

# 2

## CHAPTER

# Incorporation of Company and Matters Incidental Thereto

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## ■ INTRODUCTION TO INCORPORATION OF COMPANIES

**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

## ■ 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.

### MULTIPLE CHOICE QUESTIONS (MCQ)

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**

## ■ 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 who are cognizant of the reduction will be personally liable for the payment of the acts /contracts/debts of the company contracted during that time (after elapse of six months).

**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).

## ■ 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)

#### 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.

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

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

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

<b>Application for reserving name (New Company)</b>	Through SPICe+ (INC-32) with prescribed fee
<b>Application for name change (Existing Company)</b>	Through RUN (Reserve Unique Name) web service with fee
<b>Resubmission</b>	Allowed within 15 days for rectification of defects
<b>Restrictions on Names (Sub-sections 2 &amp; 3)</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Name must not: <ul style="list-style-type: none"> <li><input type="checkbox"/> Be identical or nearly resemble another company's name</li> <li><input type="checkbox"/> Be offensive or undesirable (ROC's discretion)</li> <li><input type="checkbox"/> Imply connection with Government bodies (unless approved by CG)</li> <li><input type="checkbox"/> Include restricted words (e.g. Nation, Republic, Authority, etc.)</li> </ul> </li> </ul>
	Which includes words or expressions namely Board; Commission; Authority, Undertaking; National; Union; Central; Federal; Republic; President Rashtrapati; Small Scale Industries; Khadi and Village Industries Corporation Financial Corporation and the like; Municipal; Development Authority; Prime Minister or Chief Minister: Minister; Nation; Forest corporation; Development Scheme: Statute or Statutory: Court or Judiciary; Governor, Bureau; and the use of word Scheme with the name of Government (s), State, India, Bharat on any Government authority or in any manner resembling with the schemes launched by Central, State or local Governments and authorities.
<b>Example of Resembling Names</b>	<b>Same name despite differences in:</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Singular/plural (Green Tech vs Greens Tech)</li> <li><input type="checkbox"/> Punctuation/spelling/capitalisation</li> <li><input type="checkbox"/> Tenses (Ascend vs Ascending)</li> <li><input type="checkbox"/> Translation (Rashtriya Vidyut = National Electricity)</li> </ul>

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

<b>4 (1) (b)</b>	<b>Situation clause OR Registered Office</b>	<p><b>Situation clause is important for:</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Legal Domicile – Helps determine jurisdiction for compliance (ROC, RD), judicial (NCLT, High Court), and fiscal (taxation) matters.</li> <li><input type="checkbox"/> The State in which the registered office of the company is to be situated</li> <li><input type="checkbox"/> Shall have an RO in 30 days of INC</li> <li><input type="checkbox"/> Statutory books are generally kept here.</li> <li><input type="checkbox"/> Public companies must hold general meetings at the registered office or in the same city.</li> <li><input type="checkbox"/> Acts as the official address for receiving all notices and communications.</li> </ul>
<b>4 (1) (c)</b>	<b>Object Clause</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> The objects for which the company is proposed to be incorporated, and any matter considered necessary in furtherance thereof.</li> </ul>

		<input type="checkbox"/> Main object <input type="checkbox"/> Ancillary or Incidental Objects
		<p>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.</p> <p>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. 15 To illustrate for trade one have rent or own a building, issue invoices, make and receive payments.</p>
4 (1) (d)	Liability clause	<input type="checkbox"/> The liability of members of the company , whether limited or unlimited, and also state,— <input type="checkbox"/> Limited by shares – Liability of its members is limited to the amount unpaid, if any, on the shares held by them <input type="checkbox"/> Limited by guarantee – The amount up to which each member undertakes to contribute – <input type="checkbox"/> To the assets of the company in the event of its being wound-up <input type="checkbox"/> while he is a member or <input type="checkbox"/> Within one year after he ceases to be a member <input type="checkbox"/> <b>for Debt and liabilities of the company or contracted before he ceases to be a member, as the case may be; and</b> <input type="checkbox"/> To the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories themselves

**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	<input type="checkbox"/> Amount of authorized or nominal capital divided into share of fixed amounts and <input checked="" type="radio"/> On face value
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		<ul style="list-style-type: none"> <li>○ 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</li> </ul> <p>A company not having share capital need not have this clause.</p>
4 (1) (e) (ii)	<b>Subscription or Association Clause</b>	<ul style="list-style-type: none"> <li>□ The detail of the subscribers to be formed into a company.</li> <li>□ The Memorandum shall conclude with the association clause.</li> <li>□ Every subscriber to the Memorandum shall take at least one share, and shall write against his name, the number of shares taken by him.</li> <li>□ In the case of a company having a share capital.</li> </ul>
4 (1) (f)	<b>Nomination clause (OPC)</b>	<ul style="list-style-type: none"> <li>□ In the case of OPC, the name of the person who, in the event of death of the subscriber,</li> <li>□ Shall become the member of the company.</li> </ul>

## ■ 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

## ■ 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.

## ■ 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
01.	<b>Contains regulations</b>	The Rules and regulations for internal management of the company.
02.	<b>Inclusion of matters</b>	A company may also include such additional matters in its articles as may be considered necessary for its management.
03.	<b>Entrenchment provision</b> (सख्ती)	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] <input type="checkbox"/> At the time of formation <input type="checkbox"/> By amendment – Through consent of all in Private and SR in case of Public company.
04.	<b>Notice to the registrar of the entrenchment provision</b> [Sub-section 5]	Shall give notice to ROC for such provision in – <input type="checkbox"/> SPICe + INC-32 along with the fees at the time of incorporation or <input type="checkbox"/> In case of existing companies in form no. MGT-14 within <input type="checkbox"/> 30 days from the date of entrenchment of the articles, along with the fee

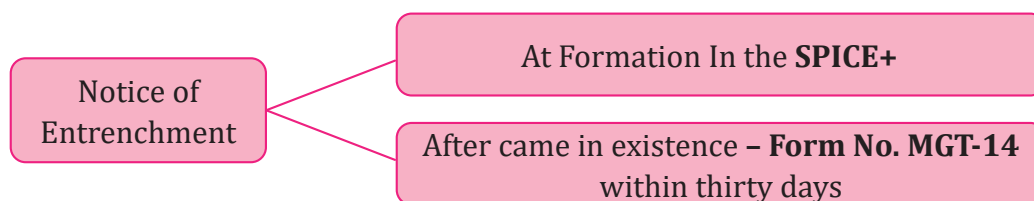
**Note:** Entrenchment is the chronic or deep-rooted fact of an attitude, habit, or belief that is firmly established or accustomed, therefore it becomes difficult or unlikely to change.

### 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.

### ■ SUMMARY OF SECTION 5(5) AND RULE 10



### ■ 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.

<b>Forms for Articles</b>
<input type="checkbox"/> Table F-L-S
<input type="checkbox"/> Table G-L-BOTH
<input type="checkbox"/> Table H-L-G
<input type="checkbox"/> Table I-UL+SC
<input type="checkbox"/> Table J-UL-SC

- ❑ Table I - Unlimited company and having share capital.
- ❑ Table J - Unlimited company and having no share capital.

**Example:** 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.

### MULTIPLE CHOICE QUESTIONS (MCQ)

2. 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
3. Entrenchment enhances 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

### ■ 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. ticles 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.
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## ■ 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.

**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.

**Examples:** 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.

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.

## ■ 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.

### 1. Members are bound to company

- It is deemed that MOA is signed by every member
- Every member shall comply with all conditions
- If any Non Compliance then co. may sue members
- If any debt due – Company holds right of lien on the shares

### **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.

### **2. Company is bound to members**

- If company deprives any member of its rights then members can sue the company
- Company is bound to comply with all T/C of MOA/AOA and
- If company is about to commit a breach members may obtain an injunction from court or
- If company has already committed a breach then members can sue the company/director/responsible persons

### **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

### **3. Members are bound by each other but cannot sue each other directly**

- There is no contract between members.
- However a member can sue other members only through the company

### **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.

### **4. Company or members are NOT bound to outsiders**

- MOA/AOA do not bind company or members to outsiders
- An outsider cannot take the help of articles to establish a contract with the company

**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.

### MULTIPLE CHOICE QUESTIONS (MCQ)

- 4. 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.
- 5. 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

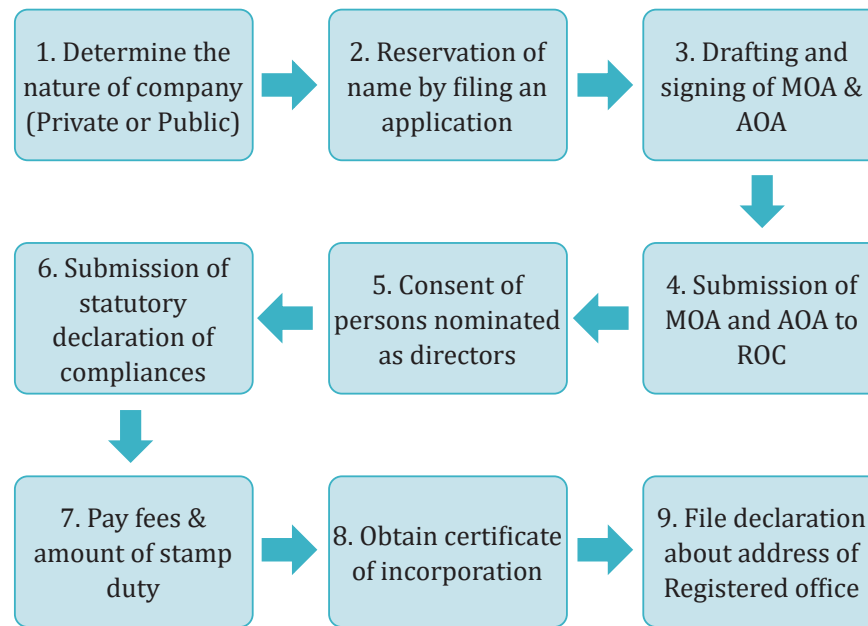
## ■ SECTION 7 - INCORPORATION OF COMPANY

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 (SECTION 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 & Employment
- 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.

### ■ 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 director 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 is 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)**

### ■ MANNER PRESCRIBED UNDER RULE 13 OF THE COMPANIES (INCORPORATION) RULES, 2014

Sr. 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)	<input type="checkbox"/> Affix thumb impression/mark. <input type="checkbox"/> 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)	<input type="checkbox"/> Signature & address must be notarized by a Notary Public. <input type="checkbox"/> If outside Commonwealth/Hague Convention countries, authentication by Consular Officer required.
6.	Foreign National (Visited India)	<input type="checkbox"/> Intended to incorporate a company in India, <input type="checkbox"/> Allowed if holding valid Business Visa. <input type="checkbox"/> 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, Shivajinagar, Pune - 411 016 Consultant	1 (One equity)	VIPUL DEVENDRA KINKHABWALA (S/o. Devendra Vithaldas Kinkhabwala) 14, Thakurdwar Road, Zaveri Building, Bombay - 400 002. Service
Nadathur Srinivasa Raghavan (Son of N. Sarangapani) 5, "Ravikripa", Station Road, Matunga (C. R.), Bombay-400019. Consultant	1 (One equity)	
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

**■ DETAILED PROCESS WITH THE REQUIRED DOCUMENTS FOR INCORPORATION IS LISTED BELOW**

<b>Declaration of Compliance</b>	<input type="checkbox"/> A declaration in Form INC-8 shall be filed by: <ul style="list-style-type: none"> <li><input type="radio"/> An advocate, a chartered accountant, cost accountant or company secretary in practice who is engaged in the formation of the company; and</li> <li><input type="radio"/> A person named in the articles as director, manager or secretary of the company.</li> </ul> <input type="checkbox"/> 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.
<b>Declaration by Subscribers and First Directors</b>	<input type="checkbox"/> 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"> <li><input type="radio"/> All documents filed with the Registrar are correct, complete, and true to the best of his knowledge and belief;</li> <li><input type="radio"/> He is not convicted of any offence related to promotion, formation or management of a company; and</li> <li><input type="radio"/> He has not been found guilty of fraud or breach of duty during the last five years.</li> </ul>
<b>Address for Correspondence</b>	<input type="checkbox"/> The address for correspondence must be provided till the company establishes its registered office.
<b>Details of First Directors (Form DIR-12)</b>	<input type="checkbox"/> The particulars of each first director named in the articles shall include: <ul style="list-style-type: none"> <li><input type="radio"/> Full name (including surname or family name),</li> <li><input type="radio"/> DIN,</li> <li><input type="radio"/> residential address,</li> <li><input type="radio"/> nationality and</li> <li><input type="radio"/> other relevant particulars</li> <li><input type="radio"/> Proof of identity</li> </ul> <input type="checkbox"/> His interest in other firms or bodies corporate <input type="checkbox"/> Consent to act as director in Form DIR-2

<b>Particulars of Subscribers</b>	<p>For every subscriber to the memorandum, the following shall be filed</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Name (with surname/family name) and</li> <li><input type="checkbox"/> recent photograph</li> <li><input type="checkbox"/> Parent's name, date and place of birth,</li> <li><input type="checkbox"/> educational qualification and occupation</li> <li><input type="checkbox"/> PAN, Email ID, Phone number</li> <li><input type="checkbox"/> Permanent and present residential address with proof (e.g., electricity bill, bank statement – not older than 2 months)</li> <li><input type="checkbox"/> Proof of identity (Voter ID, Passport, DL, Aadhaar for Indian nationals; Passport for foreign nationals)</li> <li><input type="checkbox"/> If already a director/promoter in another company, details of company name, CIN, and nature of interest</li> </ul>
<b>Where Subscriber is a Body Corporate</b>	<p>Details to be filed include:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Name of body corporate, CIN or Registration No., GLN (if any),</li> <li><input type="checkbox"/> principal place of business,</li> <li><input type="checkbox"/> email ID</li> <li><input type="checkbox"/> Certified true copy of Board resolution authorizing subscription to MOA</li> <li><input type="checkbox"/> For LLPs, certified resolution approved by all partners authorizing subscription</li> <li><input type="checkbox"/> For foreign body corporates, copy of COI and RO address</li> </ul>
<b>Special Approvals (Rule 12)</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> 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.</li> <li><input type="checkbox"/> A declaration to this effect shall be submitted at incorporation.</li> </ul>
<b>Nidhi Company</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> If incorporating as a Nidhi, a declaration by the Central Government under Section 406 must be obtained before business commencement.</li> <li><input type="checkbox"/> A declaration in this regard must be submitted at incorporation.</li> </ul>
<b>Certificate of Incorporation (Form INC-11)</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> The Registrar shall, upon verification of documents and information, register them and issue a certificate of incorporation in Form INC-11,</li> <li><input type="checkbox"/> stating that the company is incorporated.</li> <li><input type="checkbox"/> It shall also mention the PAN of the company if allotted by the Income Tax Department.</li> </ul>

	
<p><b>Corporate Identity Number (CIN)</b></p>	<p><input type="checkbox"/> 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.</p>
<p><b>CIN of Infosys Limited is L85110KA1981PLC013115</b></p> <p>The first character - <b>L</b> (reveals listing status, L for listed and U for unlisted, for instance Infosys is Listed one)</p> <p>The next five digits - <b>85110</b></p> <p>The next two letters - <b>KA</b> (reveals the Indian state where the company is registered, for instance, KA is for Karnataka)</p> <p>The next four digits - <b>1981</b> (reveals the year of incorporation of a company)</p> <p>The next three characters - <b>PLC</b> (reveals the company classification - PLC for public, PTC for private, FTC for foreign, and GOI for government)</p> <p>The last six digits - <b>013115</b> (reveals registration number with concerned ROC)</p>	
<p><b>Maintenance of Documents</b></p>	<p><input type="checkbox"/> The company shall maintain and preserve copies of all documents and information filed at the time of incorporation</p> <p><input type="checkbox"/> at its registered office till its dissolution.</p>
<p><b>Furnishing of False or Incorrect Information (Pre-INC)</b></p>	<p><input type="checkbox"/> If any person furnishes false/incorrect particulars or</p> <p><input type="checkbox"/> suppresses material facts</p> <p><input type="checkbox"/> during incorporation,</p> <p><input type="checkbox"/> he shall be liable under Section 447 for action related to fraud.</p>

<p><b>False Information Discovered (Post-INC)</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> If at any time post incorporation, it is found that:</li> <li><input type="checkbox"/> Company was incorporated through false information or suppression of facts or</li> <li><input type="checkbox"/> Any fraudulent action was involved, then</li> <li><input type="checkbox"/> promoters, first directors and declarants</li> <li><input type="checkbox"/> shall be liable under Section 447.</li> </ul>
<p><b>Order of Tribunal (NCLT)</b></p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Upon being satisfied and</li> <li><input type="checkbox"/> after giving the company, a reasonable opportunity of being heard, (OoBH)</li> <li><input type="checkbox"/> the NCLT may pass any order it deems fit including: <ul style="list-style-type: none"> <li><input type="radio"/> Regulation of company management (MOA/AOA)</li> <li><input type="radio"/> Making members' liability unlimited</li> <li><input type="radio"/> Removal of company name from register</li> <li><input type="radio"/> Winding up the company</li> </ul> </li> <li><input type="checkbox"/> The Tribunal shall also consider the transactions and liabilities contracted by the company before passing such order.</li> </ul>

**Note:** 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.

### MULTIPLE CHOICE QUESTIONS (MCQ)

6. 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

7. 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

### ■ REGISTRATION OF SECTION 8 COMPANY WITH CHARITABLE OBJECTS ETC.

**Additional document along with Application under INC-32 in SPICe+ :**

**Who has the power to provide the license??**

- CG has the power which has been delegated to ROC
- MOA/AOA can be altered only with prior permission of CG in respect of change of name by omitting the word 'limited' to 'private limited' but

**Except in the case of –**

- Conversion of Section 8 company to any other kind of companies and
- In case of revocation of license also,
- The power resides with Regional Director – RD

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

<b>For Incorporation of Section 8 Company</b>	
<b>Memorandum &amp; Articles of Association</b>	Drafted in conformity with Section 8 and applicable rules in <b>INC-13</b>
<b>Declaration by a Practicing Professionals</b>	Advocate/CA/CS/CMA in practice declaring MOA & AOA conform to Section 8 and all legal requirements are fulfilled in <b>INC-14</b>
<b>Estimate of Income &amp; Expenditure</b>	An estimate or projected for next 3 years and sources of income & objects of expenditure.
<b>Declaration by each Applicants</b>	Declaration from each person making the application in <b>INC-15</b>
<b>For Alteration of MOA &amp; AOA</b>	
<b>Prior Permission for Alteration</b>	MOA – Approval from Regional Director (RD) AOA – Approval from Registrar of Companies (ROC)
<b>For Conversion into Any Other Kind of Company</b>	
<b>Special Resolution</b>	Passed in a general meeting approving conversion with explanatory statement stating reasons.
<b>Application to RD (Form INC-18)</b>	With fee, copy of SR, explanatory statement, and notice.
<b>Notices to Authorities</b>	Proof of service to: <ul style="list-style-type: none"><li><input type="checkbox"/> Chief Commissioner &amp; ITO</li><li><input type="checkbox"/> Charity Commissioner</li><li><input type="checkbox"/> Chief Secretary of the State</li><li><input type="checkbox"/> Relevant Departments under whom Co. operates</li></ul>
<b>Public Notice (Form INC-19)</b>	Company within a week's time from filing the application to RD shall publish the notice on its own expense in: One vernacular newspaper One English newspaper Company's website (if any)
<b>Filing Status</b>	All financials, annual returns, and statutory filings should be up-to-date.

**Note:** In the event the application is made after the expiry of three months from the date of preceding financial year to which the financial statement has been filed, a statement of the financial position duly certified by chartered accountant made up to a date not preceding thirty days of filing the application shall be attached.

<b>Hearing &amp; Approval by RD</b>	RD to grant approval after giving opportunity of being heard; may impose conditions.
<b>Post-Approval Action</b>	<input type="checkbox"/> On receipt of approval from RD, company shall – <input type="checkbox"/> Call GM to amend MOA & AOA <input type="checkbox"/> File updated docs with ROC along with <input type="checkbox"/> Declaration to comply with RD conditions
<b>Fresh Certificate of Incorporation</b>	Issued by Registrar upon registration of updated MOA & AOA.

## ■ SECTION 9 - EFFECT OF REGISTRATION

### From the Date of Incorporation

(mentioned in the certificate of incorporation),

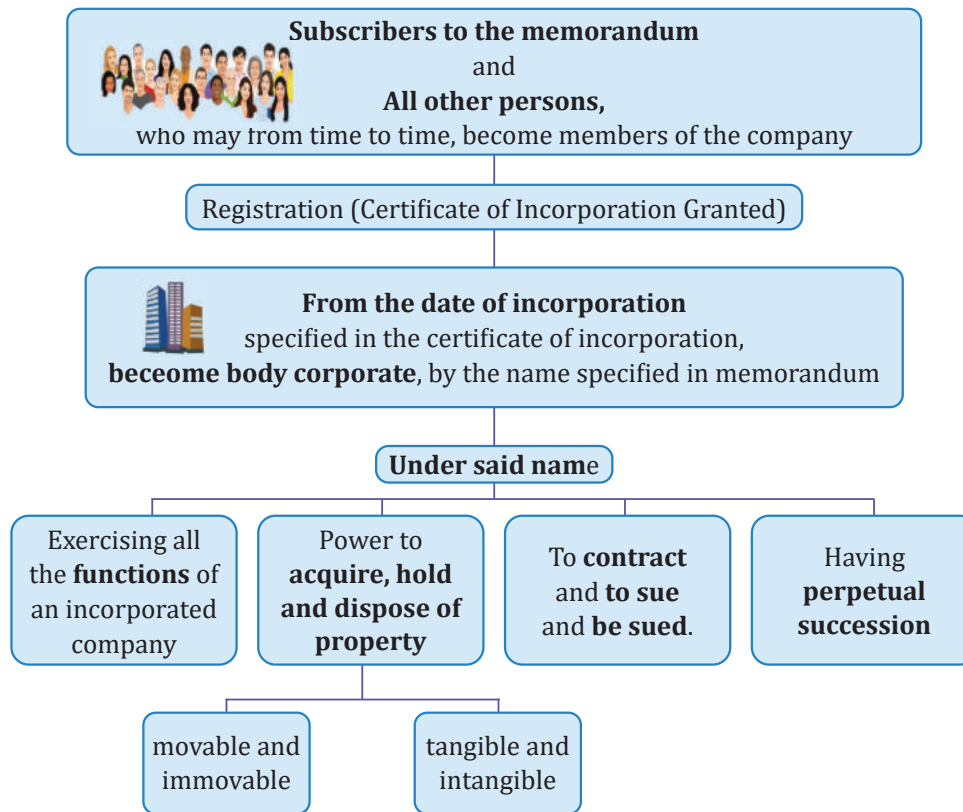
SUBSCRIBERS ----->> MEMBERS OF THE COMPANY

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



### ■ SECTION 10A- 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 -

- 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 make it verified by CA,CS, Cost Acc.
- Verify your address in 30 days of INC in INC 22
- 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:

Liabile	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.

**8.** 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

**9.** 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

## ■ DOCTRINE OF ULTRA VIRES

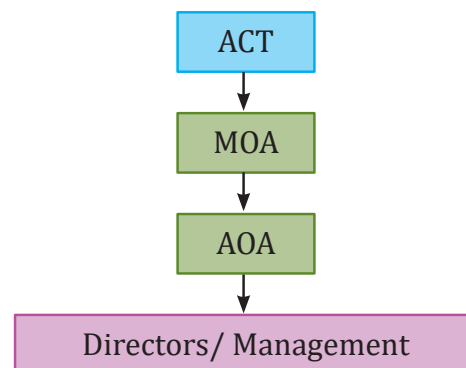
- ☐ Doctrine = Theory
- ☐ Ultra = Beyond
- ☐ Vires = Power

### 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.

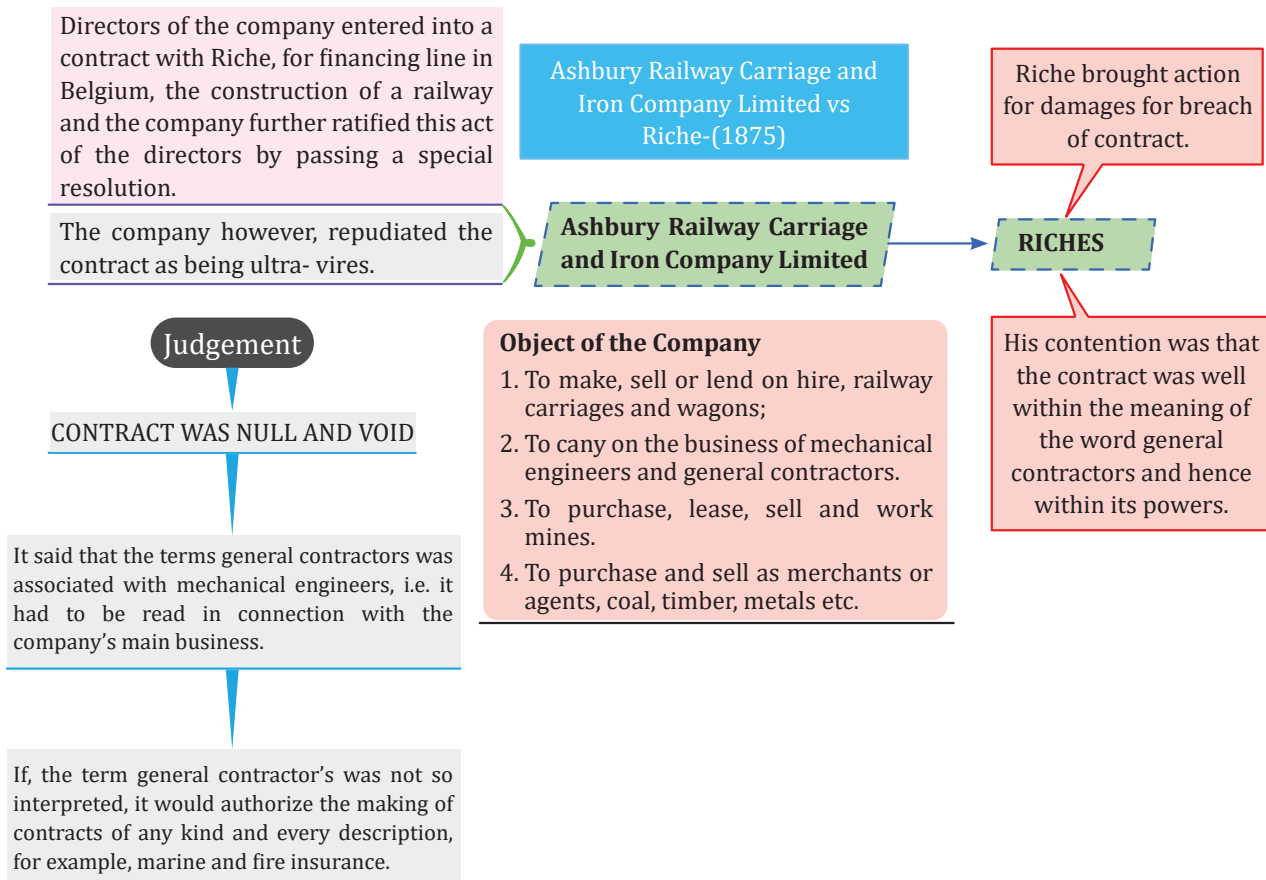


## ■ CONSEQUENCES OR IMPACT OF ULTRA VIRES ACTS

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.



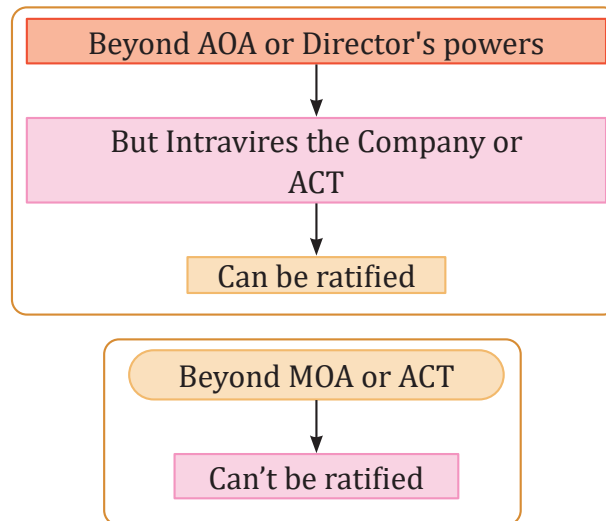
**Since the memorandum is a “public document”, it is open to public inspection.**

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.*

## ■ 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 remains 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 has rent or own a building, issue invoices, make and receive payments.

## ■ DOCTRINE OF CONSTRUCTIVE NOTICE

**In the favour of Company  
Crates 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.**

#### Kotla Venakataswamy Vs Rammurthi (1934)

- AOA required every document to be signed by 3 persons: MD, working director and secretary
- A mortgage deed was not signed by MD
- It was held that plaintiff cannot enforce the contract as the deed was invalid.

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

## ■ DOCTRINE OF INDOOR MANAGEMENT

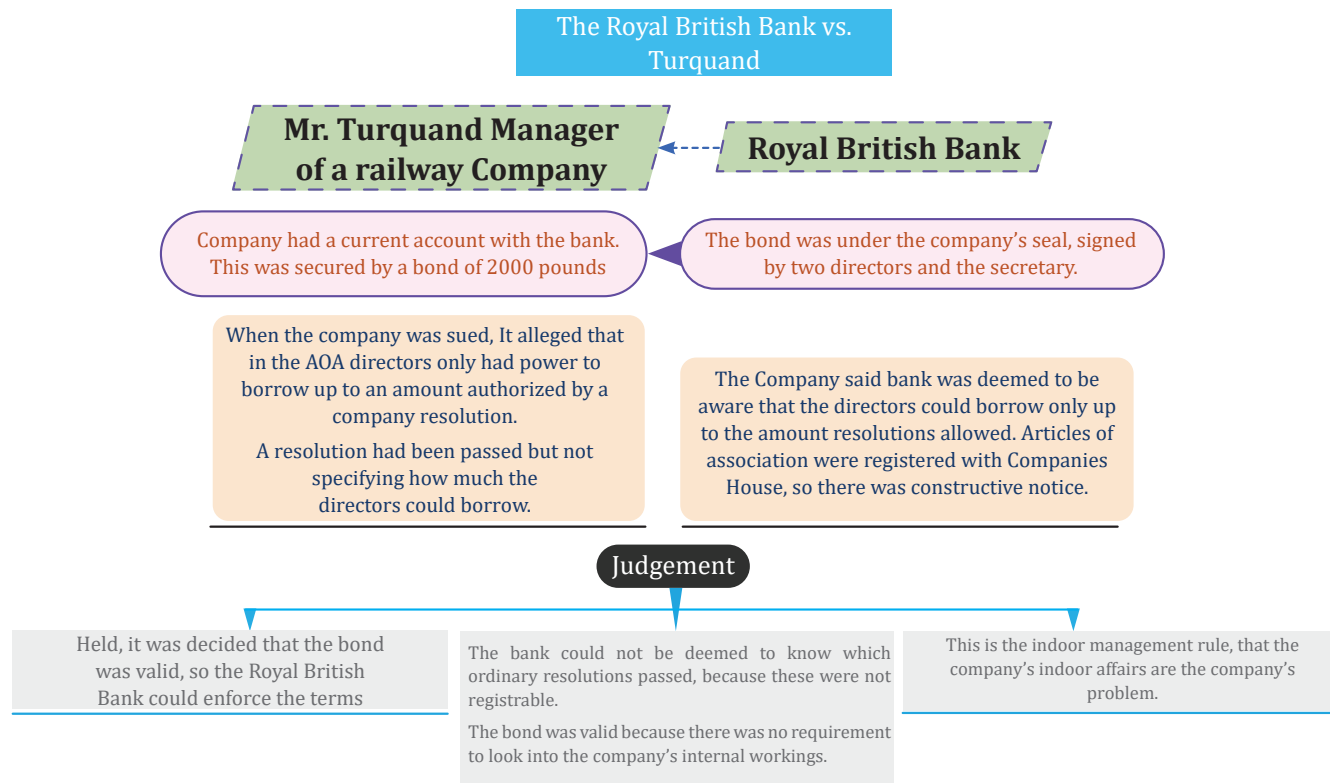
**In the favour of outsiders Creates a presumption in the favour of the outsiders**

**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

#### 1. 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 Kansseen

- ❑ 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.

## 2. Suspicion of irregularity (Negligence)

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

(बेवकूफो के लिए कोई जगह नहीं है)

- Where the person dealing with the company is put upon an inquiry,
- for example, where the transaction is unusual or
- not in the ordinary course of business,
- it is the duty of the outsider to make the necessary enquiry.
- the circumstances surrounding the contract are suspicious and therefore invite inquiry.
- It means 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
- Suspicion should arise from the fact that an officer who is acting in the matter which is apparently outside the scope of his authority

### 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

## 3. Forgery

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

(चोरी और ऊपर से सीना जौरी) - धौके के लिए use नहीं कर सकते

- 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.

### Mnemonic or Story to Learn the Above Case Law Names

Knowledge – Mera ek friend hai jisko bahot knowledge tha

Howard – se padh kara aya tha aur Patent है खुद के नाम पर – but नाम -kya hai ? - MK

Suspicion?? – Anand था – Din में

Forgery – Rub किया documents par aur देखा – Great Forgery nikla

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

- (a) Exception
- (b) Extension
- (c) Alternative
- (d) Not related

**Answer:** (a) Exception

### ■ 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

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

## ■ SECTION 13 - ALTERATION OF MEMORANDUM

### Procedure of Alteration of Memorandum & Name Clause

Provision	Details
<b>Alteration of Memorandum [Section 13(1) &amp; 13(6)(a)]</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Company may alter its Memorandum with</li> <li><input type="checkbox"/> SR passed by members.</li> <li><input type="checkbox"/> Such special resolution must be filed with the Registrar (ROC).</li> </ul>
<b>Name Change Approval Required [Section 13(2) &amp; (3)]</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Change in company name requires</li> <li><input type="checkbox"/> Approval of CG (delegated to ROC).</li> <li><input type="checkbox"/> Application is made in Form INC-24 with prescribed fee.</li> </ul>
<b>Name Change No Approval Needed</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> 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.).</li> </ul>
<b>Filing of CG Approval [Section 13(6)(b)]</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Approval from the Central Government (ROC) must also be filed with the Registrar by the company.</li> <li><input type="checkbox"/> Special Resolution + Approval of Central Government in MGT-14 to ROC in 30 days.</li> </ul>
<b>Effectiveness of Name Change [Section 13(2)]</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Registrar updates the ROC with the new name.</li> <li><input type="checkbox"/> Issues fresh Certificate of Incorporation in Form INC-25.</li> <li><input type="checkbox"/> Change is effective only on the issue of this certificate.</li> </ul>

**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.

**Example:** Tata Sky Limited changed its Name to Tata Play Limited (CIN U92120MH2001PLC130365).

**Note:** Industrial Insight

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.

<b>Section 16 – Rectification of Name of Company</b>	
<b>Who can initiate rectification?</b>	<input type="checkbox"/> Central Government (powers delegated to Regional Directors under Section 458) <input type="checkbox"/> Proprietor of a registered trademark under the Trade Marks Act, 1999
<b>When?</b>	<input type="checkbox"/> If the company's original or new name is identical with or too similar to an existing company's name or registered trademark.
<b>Application Time Limit (Trademark case)</b>	<input type="checkbox"/> Application by trademark proprietor must be made within 3 years of incorporation, registration, or name change.
<b>Direction by CG/RD</b>	<input type="checkbox"/> The company is directed to change its name.
<b>Time Limit to Comply</b>	<input type="checkbox"/> The company must change its name within 3 months of such direction by passing an Ordinary Resolution.
<b>Post-change Filing</b>	<input type="checkbox"/> Notice of name change along with RD's order to be filed with ROC within 15 days of name change.
<b>ROC's Role</b>	<input type="checkbox"/> ROC makes necessary changes in Certificate of Incorporation and Memorandum.
<b>If Company Fails to Comply</b>	<input type="checkbox"/> The Central Government will allot a new name. <input type="checkbox"/> ROC enters a new name in Register and issues a fresh Certificate of Incorporation.
<b>Further Name Change</b>	<input type="checkbox"/> The company may subsequently change its name as per Section 13.

### **SECTION 13(8) – (11) ALTERATION IN OBJECT CLAUSE OF THE COMPANYY**

<b>Company which raised money from the public via prospectus and has unutilised funds and wants to alter the object.</b>	
<b>Mode of Approval</b>	Special Resolution via Postal Ballot only
<b>Disclosures in Postal Ballot Notice</b>	<input type="checkbox"/> Total money received <input type="checkbox"/> Total money utilized <input type="checkbox"/> Unutilised amount <input type="checkbox"/> Details of proposed alteration <input type="checkbox"/> Justification for change <input type="checkbox"/> Details of proposed alteration <input type="checkbox"/> Justification for change <input type="checkbox"/> Amount to be used for new objects <input type="checkbox"/> Estimated financial impact <input type="checkbox"/> Any other relevant info <input type="checkbox"/> Place for inspecting resolution copy

<b>Advertisement Requirements</b>	<input type="checkbox"/> Simultaneous with dispatch of postal ballot notice <input type="checkbox"/> In 1 English + 1 Vernacular newspaper (of the registered office location) <input type="checkbox"/> On company's website (if any)
<b>Exit Opportunity for Dissenting Shareholders</b>	Promoters/controlling shareholders must provide exit in accordance with SEBI regulations
<b>Filing &amp; Registration</b>	SR to be filed with ROC under Section 13(6)(a) ROC shall register the change within 30 days
<b>When Change is Effective?</b>	Alteration takes effect only after registration with ROC under Section 13(10)
<b>Prohibited Alteration [Section 13(11)]</b>	If a company is limited by guarantee & no share capital, alteration giving profit-sharing right to non-members is void.

### ■ SECTION 13(11) ALTERATION IN LIABILITY CLAUSE OF THE COMPANY

<b>Mode of Approval</b>	Special Resolution
<b>Requirements</b>	<input type="checkbox"/> Copy of SR and <input type="checkbox"/> Altered MOA with ROC in <input type="checkbox"/> MGT 14 <input type="checkbox"/> within 30 days
<b>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</b>	

**10.** 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.

## ■ SECTION 61 ALTERATION 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 O.R.
- Notice to be given to ROC within 30 days in SH-7
- With altered memorandum

## ■ 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.
  - 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”

## ■ LABELING OF COMPANY [SUB-SECTION 3]

### Every Company Shall

- Painted/affixed

Display of name  
PA Every Position legible language

### Importance of RO

To figure Domicile  
or nationality and  
Jurisdiction  
of the court

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

### 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.

### ■ CHANGE IN RO- SECTION 12(4) TO (6)

Provision	Requirement	Form + Timeline + Authority
<b>Section 12(1) &amp; (2)</b>	Every company must have a RO and verification of the same	<ul style="list-style-type: none"> <li> Within 30 days of INC</li> <li> 60 days for IFSC (Pub/Pvt)</li> <li> <b>ROC</b></li> </ul>
<b>Common for all the Situations</b>	Notice of change in registered office after	<b>INC-22</b>
	Incorporation	<ul style="list-style-type: none"> <li> Within 30 days of change</li> <li> <b>ROC</b></li> </ul>
	Change to local limits of Same city/town/village	<ul style="list-style-type: none"> <li> BR in BM</li> <li> BR in INC-22 (Notice of change) Within 30 days of change and</li> <li> 60 days for IFSC (Pub/Pvt)</li> <li> <b>ROC</b></li> <li><input type="checkbox"/> MOA not altered in such case</li> </ul>
<b>Section 12(5) (Part 1)</b>	Change outside local limits of city/town/village [Same ROC and State]	<ul style="list-style-type: none"> <li> BR in BM</li> <li> SR in GM</li> <li> MGT-14 Within 30 days of SR</li> <li> INC-22 Within 30 days of change and</li> <li> 60 days for IFSC (Pub/Pvt)</li> </ul>

		<ul style="list-style-type: none"> <li> ROC</li> <li><input type="checkbox"/> MOA not altered in such case</li> </ul>
<b>Section 12(5) (Part 2)</b>	Change from one ROC jurisdiction to another (within same state) [30-60-30]	<ul style="list-style-type: none"> <li> SR in GM</li> <li> MGT-14 Within 30 days of SR</li> <li> INC-23 File with Regional Director</li> <li> RD</li> </ul>
	Section 12(6) (Part 1)	<ul style="list-style-type: none"> <li> RD to communicate confirmation of change</li> <li> Within 30 days of application receipt</li> <li> RD to Company</li> </ul>
	Section 12(6) (Part 2)	<ul style="list-style-type: none"> <li> Company to file confirmation with ROC</li> <li> INC-28</li> <li> Within 60 days of RD's confirmation</li> <li> ROC</li> </ul>
	Section 12(6) (Part 3)	<ul style="list-style-type: none"> <li> ROC to register and certify the new registered office</li> <li> Within 30 days of filing INC-28</li> <li> ROC</li> </ul>
		<ul style="list-style-type: none"> <li> Shift to a new place</li> <li> INC-22</li> <li> Within 30 days of shifting and</li> <li> ROC</li> </ul>
<b>Change of Registered Office from One State to Another [Section 13(4), (5), &amp; (7)]</b>		
<b>Section 13(4) Application for Approval</b>	Application to CG (RD) for change of RO from One State to another [60-30]	<ul style="list-style-type: none"> <li> SR</li> <li> Form INC-23</li> <li> Before change to</li> <li> Regional Director (RD)</li> </ul>
	<ul style="list-style-type: none"> <li><input type="checkbox"/> Supporting Documents. Must attach: <ul style="list-style-type: none"> <li><input type="checkbox"/> Altered MOA</li> <li><input type="checkbox"/> GM minutes</li> <li><input type="checkbox"/> Board Resolution/POA/Vakalatnama</li> <li><input type="checkbox"/> List of creditors &amp; debenture holders</li> <li><input type="checkbox"/> Acknowledgment of service to ROC &amp; State Govt</li> </ul> </li> </ul>	
	<ul style="list-style-type: none"> <li><input type="checkbox"/> Advertisement in vernacular newspaper (local language)</li> <li><input type="checkbox"/> In English newspaper with wide circulation</li> </ul>	<ul style="list-style-type: none"> <li> Form INC-26</li> <li> Within 30 days before INC-23 filing</li> </ul>

<b>Section 13(5) Disposal of Application</b>	RD to dispose application after satisfying that: <input type="checkbox"/> Creditors/debenture-holders have consented  OR <input type="checkbox"/> Company has made provision or security to discharge all debts	🕒 Within 60 days 🏢 Regional Director (RD)
<b>Section 13(7) Filing of Order</b>	File certified copy of RD order with both States' ROCs with Altered MOA	📄 Copy of SR in MGT-14 📄 Form INC-28 🕒 Within 30 days of RD order
		📄 INC-22 🕒 Within 30 days of shifting and 🏢 ROC
<b>Section 13(7) New COI</b>	ROC of the new state to issue fresh Certificate of Incorporation	🏢 ROC of New State 📄 New COI issued
		MOA needs alteration in this case

**Key Notes:**

- 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.

**MULTIPLE CHOICE QUESTIONS (MCQ)**

- 11.** 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.
- 12.** 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

## ■ 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

### 1. Alteration by Special Resolution [Sub-section (1)]

A company may alter its Articles of Association (AOA) by passing a Special Resolution, subject to the provisions of the Companies Act, 2013 and the conditions in its Memorandum.

#### Such alteration may include:

- ❑ Conversion of a Private Company → Public Company, or
- ❑ Conversion of a Public Company → Private Company

Conversion of a Public Company into a Private Company

Such alteration shall not be valid unless approved by the Central Government.

#### Application to be made:

- ❑ Within 60 days from the date of passing the Special Resolution.
- ❑ Filed with the Regional Director (RD) in e-Form RD-1,  
along with the prescribed fee and the following documents:

#### Mnemonic - SR – 60 – 15

Code	Meaning
S	Special Resolution required
R	Regional Director approval
6	60 days – to apply to RD
15	15 days – to file with Registrar

#### Documents to be attached with RD-1:

Sr. No.	Document	Description
(a)	<b>Draft MOA &amp; AOA</b>	With proposed alterations
(b)	<b>Minutes of General Meeting</b>	Showing resolution details, votes for/against, and names of dissenters
(c)	<b>Board Resolution/ Power of Attorney</b>	Authorising filing of the application (dated not earlier than 30 days)
(d)	<b>Declaration by KMP</b>	Regarding compliance with provisions of the Act and Rules

## 2. Effect of Alteration on Private Company Status

If a Private Company alters its articles in such a way that it removes the restrictions & limitations required for a private company, then it ceases to be a private company from the date of such alteration.

## 3. Filing of Alteration with Registrar [Sub-section (2)]

Every alteration of the articles, along with the order of the Central Government, must be filed with the Registrar of Companies (ROC) in Form INC-27, along with the prescribed fee.

- Time Limit: Within 15 days of receiving the approval order.
- Registrar's Duty: To register the alteration accordingly.

## 4. Effect of Registration [Sub-section (3)]

Once registered under sub-section (2), the alteration takes effect as if originally contained in the Articles.

**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.

### MULTIPLE CHOICE QUESTIONS (MCQ)

- 13.** 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.

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 ₹1000 every copy.

- 14.** 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) Alteration shall be made to every copy of MOA/AOA because these are considered as public documents.
  - (ii) Alteration 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)



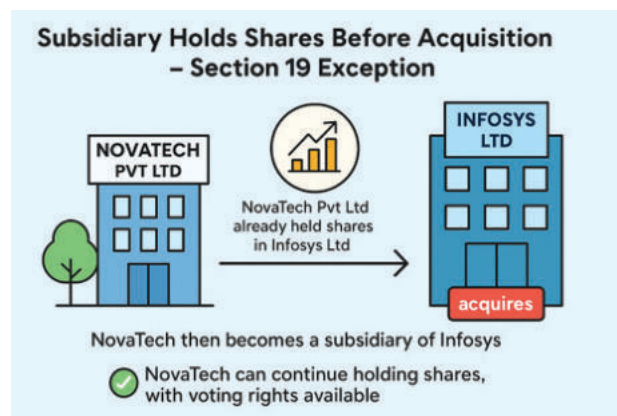
**The prohibition does not apply to the following cases:**

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



**MULTIPLE CHOICE QUESTIONS (MCQ)**

16. 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)**

- (a) Win Limited cannot represent itself as a trustee after it becomes a subsidiary of Om Limited.
- (b) Win Limited can represent itself as a trustee only after it was a holding company of Om Limited.
- (c) Win Limited cannot hold shares as a trustee even though it is a subsidiary company.
- (d) Win Limited can do so as it is holding shares in Om Limited prior to becoming a subsidiary of it.**

## ■ 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
<b>Company or Officer thereof</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Registered post</li> <li><input type="checkbox"/> Speed post</li> <li><input type="checkbox"/> Courier service</li> <li><input type="checkbox"/> Leaving it at registered office</li> <li><input type="checkbox"/> Electronic or other prescribed modes</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> If securities are held with a depository,</li> <li><input type="checkbox"/> the depository may serve records of beneficial ownership via</li> <li><input type="checkbox"/> electronic or other prescribed mode.</li> </ul>
<b>Register or Member</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Post</li> <li><input type="checkbox"/> Registered post</li> <li><input type="checkbox"/> Speed post</li> <li><input type="checkbox"/> Courier</li> <li><input type="checkbox"/> Delivery at office/address</li> <li><input type="checkbox"/> Electronic or other prescribed modes</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Filing with Registrar is electronic by default, unless stated otherwise.</li> <li><input type="checkbox"/> A member may request a specific mode and pay prescribed fees.</li> </ul>
<b>Definition of Courier</b>	A person or agency that delivers the document and provides proof of its delivery.	
<b>Definition of Electronic Transmission</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Communication that creates a record capable of retention, retrieval, and review</li> <li><input type="checkbox"/> Can be rendered into a tangible legible form Modes include: <ul style="list-style-type: none"> <li><input type="radio"/> Fax or Email (shared with company/officer)</li> <li><input type="radio"/> Electronic message board/network (designated for such communication)</li> <li><input type="radio"/> Other electronic modes with sender verification systems in place</li> </ul> </li> </ul>	
<b>Deemed Service by Post</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> For notice of meeting – After 48 hours from posting</li> <li><input type="checkbox"/> For other documents – When the letter would be delivered in ordinary course of post</li> </ul>	

<b>Special Provision for Nidhi Companies</b>	<input type="checkbox"/> Applicable only to members who: <ul style="list-style-type: none"> <li><input type="radio"/> Hold shares &gt; ₹1,000 in face value or</li> <li><input type="radio"/> Hold &gt;1% of paid-up share capital (whichever is less)</li> </ul> <input type="checkbox"/> For other shareholders: <ul style="list-style-type: none"> <li><input type="radio"/> Document to be served via newspaper notice in the district of Registered Office and</li> <li><input type="radio"/> on notice board of the Nidhi</li> </ul>
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**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).

## ■ SECTION 21 – AUTHENTICATION OF DOCUMENTS, PROCEEDINGS AND CONTRACTS

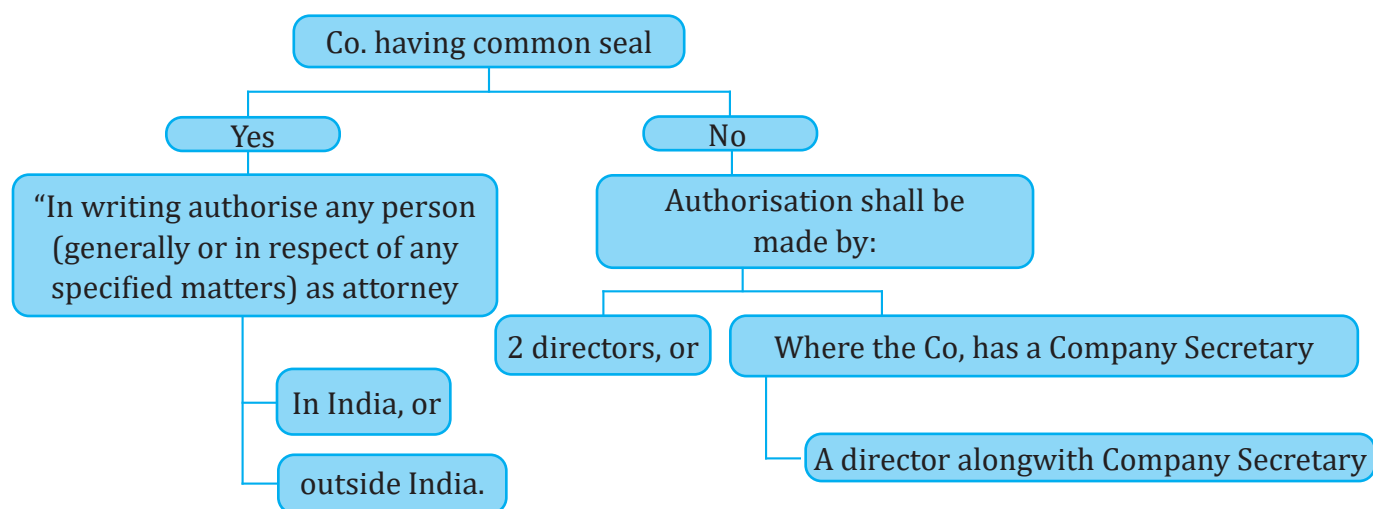
- A. A document or proceeding requiring authentication by a company or
- B. Contracts made by or on behalf of a company

### 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.

## ■ SECTION 22 – EXECUTION OF BILLS OF EXCHANGE, ETC.

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



## ■ INC FORM CONVERTED

Form No.	Purpose
INC-3	Consent of nominee for One Person Company.
INC-4	Change of nominee in OPC / cessation of member in OPC.
INC-8	Declaration by professional (CA/CS/CMA) confirming compliance for incorporation.
INC-9	Declaration by subscribers and first directors regarding offences, correctness of documents.
INC-11	Certificate of Incorporation (issued by ROC).
INC-12	Application for licence under Section 8 (non-profit company).
INC-13	MOA format for Section 8 companies.
INC-14	Declaration from practising professional for Section 8 MOA/AOA compliance.
INC-18	Application for conversion of existing company into Section 8 company.
INC-19	Notice to ROC for conversion into Section 8 company.
INC-20	Intimation of revocation/cancellation of Section 8 licence.
INC-21	Declaration prior to commencement of business (old form-replaced by INC-20A).
INC-22	Notice of situation or change of situation of registered office.
INC-23	Application to Regional Director for shifting registered office from one State to another
INC-24	Application to Central Government for approval of change of name (alteration of Name Clause).
INC-25	New Certificate of Incorporation issued after change of name.
INC-26	Advertisement format for public notice of shifting of registered office between States.
INC-27	Conversion of Public → Private or Private → Public Company and alteration filings.
INC-28	Filing of order of Court / Central Govt / Regional Director with the ROC.
INC-32	(SPICE / SPICE+) Main incorporation form for all companies
INC-33	Electronic Memorandum of Association filed with SPICE+.
INC-34	Electronic Articles of Association filed with SPICE+.
INC-35	(AGILE/AGILE-PRO / AGILE-PRO-S) - GST, EPFO, ESIC, bank account, and other linked registrations with SPICE+.