconvert
- Sub divide its shares into smaller amount
- Cancel shares which have not been taken up.

Requirement :-

- Authorisation in articles
- In GM through OR
- Notice to be given to ROC within 30 days in SH7



17. Section 12 – REGISTERED OFFICE OF COMPANY

-  A **company is a separate legal entity** from its members once incorporated.
-  It must **maintain a Registered Office** after incorporation.
-  This is the **official address** to receive:
 - Legal documents,
 - Notices from the ROC,
 - Court summons/lawsuits, etc.
-  It **cannot be a P.O. Box** – must be a **physical location**.
-  Someone must be **present during normal business hours** to accept communications.
-  The Registered Office may be **different from the Head Office or Corporate Office**.

Importance of RO

To figure Domicile or nationality. and Jurisdiction of the court

Registered Office Requirements – Section 12(1) & (2)

-  **Within 30 days of incorporation:**
 - Company must have a **Registered Office**.
 - The office must be **capable of receiving and acknowledging** communications and notices.
-  **Verification to Registrar:**
 - Company must **furnish verification** of the registered office **within 30 days** of incorporation

Note: With the respected specified IFSC public & IFSC private companies, they shall have its registered office at the IFSC located in the approved multiservice SEZ set up under the SEZ Act, 2005 read with SEZ Rules, 2006.32 In case of specified IFSC public & IFSC private company word “thirty days” will be read as “sixty days”

17.1 LABELING OF COMPANY [Sub-Section 3]

Every company shall:

- Painted / affixed
- At every place of business
- Conspicuous position
- Legible letters
- In the language used locally
- Have its name engraved in legible characters on its seal

**Display of name
PA Every Position legible language**

Name is required at all the places -

- Engraved on common seal
- Business letter, billeheads, letter papers, notices, other official papers
- Negotiable instruments

























What information is required ?


















- Name, Address and CIN with
- Email, telephone number and website

If name has changed its name in last 2 years it shall show former name as well everywhere.

17.2 CHANGE IN RO- Section 12(4) to (6)

Provision	Requirement	Form + Timeline + Authority
Section 12(1) & (2)	Every company must have a RO and verification of the same	<ul style="list-style-type: none"> 🕒 Within 30 days of INC 🕒 60 days for IFSC (Pub/Pvt) 🏢 ROC

Provision	Requirement	Form + Timeline + Authority
Common for all the Situations	Notice of change in registered office after incorporation	<p> INC-22</p> <p> Within 30 days of change  ROC</p>
	Change to local limits of Same city/town/village	<p> BR in BM</p> <p> BR in INC-22</p> <p> Within 30 days of change and</p> <p> 60 days for IFSC (Pub/Pvt)  ROC</p>
Section 12(5) (Part 1)	Change outside local limits of city/town/village	<p> BR in BM</p> <p> SR in GM</p> <p> MGT-14</p> <p> Within 30 days of SR</p> <p> INC-22</p> <p> Within 30 days of change and</p> <p> 60 days for IFSC (Pub/Pvt)</p> <p> ROC</p>
Section 12(5) (Part 2)	Change from one ROC jurisdiction to another (within same state)	<p> SR in GM</p> <p> MGT-14</p> <p> Within 30 days of SR</p> <p> INC-23</p> <p> File with Regional Director</p> <p> RD</p>
	Section 12(6) (Part 1)	<p> RD to communicate confirmation of change</p> <p> Within 30 days of application receipt</p>

Provision	Requirement	Form + Timeline + Authority
		 RD to Company
	Section 12(6) <i>(Part 2)</i>	 Company to file confirmation with ROC  INC-28  Within 60 days of RD's confirmation  ROC
		 Shift to a new place  INC-22  Within 30 days of shifting and  ROC
	Section 12(6) <i>(Part 3)</i>	 ROC to register and certify the new registered office  Within 30 days of filing INC-28  ROC
Change of Registered Office from One State to Another [Section 13(4), (5), & (7)]		
Section 13(4) Application for Approval	Application to CG (RD) for change of RO from one State to another	 SR  Form INC-23  Before change  Regional Director (RD)
	 Supporting Documents. Must attach: <ul style="list-style-type: none"> ● Altered MOA ● GM minutes ● Board Resolution / POA / Vakalatnama ● List of creditors & debenture holders ● Acknowledgment of service to ROC & State Govt 	

Provision	Requirement	Form + Timeline + Authority
	<ul style="list-style-type: none"> Advertisement in vernacular newspaper (local language) In English newspaper with wide circulation 	<ul style="list-style-type: none"> Form INC-26 Within 30 days before INC-23 filing
Section 13(5) Disposal of Application	RD to dispose application after satisfying that: <ul style="list-style-type: none"> Creditors/debenture-holders have consented OR Company has made provision or security to discharge all debts 	<ul style="list-style-type: none"> Within 60 days Regional Director (RD)
Section 13(7) Filing of Order	File certified copy of RD order with both States' ROCs with Altered MOA	<ul style="list-style-type: none"> Copy of SR in MGT-14 Form INC-28 Within 30 days of RD order
		<ul style="list-style-type: none"> INC-22 Within 30 days of shifting and ROC
Section 13(7) New COI	ROC of the new state to issue fresh Certificate of Incorporation	<ul style="list-style-type: none"> ROC of New State New COI issued
<p>Key Notes:</p> <ul style="list-style-type: none"> → Form INC-22 is always required to update the ROC about the new address. → MOA Alteration is only required when shifting from one state to another. → Consent of stakeholders (creditors/debenture holders) is mandatory only in inter-state shifts. → Regional Director (RD) approval is compulsory for cross-ROC shifts, especially across states. 		

1. Swara Musical Instruments Private Limited was incorporated on 10th October, 2018 by converting existing partnership firm into company. Sohini and Mohini became the promoters of the company. Sohini's premises which was rented out to the partnership firm was to be used as the registered office. Mention the documents which need to be filed with the Registrar of Companies (ROC) for verification of registered office.
 - a. A notarised copy of rent agreement along with rent receipt which is not older than one month.
 - b. A copy of the public notice published in a local newspaper that the premises is rented out to the company along with certified copy of rent agreement.
 - c. A notarised copy of rent agreement along with rent receipt which is not older than two months.
 - d. A notarised copy of rent agreement only.
2. A company shall verify its registered office to the Registrar within ___ of its Incorporation by filing Form No. ____
 - a. 7 days, INC-20
 - b. 15 days, INC-21
 - c. 30 days, INC-22
 - d. 60 days, INC-23

18. Section 14 – ALTERATION OF ARTICLES

- Company cannot divest (dispossess) itself from powers of AOA
- AOA means AOA is a subordinate of MOA
- Company can alter and add to AOA
- Alterations should be as per Act and MOA and in bonafide interest of members
- Requires SR in AOA alteration including:
 - Conversion of Pvt to Public and
 - Conversion of Pvt to Public to PVT (Approval of CG means RD)
 - INC 27 - File alteration with ROC within 15 days

Note: Sub-section 3 provides that alteration made under sub-section 1 and registered under sub-section 2 subject to provision of this, shall be valid and have effect as if it were originally contained in the Articles.

1. In view of the fact that a private company enjoys a number of privileges, Orange Pharma Limited having 20 members is contemplating to convert itself into the private company. For this purpose the company needs to alter its articles by inserting three restrictive clauses as specified in Section 2 (68) and the change in name is to be authorized by members by passing.
 - a. A special resolution and after obtaining approval of the Central Government.
 - b. A special resolution and after obtaining approval of the National Company Law Tribunal (NCLT).
 - c. A special resolution and after obtaining approval of the Registrar of Companies (ROC).
 - d. A special resolution and after obtaining approval of the State Government.

19. Section 15- ALTERATION OF MOA OR AOA TO BE NOTED IN EVERY COPY

Section 15
 Alteration shall be made in every copy of
 Memorandum and Articles,
 shall be made in every copy, electronic or otherwise
 If any default then,
 Co. and every officer in default will be fined Rs. 1000 every copy.

1. I.T.C limited changed its name to ITC Limited. Company and officers thereat made default by failing to make alteration in every issued copy of memorandums and articles. In this context you are required to pick incorrect statements out of followings:
 - (i) Alternation shall be made to every copy of MOA/AOA because these are considered as public documents.
 - (ii) Alternation shall be made to every copy be it in electronic form or otherwise.
 - (iii) Penalty shall be rupees one thousand for every copy of the articles issued without such alteration.

- (a) (ii) only
- (b) (iii) only
- (c) (ii) and (iii) only
- (d) None of (i), (ii) and (iii)

20. Section 17 – COPIES OF MOA OR AOA AND OTHER DOCUMENTS TO BE PROVIDED

Section 17 provides that a company shall on payment of the prescribed fee send a copy of each of the following documents to a member within seven days of the request being made by him -

1. Memorandum;
2. Articles;
3. Every agreement and every resolution referred to in sub-section (1) of section 117, if and so far as they have not been embodied in the memorandum and articles.

Any failure will make the company as well as every officer in default liable to a fine of one thousand rupee for each day during which default continues or one lakh rupee whichever is less.

Section 399 is not part of syllabus, but essential to develop understanding.

1. A company shall, on being so requested by a member, send to him within of the request and subject to the payment of such fees as may be prescribed, a copy of the Memorandum and Articles of the company.
 - a. 7 days
 - b. 15 days
 - c. 30 days
 - d. 45 days

21. Section 10 A- COMMENCEMENT OF BUSINESS ETC.

Section applicable ONLY to the companies having SC.

Provision says –

- **Cannot start the business immediately**
- **Wait before you start borrowing money**
- **Then ? How much time ?**

Shall commence any business or exercise any borrowing powers only if -

- A. A. Director must submit within 180 days of INC in form INC 20A –
What ? - That all the subscribers have paid for the shares they have agreed to be taken and made it verified by CA,CS, Cost Acc.
- B. B. Verify your address in 30 days of INC in INC 22
- C. **Declaration not filled by director within 180 days** - If not and ROC has reasonable cause to believe that the company is not carrying on any business, then – INITIATE NAME REMOVAL

Note -

- **Action by Registrar for removal of name can be take place simultaneously with levy of penalty**
- **In the case of a company pursuing objects requiring registration or approval from any sectoral regulators such as the Reserve Bank of India, Securities and Exchange Board of India, etc., the registration or approval, as the case may be from such regulator shall also be obtained and attached with the declaration.**

OUTCOME WHERE CONDITIONS ARE NOT SATISFIED

Penalty - If any default is made in complying with the requirements of this section, the penalty shall be:

Liabe	Quantum of penalty
Company	Fifty thousand rupee
Every officer who is in default	One thousand rupees for each day during which such default continues but not exceeding an amount of one lakh rupees.

1. Modern Furniture incorporated on 30th June 2022, its directors filed a declaration under section 10A (1)(a) regarding receipt of payment i.e. value of share (against share subscribed by subscriber) to the registrar on 18th April 2023. The company and its officers (officers who are in default) shall be charged with penalty of:
 - (a) ₹ 1,11,000 and ₹ 1,11,000 respectively
 - (b) ₹ 50,000 and ₹ 1,11,000 respectively
 - (c) ₹ 1,11,000 and ₹ 50,000 respectively
 - (d) ₹ 50,000 and ₹ 1,00,000 respectively
2. A company incorporated after 2nd November, 2018 and having a share capital shall not commence any business or exercise any borrowing powers unless:
 - (a) It files a declaration with the Registrar within a period of 180 days of the date of incorporation that every subscriber to the Memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration.
 - (b) It files with the Registrar a verification of its registered office within 30 days of its incorporation.
 - (c) Both (a) and (b)
 - (d) None of the above

22. Section 18 – CONVERSION OF COMPANIES ALREADY REGISTERED

This section empowers a company to convert itself into some other class of company by –

1. Altering its memorandum and articles of association.
2. File an application to the registrar and it shall after satisfying himself that the provisions applicable for registration of companies have been complied with,
 - A. Close the former registration of the company; and
 - B. After registering the required documents, issue a certificate of incorporation in the same manner as its first registration.

THE CONVERSION WILL NOT HAVE ANY EFFECT ON THE DEBTS, LIABILITIES ETC. INCURRED BEFORE CONVERSION.

To put in more simple way, the company remains the same entity as it was before in respect of its debts and liabilities, obligations or contracts.

23. Section 19 – SUBSIDIARY COMPANY NOT TO HOLD SHARES IN ITS HOLDING COMPANY

General rule

**A company cannot hold any shares (itself or through its nominee) in its HC
HC cannot allot or transfer its shares to SC
It Shall be VOID**

The prohibition does not apply to the following cases:

Exceptions	Description
Subsidiary as legal representative of deceased member	When a subsidiary holds shares on behalf of a deceased member (natural person) of the holding company as their legal heir or representative. <input checked="" type="checkbox"/> Voting rights will be available.
Subsidiary holds shares as trustee	When a subsidiary holds shares in a fiduciary capacity (i.e., as a trustee for another person/entity). <input checked="" type="checkbox"/> Voting rights will be available.

Example:

Ratan Tata, a shareholder of TATA Ltd, had incorporated a company named RT Holdings Ltd. RT Holdings Ltd holds shares in TATA Ltd. After Ratan Tata's passing, all his assets including the shares in TATA Ltd are to be inherited by his minor grandson. However, RT Holdings Ltd manages these shares as a trustee on behalf of the minor. Since TATA Ltd is the holding company of RT Holdings Ltd, this arrangement is allowed under Section 19. Voting rights will be available to RT Holdings Ltd.

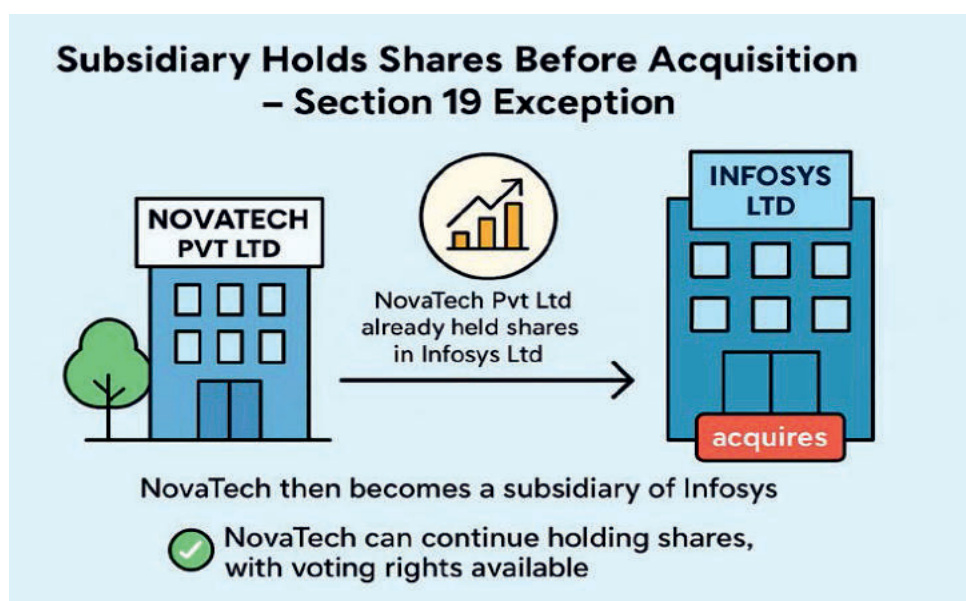
Subsidiary already held shares before becoming subsidiary

If the subsidiary already held shares in the holding company before the relationship of holding-subsubsidiary was established.

Note:

- *The prohibition does not apply to the case of a subsidiary company which already had shares in its holding company at the commencement of the Act.*
- *A subsidiary can buy shares in its holding company where it is a part of a scheme of amalgamation sanctioned by the court/tribunal.*

Example: RPIP Ltd. has invested 51% in the shares of SSP Pvt. Ltd. on 31st March 2023. SSP Pvt. Ltd. have been holding 2% equity of RPIP Ltd. since 2013. SSP Pvt. Ltd. cannot increase its equity beyond that 2% on or after 31st March 2023. However, it could continue to hold or reduce its initial 2% stake.



1. Win Limited bought 15% shares of Om Limited in the year 2018. In the year 2020 it formed a trust for its employees and donated its 15% shares of Om Limited along with ₹ 10,00,000 to the trust and became its trustee. In February 2023, Om Limited acquired 55% stake in Win Limited through an in-house deal. Can a subsidiary company hold shares in its holding company justifiably in this situation? (RTP Nov 23)
- Win Limited cannot represent itself as a trustee after it becomes a subsidiary of Om Limited.
 - Win Limited can represent itself as a trustee only after it was a holding company of Om Limited.
 - Win Limited cannot hold shares as a trustee even though it is a subsidiary company.
 - Win Limited can do so as it is holding shares in Om Limited prior to becoming a subsidiary of it.

24. Section 20 – SERVICE OF DOCUMENTS

The mode in which documents may be served -

- on the company
- on the members and
- also on the registrars.

Law with respect to the service of documents is as follows-

Recipient	Modes of Serving Documents	Special Notes
Company or Officer thereof	<ul style="list-style-type: none"> Registered post Speed post Courier service Leaving it at registered office Electronic or other prescribed modes 	<ul style="list-style-type: none"> If securities are held with a depository, the depository may serve records of beneficial ownership via electronic or other prescribed mode.
Registrar or Member	<ul style="list-style-type: none"> Post Registered post Speed post Courier Delivery at office/address Electronic or other prescribed modes 	<ul style="list-style-type: none"> Filing with Registrar is electronic by default, unless stated otherwise. A member may request a specific mode and pay prescribed fees.

Definition of Courier	A person or agency that delivers the document and provides proof of its delivery.
Definition of Electronic Transmission	<ul style="list-style-type: none"> ● Communication that creates a record capable of retention, retrieval, and review ● Can be rendered into a tangible legible form Modes include: <ul style="list-style-type: none"> ○ Fax or Email (shared with company/officer) ○ Electronic message board/network (designated for such communication) ○ Other electronic modes with sender verification systems in place
Deemed Service by Post	<ul style="list-style-type: none"> ● For notice of meeting – After 48 hours from posting ● For other documents – When the letter would be delivered in ordinary course of post
Special Provision for Nidhi Companies	<ul style="list-style-type: none"> ● Applicable only to members who: <ul style="list-style-type: none"> ○ Hold shares > ₹1,000 in face value or ○ Hold >1% of paid-up share capital (whichever is less) ● For other shareholders: <ul style="list-style-type: none"> ○ Document to be served via newspaper notice in the district of Registered Office and ○ on notice board of the Nidhi

Example: Modern Furniture sent the notice of general meeting through postal mail 48 hours after the post of letter containing such notice, shall be deemed to be served. Hence, requirement of 21 clear days' notice under section 101 of the Act, if seen in this context, Modern Furniture Limited should have posted the letter containing notice 23 days prior to meeting day (48 hours of post-delivery+21 clear days).

25. Section 21 – AUTHENTICATION OF DOCUMENTS, PROCEEDINGS AND CONTRACTS

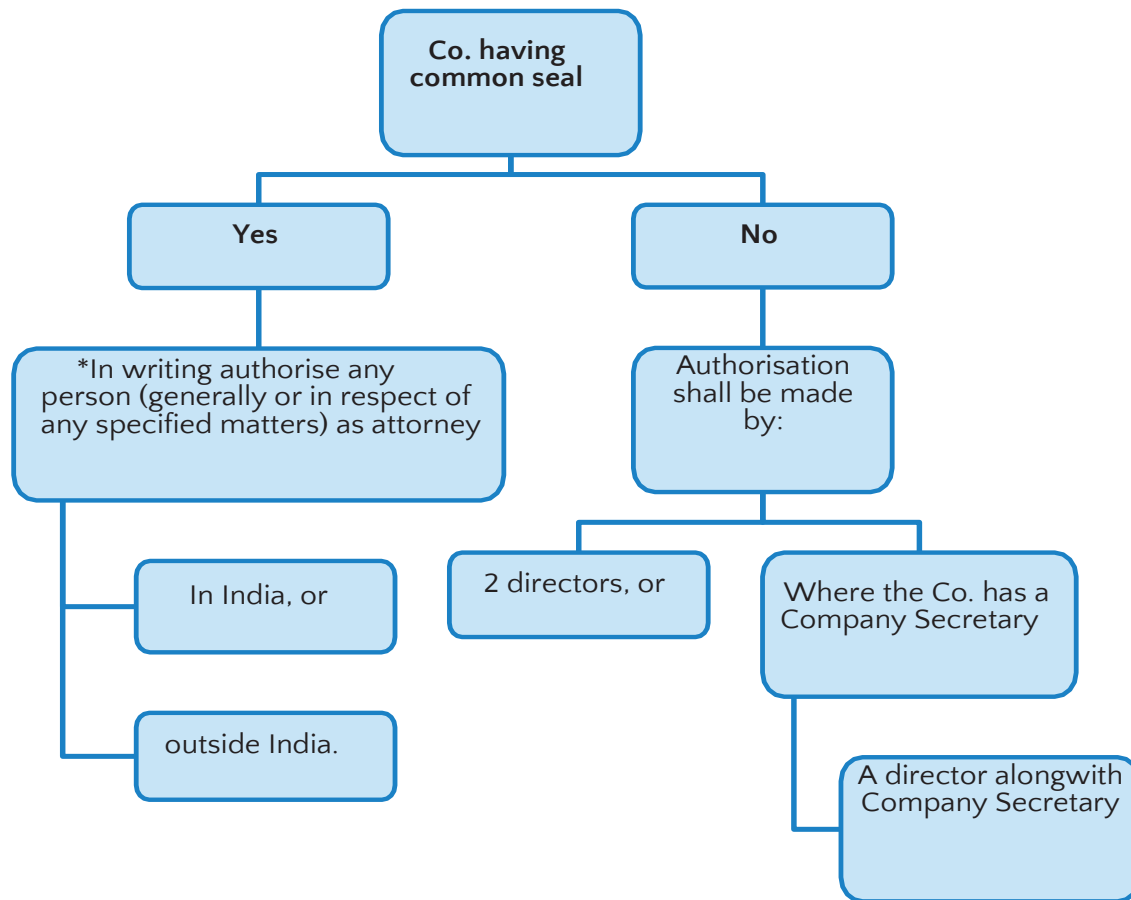
- A. A document or proceeding requiring authentication by a company or
- B. Contracts made by or on behalf of a company

May be signed by:

- A. Any key managerial personnel, or
- B. An officer or employee of the company duly authorized by the Board in this behalf.

26. Section 22 – EXECUTION OF BILLS OF EXCHANGE, ETC.

Sub-section	Provision
(1)	<ul style="list-style-type: none"> ● A bill of exchange, hundi, or promissory note is deemed to be made, accepted, drawn, or endorsed on behalf of a company if done so: <ul style="list-style-type: none"> ● In the name of the company, or ● On behalf of / on account of the company ● By a person acting under the company's authority (express or implied)
(2) & (3)	<ul style="list-style-type: none"> ● A company may authorize a person to execute deeds on its behalf: <ul style="list-style-type: none"> ● Through a written instrument: <ul style="list-style-type: none"> ● Under the company's common seal, if it has one, ● If no seal: <ul style="list-style-type: none"> ○ By 2 directors, or ○ 1 director + Company Secretary (if appointed) ○ Authorization can be general or for specific matters ● The person can act as the company's attorney, in India or abroad ● Deeds executed by such attorney under his own seal shall be binding on the company



Pre-Incorporation Contract

By - Promoters

Behalf – Of the proposed company

Before – The incorporation of company

For – Acquiring some property or right for company

When PIC is binding : Conditions

On company and other parties– IF done –

1. Before -- Object -- Behalf
2. Accepted after incorporation by the Co.
3. Communicated to parties that accepted.

When company adopts Contract :

- Can be enforced by the company
- Becomes binding on the company
- Promoters shall NOT be personally liable.

When company does not adopt Contract :

- Cannot be enforced
- Shall not bind
- Even if contract tells that company will be bound, it will not
- Promoters shall be personally liable.

Liability of the proposed company vis a vis third party - PIC are void ab initio

As 2 consenting parties are necessary to a contract & company before incorporation is a non-entity and unless adopted by the co, third party cannot enforce the company, however promoters may be held personally liable.

Exceptions	Cases	About
Knowledge	Howard vs Patent Morris vs Kassen	Shares or Debentures allotment – without approval
Suspicion	Anand vs Dinshaw Houghton vs Nothard	Accountant sold the property Director in two companies
Forgery	Ruben vs Great Fingall	SC – Forgery sign CS

Scenario	Approval Required	Forms & Filing	Time Limits	Effect on MOA	Authority Involved
1. Within Same City / Town / Village	Board Resolution (BR)	<ul style="list-style-type: none"> BR Copy to ROC INC-22 (Notice of Change) 	<ul style="list-style-type: none"> INC-22: within 30 days 60 days for IFSC 	✗ MOA not altered	Board of Directors
2. From One ROC to Another (Same State)	Special Resolution (SR) in General Meeting	<ul style="list-style-type: none"> MGT-14 (SR): within 30 days INC-23 (Application to RD) INC-28 (RD Order): within 60 days of order INC-22: within 30 days of new RO 	<ul style="list-style-type: none"> MGT-14: 30 days INC-28: 60 days INC-22: 30 days 	✗ MOA not altered	Shareholders (GM), Regional Director (RD), ROC
3. Different City (Same ROC & State)	BR + SR in GM	<ul style="list-style-type: none"> MGT-14 (SR): within 30 days INC-22 (Notice of Change): within 30 days 	<ul style="list-style-type: none"> 30 days for MGT-14 30 days for INC-22 60 days for IFSC 	✗ MOA not altered	Board & Shareholders
4. From One ROC to Another (Different State)	Special Resolution in GM + RD Confirmation	<ul style="list-style-type: none"> MGT-14 (SR) INC-23 (to RD) INC-28 (RD Order): within 30 days INC-22 (for New RO): within 30 days 	<ul style="list-style-type: none"> INC-23 disposed in 60 days by RD (if satisfied: consent of creditors/debenture holders, security for debts) MGT-14 & INC-28: 30 days each INC-22: 30 days 	✓ MOA needs alteration	Shareholders, RD, ROC

Conversion

Private



Public

- **Pass SR**
- **No** longer includes limitations and restrictions then it ceased to be a PVT Ltd
- Increase Members to 7 and Directors to 3
- Shall take effect from the date of alteration of articles.
- Application in INC 27 with ROC

Public to Private -

Approval of Tribunal is Required

Within 60 days from the date of SR
Submit application To RD RD-1 for the approval and..

When PUBLIC alters to convert into PRIVATE –

- **Pass SR and alter MOA and AOA**
- To Includes limitations and restrictions then it ceased to be a public Co. and
- Add PRIVATE LTD to its name
- No need for CG approval for this – Refer Section 13

Application in INC 27 with ROC with –

- Order of Tribunal
- Altered AOA
- Within 15 days (From the Tribunal's order)

PROBLEM KYA HAI? QUESTION BANK

ICAI Module Descriptive Questions

Section 5 Entrenchment Clause

1. Yadav dairy products Private limited has registered its articles along with memorandum at the time of registration of company in December, 2019. Now directors of the company are of the view that provisions of articles regarding forfeiture of shares should not be changed except by a resolution of 90% majority. While as per section 14 of the Companies Act, 2013 articles may be changed by passing a special resolution only. One of the directors said that they cannot make a provision against the Companies Act. You are required to advise the company on this matter.

Solution:

As per section 5 of the Companies Act, 2013 the article may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if more restrictive conditions than a special resolution, are met.

The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles 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.

Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in prescribed manner.

In the present case, Yadav dairy products Private Limited is a private company and wants to protect provisions of articles regarding forfeiture of shares. It means it wants to make entrenchment of articles, which is allowed. But the company will have to pass a resolution taking permission of all the members and it should also give notice to ROC regarding entrenchment of articles.

Section 8 Company

2. A group of individuals intend to form a club namely 'Budding Pilots Flying Club' as limited liability company to impart class room teaching and aircraft flight training to trainee pilots. It was decided to form a limited liability company for charitable purpose under Section 8 of the Companies Act, 2013 for a period of ten years and thereafter the club will be dissolved and the surplus of assets over the liabilities, if any, will be distributed amongst the members as a usual procedure allowed under the Companies Act.

Examine the feasibility of the proposal and advise the promoters considering the provisions of the Companies Act, 2013.

Solution:

According to section 8(1) of the Companies Act, 2013, where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—

- (a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- (b) intends to apply its profits, if any, or other income in promoting its objects; and
- (c) intends to prohibit the payment of any dividend to its members; the Central Government may, by issue of licence, allow that person or association of persons to be registered as a limited liability company.

In the instant case, the decision of the group of individuals to form a limited liability company for charitable purpose under section 8 for a period of ten years and thereafter to dissolve the club and to distribute the surplus of assets over the liabilities, if any, amongst the members will not hold good, since there is a restriction as pointed out in point (b) above regarding application of its profits or other income only in promoting its objects.

Further, there is restriction in the application of the surplus assets of such a company in the event of winding up or dissolution of the company as provided in sub-section (9) of Section 8 of the Companies Act, 2013. Therefore, the proposal is not feasible.

Section 8

3. Alfa school started imparting education on 1st April, 2010, with the sole objective of providing education to children of weaker society either free of cost or at a very nominal fee depending upon the financial condition of their parents. However, on 30th March 2024, it came to the knowledge of the Central Government that the said school was operating by violating the objects of its objective clause due to which it was granted the status of a section 8 company under the Companies Act, 2013. Describe what powers can be exercised by the Central Government against the Alfa School, in such a case?

Solution:

Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, education, sports etc. Such a company intends to apply its profit in promoting its objects. Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them. Since, Alfa School was a Section 8 company and it had started violating the objects of its objective clause, hence in such a situation the following powers can be exercised by the Central Government:

- (i) The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this section subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.
- (ii) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section. However, no such order shall be made unless the company is given a reasonable opportunity of being heard.

- (iii) Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

Section 13 Procedure to Alter Object Clause

4. XY Ltd. has its registered office at Mumbai in the State of Maharashtra. For better administrative conveniences the company wants to shift its registered office from Mumbai to Pune (within the State of Maharashtra, but from Mumbai ROC to Pune ROC). What formalities the company has to comply with under the provisions of the Companies Act, 2013 for shifting its registered office as stated above? Explain.

Solution:

The Companies Act, 2013 under section 13 provides for the process of altering the Memorandum of a company. Since the location or Registered Office clause in the Memorandum only names the state in which its registered office is situated, a change in address from Mumbai to Pune, does not result in the alteration of the Memorandum and hence the provisions of section 13 (and its sub sections) do not apply in this case.

However, under section 12 (5) of the Act which deals with the registered office of company, the change in registered office from one town or city to another in the same state, must be approved by a special resolution of the company.

Further, registered office is shifted from one ROC to another, therefore company will have to seek approval of Regional director.

Section 13

5. Anushka security equipments limited is a manufacturer of CCTV cameras. It has raised ₹ 100 crore through public issue of its equity shares for starting one more unit of CCTV camera manufacturing. It has utilized 10 crore rupees and then it realized that its existing business has no potential for expansion because the government has reduced customs duty on import of CCTV cameras. Hence imported cameras from China are cheaper than its own manufacturing. Now it wants to utilize the remaining amount in the mobile app development business by adding a new object in its memorandum of association.

Does the Companies Act allow such change of object? If not, then what advise will you give to the company. If yes, then give steps to be followed.

Solution:

According to section 13 of the Companies Act, 2013 a company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and—

- (i) the details in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change;
- (ii) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with SEBI regulations.

Company will have to file copy of special resolution with ROC and he will certify the registration within a period of thirty days. Alteration will be effective only after this certificate by ROC.

Looking at the above provision we can say that company can add the object of mobile app development in its memorandum and divert public money into that business. But for that it will have to comply with above requirements.

Section 13

6. The object clause of the Memorandum of Vivek Industries Limited., empowers it to carry on real-estate business and any other business that is allied to it. Due to a downward trend in real-estate business, the management of the company has decided to take up the business of Food processing activity. The company wants to alter its Memorandum, so as to include the Food Processing Business in its objects clause. Examine whether the company can make such change as per the provisions of the Companies Act, 2013?

Solution:

Alteration of Objects Clause of Memorandum

The Companies Act, 2013 has made alteration of the memorandum simpler and more flexible. Under section 13(1) of the Act, a company may, by a special resolution after complying with the procedure specified in this section, alter the provisions of its Memorandum.

In the case of alteration to the objects clause, section 13(6) requires the filing of the Special Resolution by the company with the Registrar. Section 13 (9) states that the Registrar shall register any alteration to the Memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution by the company.

Section 13 (10) further stipulates that no alteration in the Memorandum shall take effect unless it has been registered with the Registrar as above.

Hence, the Companies Act, 2013 permits any alteration to the objects clause with ease. Vivek Industries Limited can make the required changes in the object clause of its Memorandum of Association.

Doctrine of Indoor Management

7. The persons (not being members) dealing with the company are always protected by the doctrine of indoor management. Explain. Also, explain when the doctrine of Constructive Notice will apply.

Solution :

Doctrine of Indoor Management

According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association.

Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.

The doctrine helps to protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.

The doctrine of indoor management is opposite to the doctrine of constructive notice. Whereas the doctrine of constructive notice protects a company against outsiders, the doctrine of indoor management protects outsiders against the actions of a company.

This doctrine also is a safeguard against the possibility of abusing the doctrine of constructive notice.

Exceptions to Doctrine of Indoor Management (Applicability of doctrine of constructive notice)

- (i) **Knowledge of irregularity:** In case an 'outsider' has actual knowledge of irregularity within the company, the benefit under the rule of indoor management would no longer be available. In fact, he/she may well be considered part of the irregularity.
- (ii) **Negligence:** If with a minimum of effort, the irregularities within a company could be discovered, the benefit of the rule of indoor management would not apply.

The protection of the rule is also not available where the circumstances surrounding the contract are so suspicious as to invite inquiry, and the outsider dealing with the company does not make proper inquiry.

- (iii) **Forgery:** The rule does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery. A company can never be held bound for forgeries committed by its officers.

Section 16 Company incorporated by furnishing false or incorrect information

8. Manglu and friends got registered a company in the name of Taxmann advisory private limited. Taxmann is a registered trademark. After 5 years when the owner of the trademark came to know about the same, it filed an application with relevant authority. Can the company be compelled to change its name by the owner of the trademark? Can the owner of a registered trademark request the company and then company changes its name at its discretion?

Solution:

According to section 16 of the Companies Act, 2013 if a company is registered by a name which,—

- in the opinion of the Central Government, is identical with the name by which a company had been previously registered, it may direct the company to change its name. Then the company shall by passing an ordinary resolution change its name within 3 months.
- is identical with a registered trade mark and owner of that trade mark apply to the Central Government within three years of incorporation of registration of the company, it may direct the company to change its name. Then the company shall change its name by passing an ordinary resolution within 6 months.

Company shall give notice to ROC along with the order of Central Government within 15 days of change. In case of default company and defaulting officer are punishable.

In the given case, owner of registered trade-mark is filing objection after 5 years of registration of company with a wrong name. While it should have filed the same within 3 years. Therefore, the company cannot be compelled to change its name.

As per section 13, company can anytime change its name by passing a special resolution and taking approval of Central Government. Therefore, if owner of registered trademark request the company for change of its name and the company accepts the same then it can change its name voluntarily by following the provisions of section 13.

Section 19 Subsidiary Not to Hold Shares in Holding

9. Explain in the light of the provisions of the Companies Act, 2013, the circumstances under which a subsidiary company can become a member of its holding company.

Solution:

In accordance with the provisions of Section 19 of the Companies Act, 2013, a subsidiary company cannot either by itself or through its nominees hold any shares in its holding company and no holding company shall allot or transfer its shares to any subsidiary companies. Any such allotment or transfer of shares in a company to its subsidiary is void. The section however does not apply where:

- (1) the subsidiary company holds shares in its holding company as the legal representative of a deceased member of the holding company,
- (2) the subsidiary company holds such shares as a trustee, or
- (3) the subsidiary company was a shareholder in the holding company even before it became its subsidiary.

Section 19

10. Shri Laxmi Electricals Ltd. (S) is a company in which Hanuman power suppliers Limited (H) is holding 60% of its paid up share capital. One of the shareholder of H made a charitable trust and donated his 10% shares in H and ₹ 50 crore to the trust. He appointed S as the trustee. All the assets of the trust are held in the name of S. Can a subsidiary hold shares in its holding company in this way?

Solution:

According to section 19 of the Companies Act, 2013 a company shall not hold any shares in its holding company either by itself or through its nominees.

Also, holding company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Following are the exceptions to the above rule;

- (a) Where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
- (b) Where the subsidiary company holds such shares as a trustee; or
- (c) Where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company, but in this case, it will not have a right to vote in the meeting of holding company.

In the given case, one of the shareholders of holding company has transferred his shares in the holding company to a trust where the shares will be held by subsidiary company. It means now subsidiary will hold shares in the holding company. But it will hold shares in the capacity of a trustee. Therefore, we can conclude that in the given situation S can hold shares in H.

Section 20 Service of Documents

11. Explain the provisions of the Companies Act, 2013 relating to the 'Service of Documents' on a company and the members of the company.

Solution:

Under section 20 of the Companies Act, 2013 a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed. However, in case where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

Under section 20 (2), save as provided in the Act or the rule thereunder for filing of documents with the registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed. However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

Section 22 Execution of Bills of Exchange

12. Parag Constructions Limited is a leading infrastructure company. One of the directors of the company Mr. Parag has been signing all construction contracts on behalf of the company for many years. All the parties who ever deal with the company know Mr. Parag very well. The company has got a very important construction contract from a renowned software company. Parag constructions will do construction for this site in partnership with a local contractor Firozbhai.

Mr. Parag signed a partnership deed with Firozbhai on behalf of the company because he has an implied authority. Later in a dispute the company denied to accept liability as a partner. Can the company deny its liability as a partner?

Solution:

As per section 22 of the Companies Act, 2013 a company may authorise any person as its attorney to execute deeds on its behalf in any place either in or outside India. But common seal should be affixed on his authority letter or the authority letter should be signed by two directors of the company or it should be signed by one director and secretary. This authority may be either general for any deeds or it may be for any specific deed.

A deed signed by such an attorney on behalf of the company and under his seal shall bind the company as if it were made under its common seal.

In the present case company has not neither given any written authority nor affixed common seal of the authority letter.

It means that Mr. Parag is not legally entitled to execute deeds on behalf of the company. Therefore, deeds executed by him are not binding on the company. Therefore, company can deny its liability as a partner.

RTP, MTP and PYQ Descriptive Questions

Section 2(69) - PROMOTER

1. Mr. Abhi is a Chartered Accountant and MBA by profession, has been appointed as an Executive Director on the Board of XYZ Limited. His job profile includes advising the Board of Directors of the company on various compliance matters, strategies, business plans, and risk matters relating to the company. Keeping in view of above position whether Mr. Abhi can be classified as the Promoter of XYZ Limited? Please examine the same under the provisions of the Companies Act, 2013.

(RTP May 2022) (5 Marks) (MTP Dec 24)

Solution:

Law: As per section 2(69) of companies Act,2013

- (i) Promoter means a person
 - (a) who has been named as such in a Prospectus; or
 - (b) is identified by the Company in the Annual Return;
 - (c) who has control over the affairs of the company directly or indirectly,
 - (d) in accordance with whose advice, directions or instructions; the BOD of a company is accustomed to Act.
- (ii) However, a person acting merely in a professional capacity shall not be regarded as promoter under point (d).

Conclusion: In present case, As the job profile of Mr. Kaushal is only limited to advise the Board of Directors on various compliance matters, strategies, business plans and risk matters relating to business of the company and that to only in a professional capacity, he will not be classified as a Promoter of XYZ Limited.

Section 3A Members Severally Liable in Certain Cases

2. Red Limited was incorporated on 1st April, 2014 is facing severe effects of depression of the economy. Owing to its bad financial status most of the members have started withdrawing their holding from the company. The company had 250 members on 10th January, 2019. By 15th January, 2019, 244 members had withdrawn their holding. No new member has invested in the company after 15th February till date. Now, Mr. A, an existing member has approached you to advise him regarding his liabilities in such a situation.

(RTP NOV 2019)

Solution:

Law: As per section 3A of the Companies Act, 2013, If at any time the number of members of a company is reduced below 2/7, {in the case of a private company, below 2, and in the case of a public company, below 7}, and the company carries on business for more than 6 months while the number of members is so reduced, Every person who is a member of the company during the time that it so carries on business after those 6 months and is cognizant of the fact that it is carrying on business with less than 2/7 members, shall be severally liable (personally liable) for the payment of the whole debts of the company contracted during that time

Conclusion: In present case , since 244 out of 250 members has withdrawn membership is restricted to 6 i.e less than 7 if the membership remains less than 7 till 6 months from 10th January , every contract entered by company after that will make personally liable to A and all existing members who knew about such reduction.

Section 5 Entrenchment Clause

3. Mr. Shyamlal is a B. Tech in computer science. He has promoted an IT start up and got it registered as a Private Limited Company. Initially, only he and his family members are holding all the shares in the company. While drafting the Articles of Association of the company, it has been included that Mr. Shyamlal will remain as a director of the company for lifetime.

Mr. Mehra, a close friend of Mr. Shyamlal has warned him (Mr. Shyamlal) that in future if 75% or more shares in the company are held by non- family members then by passing a Special Resolution, the relevant articles can be amended and Mr. Shyamlal may be removed from the post of director.

Mr. Shyamlal has approached you to advise him for protecting his position as a director for lifetime. Give your answer as per the provisions of the Companies Act, 2013. (6 Marks)

(MTP May 21)**Solution:**

Law: As per the provisions of section 5 of the Companies Act, 2013,

- (i) Usually, an article of association may be altered by passing a special resolution but entrenchment makes it one difficult to change it. So, entrenchment means making something more protective.
- (ii) As per the provisions of sub-section (4) of section 5 of the Companies Act, 2013, the provisions of entrenchment shall only be made either on formation of a company, or by an amendment in the Articles of Association as agreed to by all the members of the company in the case of a private company and by a special resolution in case of a public company.

Conclusion: In the said situation , the IT startup company is a private company. Therefore, Mr. Shyamlal can get the articles altered which is agreed to by all the members whereby the amended article will say that he can be removed from the post of director only if, say, 95% votes are cast in favour of the resolution and give notice of the same to the Registrar.

Section 5

4. Yadav Dairy Products Private limited has registered its articles along with memorandum at the time of registration of company in December, 2014. Now directors of the company are of the view that provisions of articles regarding forfeiture of shares should not be changed except by a resolution of 90% majority. While as per section 14 of the Companies Act, 2013 articles may be changed by passing a special resolution only. Hence, one of the directors is of the view that they cannot make a provision against the Companies Act, 2013. You are required to advise the company on this matter.

(RTP MAY 2020)**Solution:****Law:**

- (i) As per section 5 of the Companies Act, 2013 the article may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if more restrictive conditions than a special resolution, are met.

- (ii) The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles 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.
- (iii) Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in prescribed manner.

Conclusion: In the present case, Yadav Dairy Products Private Limited is a private company and wants to protect provisions of articles regarding forfeiture of shares. It means it wants to make entrenchment of articles, which is allowed. But the company will have to pass a resolution taking permission of all the members and it should also give notice to Register of Companies regarding entrenchment of articles.

Section 7 Incorporation of a Company

5. ABC Pvt. Ltd., a company that has been operational for two years, was incorporated with the submission of false information and suppression of material facts. The company's founders, Mr. X and Ms. Y, provided incorrect financial statements and concealed significant liabilities during the incorporation process. This misrepresentation was recently uncovered during an internal audit initiated by the company's new CFO, Mr. Z. Upon discovering these fraudulent actions, Mr. Z has filed an application with the National Company Law Tribunal (NCLT). Explain the provisions of the Companies Act, 2013 in respect where a company has been incorporated by furnishing false or incorrect information.

(RTP sep 24)

Solution:

company incorporated by furnishing false or incorrect information

According to section 7(7) of the Companies Act, 2013, where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants—

- (a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
- (b) direct that liability of the members shall be unlimited; or
- (c) direct removal of the name of the company from the register of companies; or
- (d) pass an order for the winding up of the company; or
- (e) pass such other orders as it may deem fit. However, before making any order under this subsection, -
 - (i) the company shall be given a reasonable opportunity of being heard in the matter; and
 - (i) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

Entrenchment Clause

6. The Articles of Association of a Company may contain provisions for entrenchment under Section 5 of the Companies Act, 2013. What is meant by entrenchment provisions in this context? Also State the relevant provisions of the said Act dealing with entrenchment provisions.(3 Marks)

(Nov 2020) (MTP Oct. 22)**Solution:**

Entrenchment Clause

1. Usually an AOA may be altered by passing special resolution but entrenchment makes it more difficult to change it. So entrenchment means making something more protective.
2. The AOA may contain the provisions for entrenchment, i.e. certain specified provisions of the articles can be altered only by complying with such conditions or procedures as are more restrictive than those as are applicable in case of a SR.
3. The provisions for entrenchment may be made at the time of formation of the company; or by an amendment of articles,
 - (a) In case of a private company, with the consent of all the members;
 - (b) In case of a public company, by passing Special Resolution.
4. Where the articles contains the provisions for entrenchment, the company shall give notice of such provisions to the Registrar:
 - (i) In Form No. INC-2 & SPICe+ INC-32, as the case may be, at the time of incorporation of the company;
 - (ii) In Form No. MGT-14, within 30 days from the date of entrenchment of the articles in case of existing companies.

Section 10 MOA/AOA Doesn't Bind Outsider

7. The Articles of a Public Company clearly stated that Mr. A will be the solicitor of the company. The company in its general meeting of the shareholders resolved unanimously to appoint B in place of A as the solicitor of the company by altering the articles of association. Examine whether the company can do so? State the reasons clearly. Does it make any difference if A also member of the company

(RTP May 2015) (RTP May 2016) (MAY 2013)**Solution:****Law:**

- (i) According to Section 10(1) of the Companies Act, 2013, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member
- (ii) MoA and AoA binds
 - (a) Company to members

- (b) Members to company
- (c) Members Interse
- (iii) The Memorandum and Articles do not bind either the company or the members to any third party.
- (iv) Further, under Section 14 (1) subject to the provisions of this Act and to the conditions contained in the Memorandum, a company may, by a special resolution, alter its Articles.
Ref Case: Eley v Positive Life Insurance Co

Conclusion: In the present case,

- (i) Since section 10 do not bind outsiders so A can be terminated ,the company has altered the Articles by a unanimous resolution of the members passed at a general meeting. Hence, the alteration is valid and after registration of the altered Articles, the appointment of B will stand and A will be terminated.
- (ii) No it doesn't make any difference if he is also member of company as being solicitor is not right attached with membership

Doctrine of Ultra Vires

8. The object clause of the Memorandum of Association of Miranda Private Ltd, Kolkata authorized it to do trading in fruits and vegetables. The company, however, entered into a Partnership with Mr. Karan and traded in steel and incurred liabilities to Mr. Karan. The company, subsequently, refused to admit the liability to Karan on the ground that the deal was 'Ultra Vires' the company. Examine the validity of the company's refusal to admit the liability to Karan. Give reasons in support of your answer.

(RTP Nov 2016)

Solution:

Law: As per Doctrine of Ultra Vires, the acts beyond the powers of a company/Memorandum/object clause are ultra vires and void and cannot be ratified even though every member of the company may give his consent [Ashbury Railway Carriage Company Vs Richee]

Conclusion: Miranda Pvt. Ltd is authorized to trade directly on fruits and vegetables. It has no power to enter into a partnership for iron and steel with Mr. Karan. Such act cannot be treated as being within either the 'express' or 'implied' powers of the company. Mr. Karan who entered into partnership is deemed to be aware of the lack of powers of Miranda Pvt. Ltd. In the light of the above, Mr. Karan cannot enforce the agreement or liability against Miranda Pvt. Ltd under the Companies Act, 2013. Mr. Karan should be advised accordingly.

Doctrine of Indoor Management

9. The Doctrine of Indoor Management always protects the persons (outsiders) dealing with a company." Explain the above statement. Also, state the exceptions to the above rule

(MAY 2015) (NOV 2018) (MTP Sep 22)

Solution :

Doctrine of Indoor Management

- (i) As per this doctrine, outsiders dealing with the company are not required to enquire into the internal management of the company.
- (ii) Outsiders dealing with the company are entitled to assume that as far as internal proceedings of the company are concerned, everything has been done regularly.
- (iii) If not, company is in fault and cannot deny liability on said ground
- (iv) Thus, the doctrine protects an innocent outsider from any irregularity present in the working of the company

Exceptions to Doctrine of Indoor Management

Relief on the ground of 'indoor management' cannot be claimed by an outsider dealing with the company in the following circumstances:

1. **Knowledge of irregularity** - In case this 'outsider' has actual knowledge of irregularity within the company, the benefit under the rule of indoor management would no longer be available. In fact, he/she may well be considered part of the irregularity.
2. **Negligence:** If with a minimum of effort, the irregularities within a company could be discovered, the benefit of the rule of indoor management would not apply. The protection of the rule is also not available where the circumstances surrounding the contract are so suspicious as to invite inquiry, and the outsider dealing with the company does not make proper inquiry.
3. **Forgery:** The rule does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery. A company can never be held bound for forgeries committed by its officers.
4. Where the question is in regard to the very existence of an agency.
5. Where a pre-condition is required to be fulfilled before company itself can exercise a particular power. In other words, the act done is not merely ultra vires the directors/officers but ultra vires the company itself.

Doctrine of Indoor Management

10. The role of doctrine of 'Indoor management' is opposed to that of the role of 'Constructive notice'. Comment on this statement with reference to the Companies Act, 2013.(6 Marks)

(MTP Nov. 23)**Solution:**

Yes doctrine of 'Indoor management' is opposed to that of the role of 'Constructive notice' because of following reasons

- (i) It protects outsiders from company whereas 'Constructive notice protects company from outsiders.

- (ii) In Constructive notice outsider is at fault whereas in indoor management company is at fault
- (iii) In Constructive notice outsider is presumed to have knowledge of Moa and AoA whereas in indoor management he is presumed that all internal proceeding are done regularly
- (iv) Constructive notice makes contract void whereas Indoor management makes contract valid

Doctrine of Indoor Management

11. The directors of Smart Computers limited borrowed a sum of money from Mr. Tridev. The company's articles provided that the directors may borrow on bonds such sums as may, from time to time, be authorized by resolution passed at a general meeting of the company. The shareholders claimed that there had been no such resolution authorizing the loan, and therefore, it was taken without their authority and the company is not bound to repay the loan to Tridev. In the light of the contention of shareholders, decide whether the company is bound to pay the loan.

(MTP MAY 2020) (NOV 2016)

Solution:

Law: Doctrine of Indoor Management: According to this doctrine, persons dealing with the company need not enquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association.

Ref Case: Royal British Bank vs Turquand.

Conclusion: In the given question, Mr. Tridev being a person external to the company, need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. Even if the shareholders claim that no resolution authorizing the loan was passed, the company is bound to pay the loan to Mr. Tridev.

Doctrine of Indoor Management

12. The Secretary of a company issued a share certificate to 'A' under the company's seal with his own signature and the signature of a Director forged by him. 'A' borrowed money from 'B' on the strength of this certificate. 'B' wanted to realize the security and requested the company to register him as a holder of the shares. Explain whether 'B' will succeed in getting the share registered in his name.

(RTP Nov 2013)

Solution:

Law: As per doctrine of Indoor Management which says that persons dealing with the company are entitled to assume that the acts of the directors or the officers of the company are validly performed, if they are within the scope of their apparent authority. The rule of Indoor Management is not applicable if the transaction involves forgery. A company can never be held bound for forgeries committed by its officers.

Ref case: Ruben vs Great Fingall consolidated company.

Conclusion: In the stated problem, the doctrine of indoor management can apply only in case of irregularities which might otherwise affect the transaction, but it cannot apply to forgery which must be regarded as nullity. Hence, 'B' will not succeed in getting the share registered in his name.

Doctrine of Indoor Management

13. Under the Articles of Association of ABC Ltd. Company, directors had power to borrow up to ₹ 10,000 without the consent of the general meeting. The Directors themselves lent ₹ 35,000 to the company without such consent and took debentures of the Company. Decide under the provisions of the Companies Act, 2013, whether the company is liable? If so, what is the extent of liability of the company in this case?

(MTP MAY 2013)

Solution :

Law: As per exception to doctrine of Indoor management, where a person dealing with a company has actual or constructive notice of the irregularity as regards internal management, he cannot claim the benefit under the rule of indoor management and such contract will not be enforceable on the company.

Ref case: Howard vs Patent Ivory Manufacturing Company

Conclusion: In this case, the directors of a company could borrow any amount up to ₹ 10,000/- without the resolution of the company in a general meeting. But for any amount beyond ₹ 10,000/- they had to obtain the consent of the shareholders in a general meeting. The directors themselves lent ₹ 35,000/- to the company without such consent and took debentures. The directors had the notice of the internal irregularity and hence the company was liable to them only for ₹ 10,000/-.

Section 13 Procedure to alter Object clause

14. Rishi Pharmacy Ltd. decided to take up the business of food processing because of the downward trend in pharmacy business. There is no provision in the object clause of the Memorandum of Association to enable the company to carry on such business. State whether its object clause can be amended? Mention briefly the procedure to be adopted for change in the object clause.

(MAY 2016)

Solution :

Procedure to alter Object Clause

Company can pursue only that object which is mentioned in object clause of memorandum. Any contract not supported by object clause of MOA is void ab initio Following are procedure to alter object clause of MOA

- (i) A company may alter its object clause by passing SR.
- (ii) If a company has raised money from the public by issue of a prospectus, and any part of it remains unutilized with the company, then the company shall alter its objects for which it raised the money through prospectus if following conditions are satisfied:
 - (a) the company has published the prescribed details and justification for such alteration in 2 -newspapers (one English newspaper and one newspaper in vernacular language) circulating at the place where the registered office of the company is situated;
 - (b) the prescribed details and justification for such change have been placed on the website of the company, if any, and
 - (c) the dissenting shareholders have been given an exit opportunity by the promoters and shareholders having control in accordance with the regulations to be specified by SEBI
- (iii) The company shall file a copy of SR with the Registrar within 30 days.
- (iv) The Registrar shall register the alteration and issue a certificate of registration within 30 days of receipt of the SR.

Section 14 Procedure to alter AOA

15. The Board of Directors of Sindhu Limited wants to make some changes and to alter some Clauses of the Articles of Association which are to be urgently carried out, which include the increase in Authorized Capital of the company, issue of shares, increase in borrowing limits and increase in the number of directors. Discuss about the provisions of the Companies Act, 2013 to be followed for alteration of Articles of Association.

(RTP NOV 2018)

Solution :

Alteration of Articles of Association

Section 14 of the Companies Act, 2013, vests companies with power to alter its articles. The law with respect to alteration of articles is as follows:

- (i) A company may alter its articles by a special resolution, subject to the provisions of this Act and the conditions contained in its memorandum.
- (ii) Every alteration of the articles and a copy of the order of the Central Government approving the alteration, shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in Form No. INC 27

Section 16 Rectification of Name of a Company

16. Paritosh and friends got registered a company in the name of Taxmann advisory Private Limited. Taxmann is a registered trademark. After 5 years when the owner of trademark came to know about the same, it filed an application with relevant authority. Can the company be compelled to change its name by the owner of trademark? Can the owner of registered trademark request the company and then company changes its name at its discretion?

(April 22)(6 Marks) (RTP Mar 23)

Solution :

Law: According to section 16 of the Companies Act, 2013

- (i) if a company is registered by a name which, in the opinion of the Central Government, is identical with the name by which a company had been previously registered, it may direct the company to change its name. Then the company shall by passing an ordinary resolution change its name within 3 months.
- (ii) If it is identical with a registered trade mark and owner of that trade mark apply to the Central Government within three years of incorporation or registration of the company, it may direct the company to change its name. Then the company shall change its name by passing an ordinary resolution within 3 months.

Conclusion: In the given case, owner of registered trade-mark is filing objection after 5 years of registration of company with identical name. While it should have filed the same within 3 years. Therefore, the company cannot be compelled to change its name.

As per section 13, company can anytime change its name by passing a special resolution and taking approval of Central Government. Therefore, if owner of registered trademark requests the company for change of its name and the company accepts the same then it can change its name voluntarily by following the provisions of section 13.

Section 19 Subsidiary Not to Hold Shares in Holding

17. As at 31st March, 2018, the paid up share capital of S Ltd. is ₹ 1,00,00,000 divided into 10,00,000 equity shares of ₹ 10 each. Of this, H Ltd. is holding 6,00,000 equity shares and 4,00,000 equity shares are held by others. Simultaneously, S Ltd. is holding 5% equity shares of H Ltd. out of which 1% shares are held as a legal representative of a deceased member of H Ltd. On the basis of the given information, examine and answer the following queries with reference to the provisions of the Companies Act, 2013 :

- (i) Can S Ltd. make further investment in equity shares of H Ltd. during 2018-19?
- (ii) Can S Ltd. exercise voting rights at Annual general meeting of H Ltd.?
- (iii) Can H Ltd. allot or transfer some of its shares to S Ltd.?

(MAY 2019)**Solution :****Law:**

- (i) Section 2(87) provides that a company shall be deemed to be a subsidiary of another, if any of the following conditions are satisfied:
 - (a) That other controls the composition of its board of directors;
 - (b) That other exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies; or through its Subsidiaries

- (ii) As per section 19 of the Companies Act, 2013
 - (a) A subsidiary company shall not hold any shares in its holding company either itself or through its nominee.
 - (b) A holding company shall not allot or transfer its shares to any of its subsidiary companies and if so done, it shall be void.

Sec. 19 is not applicable to a case:

- (a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
- (b) where the subsidiary company holds such shares as a trustee; or
- (c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company:

However, the subsidiary company to whom section 19 does not apply, shall have a right to vote at a meeting of the holding company only in case (a) or (b) mentioned above.

Conclusion: In the instant case,

- (i) As per the provisions of sub-section (1) of Section 19 of the Companies Act, 2013, no company shall, either by itself or through its nominees, hold any shares in its holding company. Therefore, S Ltd. cannot make further investment in equity shares of H Ltd. during 2018-19.
- (ii) As per second proviso to Section 19, a subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee. Therefore, S Ltd. can exercise voting rights at the Annual General Meeting of H Ltd. only in respect of 1% shares held as a legal representative of a deceased member of H Ltd.
- (iii) Section 19 also provides that no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void. Therefore, H Ltd. cannot allot or transfer some of its shares to S Ltd.

Section 19

18. Octagon Limited is holding 58% of the paid up share capital of Pentagon Limited. Vijay, one of the shareholders of Octagon Limited, holding 10% shares of the company, has made a charitable trust. He donated his 10% shareholding in Octagon Limited and ₹ 20 crore to the trust. He appointed Pentagon Limited as the trustee. All the assets of the trust are held in the name of Pentagon Limited. As per the provisions of the Companies Act, 2013, decide whether Pentagon Limited can hold shares of Octagon Limited. (6 Marks)

(MTP Sep. 22) (5 Marks) (MTP Aug 24)

Solution :

Law: Hint – similar to above question

Conclusion: In the given case, one of the shareholders of holding company (Octagon Limited) has transferred his shares in the holding company to a trust where the shares will be held by subsidiary company (Pentagon Limited). It means now subsidiary will hold shares in the holding company. But it will hold shares in the capacity of a trustee. Therefore, we can conclude that in the given situation Pentagon Limited can hold shares in Octagon Limited.

Section 19

19. ABC Limited issued equity shares worth 1,00,000 (10,000 shares of 10 each) on 1st April, 2023 which has been fully subscribed, whereby XYZ Limited holds 3,500 equity shares and PQR Limited holds 2,500 equity shares. Prior to the issue of equity shares, ABC Limited already hold 20% of the equity shares of MNP Limited. Further, XYZ Limited holds 10% of MNP Limited's equity shares as a trustee. MNP Limited controls the composition of the Board of Directors of XYZ Limited and PQR Limited on 01.07.2023. Examine with reference to the relevant provisions of the Companies Act, 2013 —

- (i) Whether ABC Limited is a subsidiary of MNP Limited ?
- (ii) Whether ABC Limited and XYZ Limited have the right to vote on the Annual General Meeting of MNP Limited held on 30th September, 2023?

(Nov 23) 5 Marks**Solution :****Law:** Similar to above question**Conclusion:** In present case ,

- (i) since MNP Limited controls the composition of the Board of Directors of XYZ Limited and PQR Limited they are subsidiaries of MNP Ltd and since XYZ Limited holds 3,500 equity shares and PQR Limited holds 2,500 equity shares i.e subsidiaries of MNP holds more than half of its voting rights(6000 out of 10000 shares) in ABC Ltd , ABC Ltd is subsidiary of MNP Ltd
- (ii) ABC Ltd has no voting rights in MNP Ltd as it held shares before becoming subsidiary but XYZ Limited have the right to vote on the Annual General Meeting of MNP Limited as it held shares as a trustee

Section 19

20. S Ltd acquired 10% paid up share capital of H Ltd on 15th March 2017. H Ltd acquired 55% paid up share capital of S Ltd on 10th March 2018. H Ltd. on 25th September, 2020 decided to issue bonus shares in the ratio of 1:1 to the existing shareholders.

Accordingly, bonus shares were allotted to S Ltd.

Examine under the provisions of the Companies Act, 2013 and decide

- (i) the validity of holding of shares by S Ltd. in H Ltd.
- (ii) allotment of Bonus shares by H Ltd. to S Ltd.

(Nov 2020)**Solution :**

Law: As per Section 19 of the Companies Act, 2013, no company shall, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

However, this shall not apply where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

Conclusion : In the given case, H Ltd. has acquired 55% paid up share capital of S Ltd. on 10th March 2018. Whereas, S Ltd. has been holding 10% paid up share capital of H Ltd. since 15th March, 2017. The said instance as asked in the question falls under the exception stated above.

Therefore –

- (i) Holding of shares by S Ltd. in H Ltd. is valid in view of the proviso (c) to sub-section of section 19 of the Act, which states that the restrictions of provisions of section 19(1) will not be applicable where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.
- (ii) Allotment of bonus shares by H Ltd. to S Ltd. is also valid in view of the above proviso.

Section 19

21. New Ltd. is a company in which Old Ltd. is holding 65% of its paid up share capital. One of the shareholder of Old Ltd. made a charitable trust and donated his 10% shares in Old Ltd. and ₹50 crore to the trust. He appoints New Ltd. as the trustee. All the assets of the trust are held in the name of New Ltd. Can a subsidiary hold shares in its holding company in this way?

(MTP Sept 24)

Solution :

Law: According to section 19 of the Companies Act, 2013 a company shall not hold any shares in its holding company either by itself or through its nominees. Also, holding company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Following are the exceptions to the above rule:

- a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
- b) where the subsidiary company holds such shares as a trustee; or
- c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company but in this case it will not have a right to vote in the meeting of holding company.

Conclusion: In the given case one of the shareholders of holding company has transferred his shares in the holding company to a trust where the shares will be held by subsidiary company. It means now subsidiary will hold shares in the holding company. But it will hold shares in the capacity of a trustee. Therefore, we can conclude that in the given situation New Ltd. can hold shares in Old Ltd.

Section 20 Service of Documents

22. Explain the provisions of the Companies Act, 2013 relating to the 'Service of Documents' on a company and the members of the company?

(MTP May 25)

Solution :

Service of Documents

Under section 20 of the Companies Act, 2013

- (i) a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed.
- (ii) However, in case where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.
- (iii) Under section 20(2), save as provided in the Act or the rule thereunder for filing of documents with the registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed.
- (iv) However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.