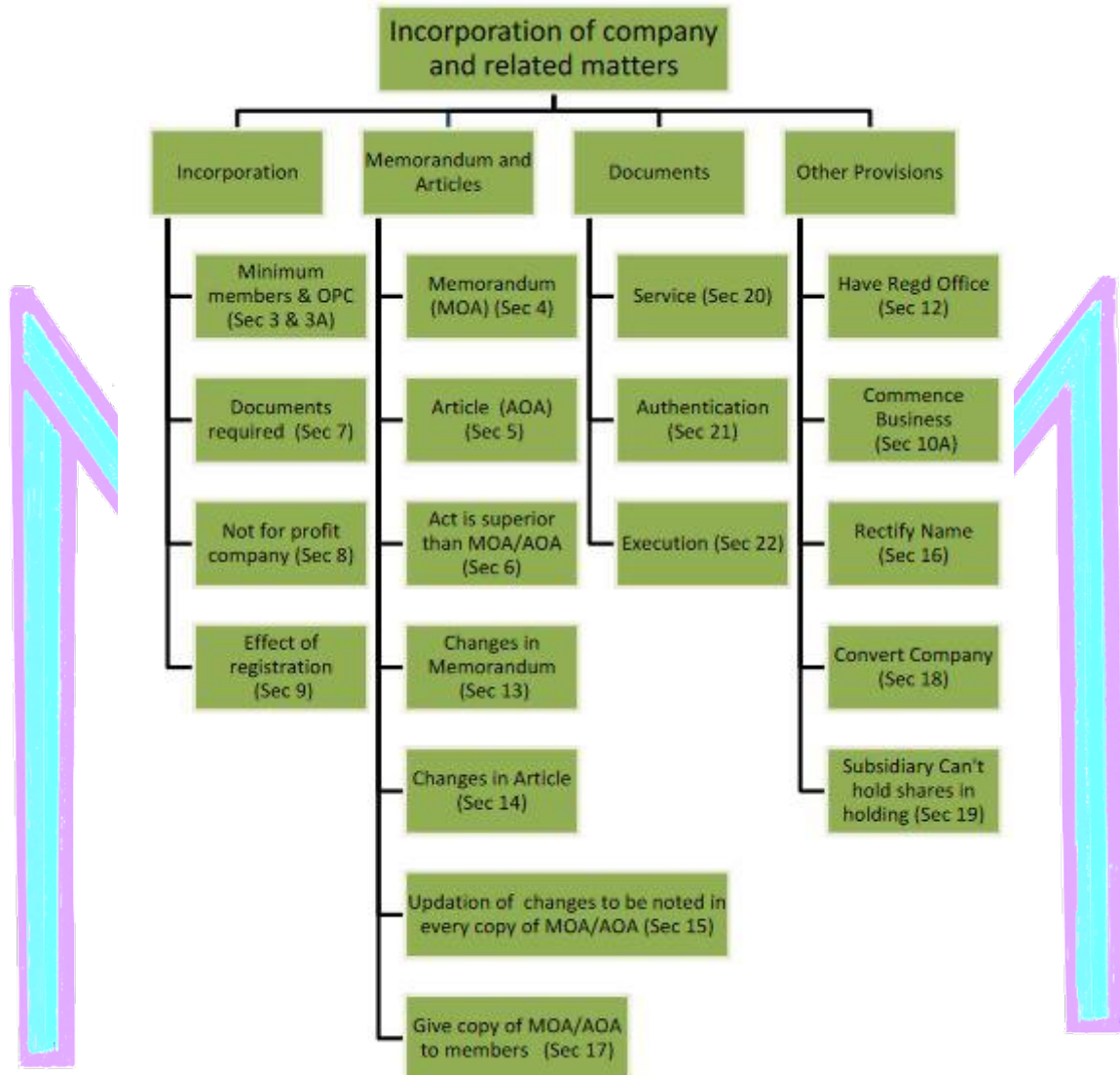


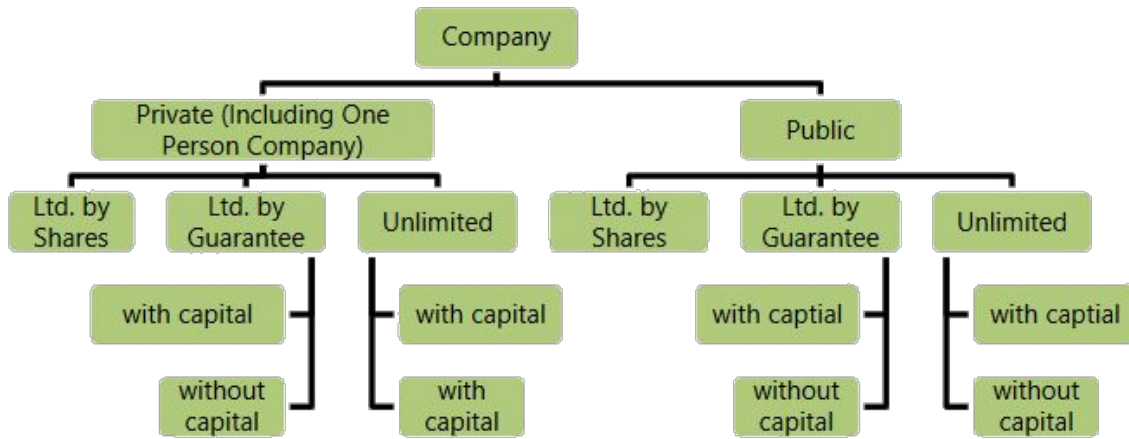
CHAPTER 2

INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO

INCORPORATION OF COMPANY AND INCIDENTAL MATTERS (SECTIONS 3 TO 22)	THE COMPANIES (INCORPORATION) RULES, 2014
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- A company is a **separate legal entity** with **perpetual succession** for **lawful purpose**;
- A company can be defined as an “artificial person”, invisible, intangible, created by or under law, with a distinct legal personality and perpetual succession. It is not affected by the death, insanity, or insolvency of an individual member;
- Persons who initiate promotion of a company are known as **Promoters**. It is they who conceive the idea of forming the company. They take all necessary steps for its registration;
- All persons who take steps for the registration of a company e.g., those associated with the preparation of a prospectus or in drawing up the Memorandum of Association of the company and assisting in its registration are regarded as promoters;
- It should, however, be noted that persons acting only in a **professional capacity** e.g., the solicitor, banker, accountant etc. are **not** regarded as promoters.



SECTION 3 - FORMATION OF COMPANY:

- Private Limited Company with Private Limited or Pvt. Ltd. as suffix;
- Public Limited Company with Limited or Ltd. as suffix;
- One Person Company with OPC as suffix;
- Sec. 3(1) Basic requirement with respect to the constitution of the company: For Lawful purpose, & subscribing name to MOA, following minimum members are required-
- Public company with or without limited liability any 7 or more persons can form a company;
- 2 or more persons can form a private company ;
- 1 person where company to be formed is one person company;
- Sec. 3(2): The companies so formed could be with limited liability (by shares or guarantee) or with unlimited liability

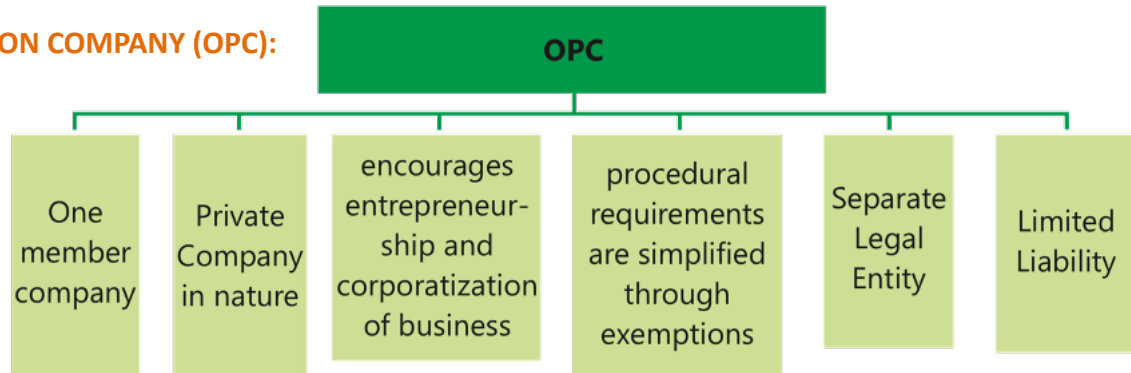
SECTION 3A – MEMBERS SEVERALLY LIABLE IN CERTAIN CASES:

- If at any time the number of members of a company is reduced,
- in the case of a public company, below 7, in the case of a private company, below 2, and
- the company carries on business for more than six months while the number of members is so reduced,
- every person who is a member of the company during the time that it so carries on business after those six months and is cognisant (aware) of the fact that it is carrying on business with less than 7 members or 2 members, as the case may be,
- shall be severally liable for the payment of the whole debts of the company contracted during that time (after 6 months), and may be severally sued therefor.

Example:

Amar, Akbar, and Anthony along with five of their friends were member of Harmony Limited. Amar and Akbar died on 18th August 2022, resultantly members count reduced to 6 and every one 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 rest of five friends, because members shall severally liable for said loan in given case.

ONE PERSON COMPANY (OPC):

**Rule 3 of Companies (Incorporation) Rules:**

- Only a **natural person** who is an **Indian citizen & resident in India** (person who has stayed in India for a period of **not less than 120 days** during the immediately preceding **Financial year**) **or Non-Resident** -
 - shall be **eligible** to incorporate a OPC;
 - shall be a **nominee** for the sole member of a OPC.
- A **natural person shall not be member of more than 1 OPC at any time i.e. 1 person = 1 OPC.** Also, the same person cannot be nominee of more than 1 OPC.
- If a member of OPC, becomes member of another OPC **due to nomination**, then within **180 days** (*incorrect in ICAI Material 182 days*) he shall rectify the situation
- **No minor** shall become member or nominee of the OPC or can hold share with beneficial interest;
- OPC **cannot** be incorporated or converted into a company under **section 8** of the Act. Though it may be converted to private or public companies in certain cases;

Indicate Name & Consent Nominee

- The memorandum of OPC shall indicate the name of the other person (other than minor) in MoA, who shall, in the event of the **subscriber's death or his incapacity to contract**, become the member of the company i.e. **Nominee appointment**.
- The name of such nominated person in Form No. INC-32 (SPICe) along with Written consent of nominee shall also be filed (INC-3) with the Registrar at the time of incorporation.
- **Example** :Ms. Madhu formed an OPC wherein Mr. Sudan is nominee as his name is specified in MOA along with his consent. Ms. Madhu declared insolvent, pending to discharge insolvency, she becomes incompetent to contract, hence, Mr. Sudan becomes the member of such OPC

Withdraw of Consent by Nominee

- Nominee can withdraw his consent later by giving notice to sole member & OPC. The, the sole member will nominate another person within 15 days of receipt of notice of withdrawal & shall intimate the Company along with written consent of new nominee in Form INC-3
- he **nominee** could be **changed** as per the process and this will **not attract** process for **alteration** of the MoA.

Replacing Nominee with another one

- Member can change nominee for any reason including death / incapacity to contract & appoint new nominee after obtaining written consent in INC-3. Member needs to intimate in writing to Company.



Example:

Rajesh has formed a 'One Person Company (OPC), wherein his wife Roopali is named as nominee. For the last two years, his wife Roopali is suffering from terminal illness and due to this hard fact he wants to change her as nominee. He has a trusted and experienced friend Ramnivas who could be made nominee or his (Rajesh) son Rakshak who is of seventeen years of age. In the instant case, Rajesh can appoint his friend Ramnivas as nominee in his OPC and not Rakshak because Rakshak is a minor.

When Nominee become Member

- When Sole member ceases to be member & nominee becomes new member, then such new member shall nominate **within 15 days** (of becoming member) a new nominee.

Notice of change to Registrar

- In cases of change of Nominee cases: Withdrawal of consent by Nominee / Replacing Nominee with another one / Nominee becomes Member, the Company shall within 30 days of receipt of notice, file with ROC the details of such changes & details of new nominee in **Form No. INC-4** along with written consent of new nominee in INC-3.
- OPC **cannot** carry out **Non-Banking Financial Investment activities** including investment in securities of any body corporate;

Relaxations available to OPC

- Cashflow Statement not required [Sec. 2(40)]
- Annual Return to be signed by Director only & not by CS. The Company can file even Abridged Annual Return [Sec. 92]
- FS can be signed only by 1 Director. Also, Abridged Director Report is allowed for OPC
- AGM not applicable to OPC [Sec. 96]. Also, sections 100 to 111 not applicable to OPC
- Relaxation to hold Board Meeting only one in each half of calendar year [Sec. 173]
- OPC can file FS with ROC within 6 months from end of FY instead of 30 days [Sec. 137]

SEC. 8 FORMATION OF COMPANIES WITH CHARITABLE OBJECTS, ETC.:

Object:

- To promote **charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.**
- License will be granted by Central Government for forming company with limited liability without the addition of words 'Limited' or 'Private limited' to its name. A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government. Sec. 8 Company will be treated as a Limited Company. Voluntary conversion into any other type of Company will be allowed after passing Special Resolution.
- The **Central Government** may by order **revoke the licence** of the company where the company **contravenes** any of the requirements or the conditions of this sections subject to which a licence is issued or where the **affairs** of the company are **conducted fraudulently**, or **violative of the objects of the company** or prejudicial to public interest, and on revocation the Registrar shall put '**Limited**' or '**Private Limited**' against the company's name in the register.
- Where a licence is **revoked**, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the **company be wound up** under this Act **or amalgamated with another Sec. 8 Company**

- However, no such order shall be made unless the company is given a reasonable **opportunity of being heard**
- Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another Sec. 8 Company & **having similar objects**, then, the CG may, by order, provide for such **amalgamation to form a single company** with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.
- Penalty for non-compliance: Co. Fine min Rs. 10 lacs max Rs. 1 crore & Officer-in-Default: Imprisonment max 3 years &/or fine min Rs.25,000 max Rs. 25 lacs.
If Fraud is proved, OID liable u/s 447

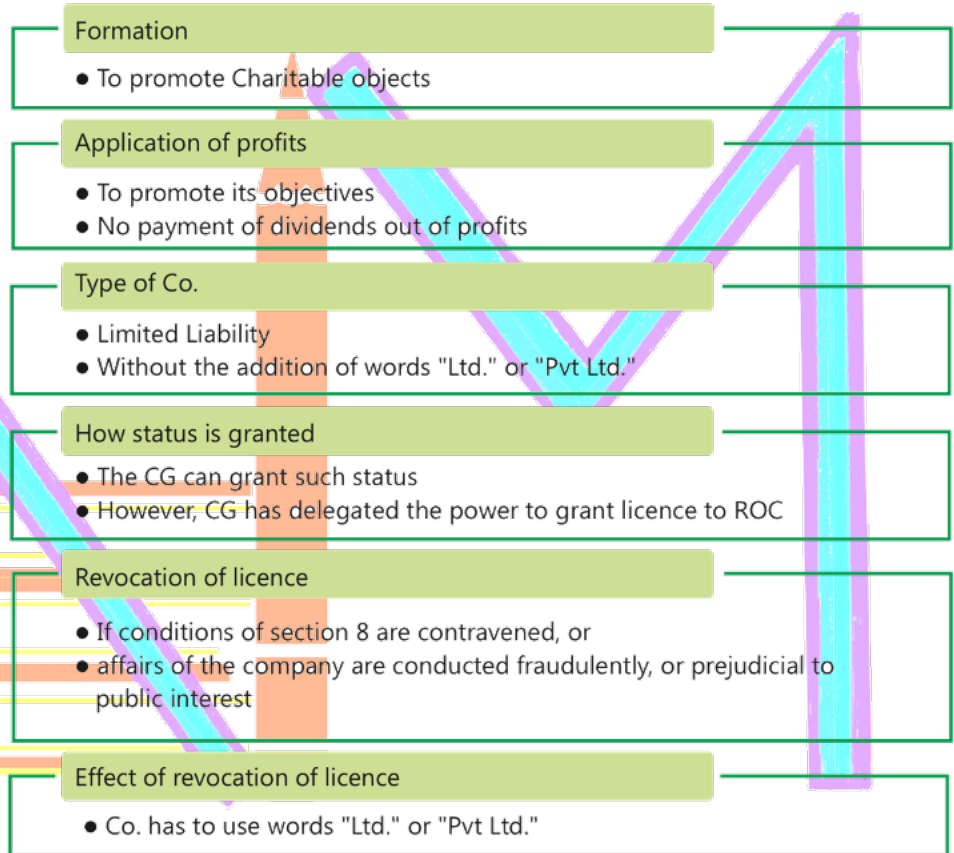
Relief:

(i) Can call its **general meeting** by giving a **clear 14 days notice instead of 21 days.**

(ii) Requirement of minimum number of directors, independent directors etc. does not apply.

(iii) Need not constitute Nomination and Remuneration Committee and Shareholders Relationship Committee.

SECTION 8 COMPANY ≠ SMALL COMPANY



MEMORANDUM OF ASSOCIATION (MOA):

- **Section 2(56)** — memorandum means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act
- It is the **base document** for the formation of the company and along with the Articles of Association (AOA) is regarded as the **Constitution** of the Company.

SECTION 4 - REQUIREMENTS OF MOA:

- As against the existing requirement of the 1956 Act, the 2013 Act does not require the objects clause in the memorandum to be classified as the following:
 - (i) The main object of the company ,

INCORPORATION OF COMPANY & INCIDENTAL MATTERS

- (ii) Objects incidental or ancillary to the attainment of the main object,
- (iii) Other objects of the company,

I. Object Clause of registering a memorandum of association:

- It contains the **object** of the company therefore identifies the possible **scope** of its operations beyond which its actions cannot go,
- It enables shareholders, creditors and all those who deal with company to know what its **powers** are and what **activities** it can engage in,
- A memorandum is a **public document** under **Section 399** of the Companies Act, 2013. Consequently, every person entering into a contract with the company is presumed to have the knowledge of the conditions contained therein.
- The shareholders must know the purposes for which his money can be used by the company and what risks he is taking in making the investment.
- The company cannot enter into a contract or engage in any trade or business, which is **beyond the power** confessed on it by the memorandum. If it does so, it would be **ultra vires** the company and **void**.

II. The memorandum of a company shall state—

- (a) The **name** of the company with the last word **“Limited”** in the case of a **public limited company**, or the last words **“Private Limited”** in the case of a **private limited company**,
Exception: This clause is not applicable to the companies formed under **section 8** of the Act.
- (b) The **State** in which the **registered office of the company is to be situated**;
- (c) The **objects** for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.

III. Liability / Capital Clause:

(a) Liability of members of the company, whether limited or unlimited-

- in the case of a **company limited by shares**, that the liability of its members is limited to the **amount unpaid**,
- in the case of a **company limited by guarantee**, the amount up to which each member undertakes to contribute,
- **Section 2(21):** *Company limited by guarantee means a company having the liability of its members limited by the memorandum to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up;* means in such companies members are liable to pay only to the company (not to any creditor of the company) and,
- Members are liable to pay only the **amount of guarantee** as per MOA of Company (not for any other liability of the company).
- Members are liable to pay only in the **event of company being wound up**.
- A company limited by Guarantee may be incorporated as Company limited by Guarantee without share capital or with share capital.

(b) In the case of a company having a share capital—

- The amount of share capital with which the company is to be registered and the **division thereof into shares of a fixed amount** and the **number of shares** which the **subscribers to the memorandum** agree to subscribe which **shall not be less than one share**;
- the number of shares each subscriber to the memorandum intends to take, indicated opposite his name. **To subscribe means to mark one's signature as approval/attestation.**

IV. Name Clause:

- The name stated in the memorandum shall not be—
 - **identical** with or **resemble too nearly** to the **name of an existing company** registered under this Act or any previous company law; or
 - That its use by the company:
 - Will constitute an **offence in any law, or**
 - Is **undesirable** in the opinion of Government.
- **Undesirable Names:**
 - no company shall be registered by a name which, in the opinion of the Registrar of Companies, is undesirable
 - A company cannot have any word in its name which in any way shows association with Government bodies (like CG / SG / Local Authority / Corporation), unless previous approval is granted by Central Government.
- **Rule 8**—Undesirable Names of the Companies (Incorporation) Rules, 2014, determines whether a proposed name is identical with another.
- No company should be allowed to be registered with the word **‘National’** as part of its title unless it is a government company. (Circular No. 02/2014)
- Rule 8B specified list of words which cannot be used in English or any other language for the name of the Company without previous approval from CG:
 - “~ 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;~ Panchayat;~ Development Authority;~ Prime Minister or Chief Minister;~ Minister;~ Nation;~ Forest corporation;~ Development Scheme;~ Statute or Statutory;~ Court or Judiciary;~ Governor “
 - Use of word **‘Scheme’** with name of Government(s), State, India, Bharat resembling connection with schemes launched by Central, State, Local Government and authorities
 - **‘Bureau’**
- The word **‘Bank’** may be allowed in the name of an entity only when such entity produces a **‘No Objection Certificate’** from RBI, or **‘Stock Exchange’** should be allowed in the name of a company only where **‘No Objection Certificate’** from SEBI is granted. Also, words like **‘Insurance’**, **‘Venture Capital’**, **‘Asset Management’**, **‘Nidhi’**, **‘Mutual Fund’** etc. will require approval from respective regulators like IRDA, SEBI, MCA etc.
- The object is to **prevent the use of name likely to mislead the public**. For example, a company will not be allowed to use a name which is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950, or suggestive of any connection with Government or of State patronage where there is none.
- For deciding the availability of names, the MCA has issued Name Availability Guidelines.
- **Reservation of name (Rule 9):**
 - A person may make an **application to the Registrar** for the reservation of a name.
 - The registrar may **reserve the name** for a period of **20 days** from the date of the application. 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 **60 days** from the date of approval.

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- If it is found that name was applied by **furnishing wrong / incorrect information**, the reserved name shall be cancelled and the person who has made the application shall be liable to a **penalty** which may **extend to one lakh rupees** (If the company is not yet incorporated),
- If Incorporated already: After opportunity of being heard, order to change name **within 3 months**, or **strike off name from Register of Companies**, or make a petition for winding up of Company.

V. Domicile Clause:

The name of **federal state** is mentioned where the registered office is to be situated

VI. Objects Clause:

Covers the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.

Doctrine of Ultra Vires:

- A company whatever is not stated in the memorandum as the objects or powers is prohibited by the doctrine of ultra vires.
- An act which is **ultra vires is void**, and does not bind the company.
- **Neither the company nor the contracting party can sue on it.**
- Generally, No ratification is allowed even if members assent to it.
- An act which is intra vires the company but outside the authority of the directors may be ratified by the company in proper form **[Rajendra Nath Dutta v. Shilendra Nath Mukherjee, (1982) 52 Com Cases 293 (Cal.)]**
- The rule is meant to **protect shareholders** and the **creditors** of the company.
- If the act is ultra vires (beyond the powers of) the directors only, the shareholders can ratify it.
- If it is ultra vires the articles of association, the company can alter its articles in the proper way.
- The first time the doctrine was established in **[Ashbury Railway Carriage and Iron Co. Ltd. v. Riche, (1878) L.R. 7 H.L. 653]**
- 'The Court held that if every shareholder of the company had been in the room and had said, "That is a contract which we desire to make, which we authorise the directors to make", still it would be ultra vires.
- The shareholders cannot ratify such a contract, as the contract was ultra vires the objects clause.

VII. Subscription Clause:

According to section 7(1)(a) there shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed in Rule 13 of the Companies (Incorporation) Rules, 2014

VIII. Forms and schedules related to memorandum :

- The memorandum of a company shall be in respective forms specified in Tables A, B, C, D and E in Schedule I as may be applicable to such company.

TABLE-A	• MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES
TABLE-B	• MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND NOT HAVING A SHARE CAPITAL
TABLE-C	• MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND HAVING SHARE CAPITAL
TABLE-D	• MEMORANDUM OF ASSOCIATION AN UNLIMITED COMPANY AND NOT HAVING SHARE CAPITAL
TABLE-E	• MEMORANDUM OF ASSOCIATION AN UNLIMITED COMPANY AND HAVING SHARE CAPITAL
TABLE-F	• ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY SHARES
TABLE-G	• ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND HAVING A SHARE CAPITAL
TABLE-H	• ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE AND NOT HAVING SHARE CAPITAL
TABLE-I	• ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY AND HAVING A SHARE CAPITAL
TABLE-J	• ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY AND NOT HAVING SHARE CAPITAL

SECTION 5 - ARTICLES OF ASSOCIATION:

AOA should contain:

- Regulations: The articles of a company shall contain the **regulations** for management of the company.
- The articles shall also contain such matters, as are prescribed under the rules. Additional matter may also be included.
- AoA is subordinate to MoA
- ***AoA establishes relation/contract between members and company and within members inter se.***

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Entrenchment:

Entrenchment = Fortification

- specified provisions of the articles may be altered only if conditions or procedures which are more restrictive than special resolution, are met with
- The provisions for **entrenchment shall only be made either on formation of a company**, or by an **amendment in the articles** agreed to by all the members of private company and by a **special resolution** in the case of a public company.
- The entrenchment provisions are usually compelled by the **minority to make the majority responsible**, and the minority in these provisions can get incorporated a clause saying that borrowing **beyond a particular limit** or **issuances of shares** is to be done only after the requisite consent of minority has been obtained.
- Nothing in this section shall apply to the **articles of a company** registered under any **previous company law**, unless amended under this Act.
- Forms of articles : The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company.
- Utmost caution must be exercised in the preparation of the articles of association of a company. At the same time, certain provisions of the Act are applicable to the company 'notwithstanding anything to the contrary in the articles'. Therefore, the articles must contain provisions in respect of all matters which are required to be contained therein so as not to hamper the working of the company later.

Examples of Entrenchment provisions:

Example:

Mr. Tarun promoted an education start up and got it registered as a private limited company. Initially he and his family are holding all shares in the company. In the article of association of company it is written that Mr. Tarun will remain director of the company for lifetime. But he has a fear that tomorrow if 75% or more shares in the company are held by non family members then by passing a special resolution article may be changed and he may be removed from the post of director. Therefore, it was also written in the article that he can be removed from the post of director only if 95% votes are cast in favour of the resolution.

Example:

If PQR Company subscribes 20% shares of XYZ, a Private Ltd. company. Remaining 80% shares are held by promoters and family. Tomorrow if XYZ private limited approaches any Bank for a loan, the bank officials would read the Articles & would ask to get the consent of PQR Company. Now, if there is no entrenchment provision, then 'XYZ' may, after passing a special resolution remove the minority right and can borrow beyond the limit.

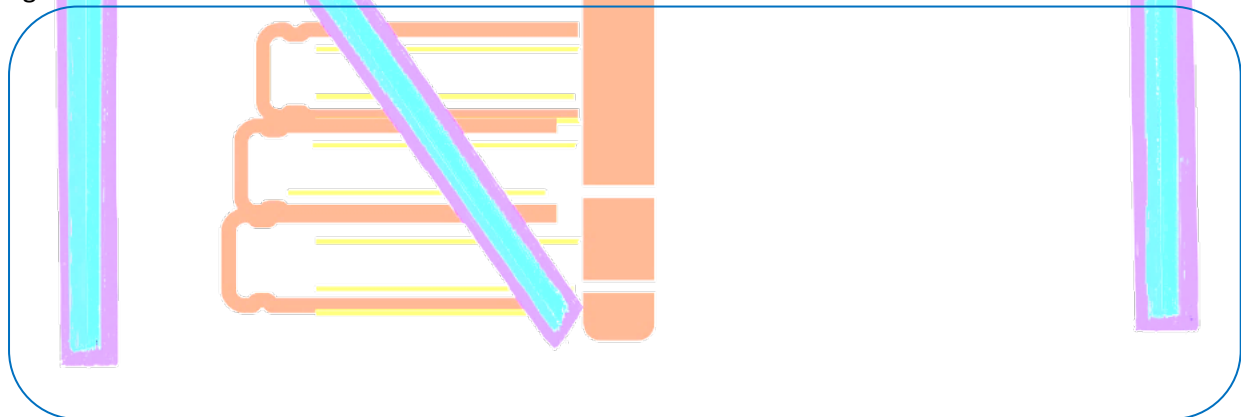
Few of the Contents of Articles of Association:

<ul style="list-style-type: none">• Number and value of shares• Issue of Preference shares• Allotment of shares	<ul style="list-style-type: none">• Dematerialisation• Conversion of Shares into stock• Voting Rights and Proxies
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<ul style="list-style-type: none"> • Call on Shares • Lien on Shares • Transfer and Transmission of Shares • Nomination • Forfeiture of Shares • Alteration of Capital • Buy Back • Share Certificates 	<ul style="list-style-type: none"> • Audit Committee • Managing Director, Whole-time Director, Manager, Secretary • Remuneration of Directors • Borrowing Powers • Accounts and Audit • Dividends and Reserves • Winding Up • Capitalisation of Reserves
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Doctrine of Indoor Management:

- The doctrine of Indoor management, popularly known as the **Turquand's rule** initially arose some 150 years ago in the context of the **doctrine of constructive notice**.
- **Doctrine of Constructive Notice** seeks to protect the company against outsiders; **Doctrine of Indoor Management** operates to protect outsiders against the company.
- The Doctrine of Indoor Management lays down that-
 - persons dealing with a company having satisfied themselves that the proposed transaction is not in its nature **inconsistent with the memorandum and articles**, are not bound to inquire the regularity of any internal proceeding;
 - Outsiders are entitled to assume that the officers of the company have observed the provisions of the articles.
 - It is no part of duty of any outsider to see that the company carries out its own internal regulations.



- The rule is based upon obvious reasons of convenience in business relations. Firstly, the memorandum and articles of associations are public documents, open to public inspection. Hence an outsider "is presumed to know the constitution of a company; but not what may or may not have taken place within the doors that are closed to him."
- The wheels of commerce would not go round smoothly if persons dealing with the company were compelled to investigate thoroughly "the internal machinery of a company to see if something is not wrong."
- The rule is of great practical utility. It has been applied in a great variety of cases involving rights and liabilities.
- It has been used to cover acts done on behalf of a company by de facto directors who have never been appointed, or whose appointment is defective....etc
- What happens internal to a company is not a matter of public knowledge.

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- An outsider can only presume the intentions of a company, but not know the information he/she is not privy to.
- If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.
- **Exceptions to Doctrine of Indoor Management:**
 - **Knowledge of irregularity:**

In case this 'outsider' has actual knowledge of irregularity within the company, the benefit under the rule of indoor management would no longer be available.
 - **Negligence:**

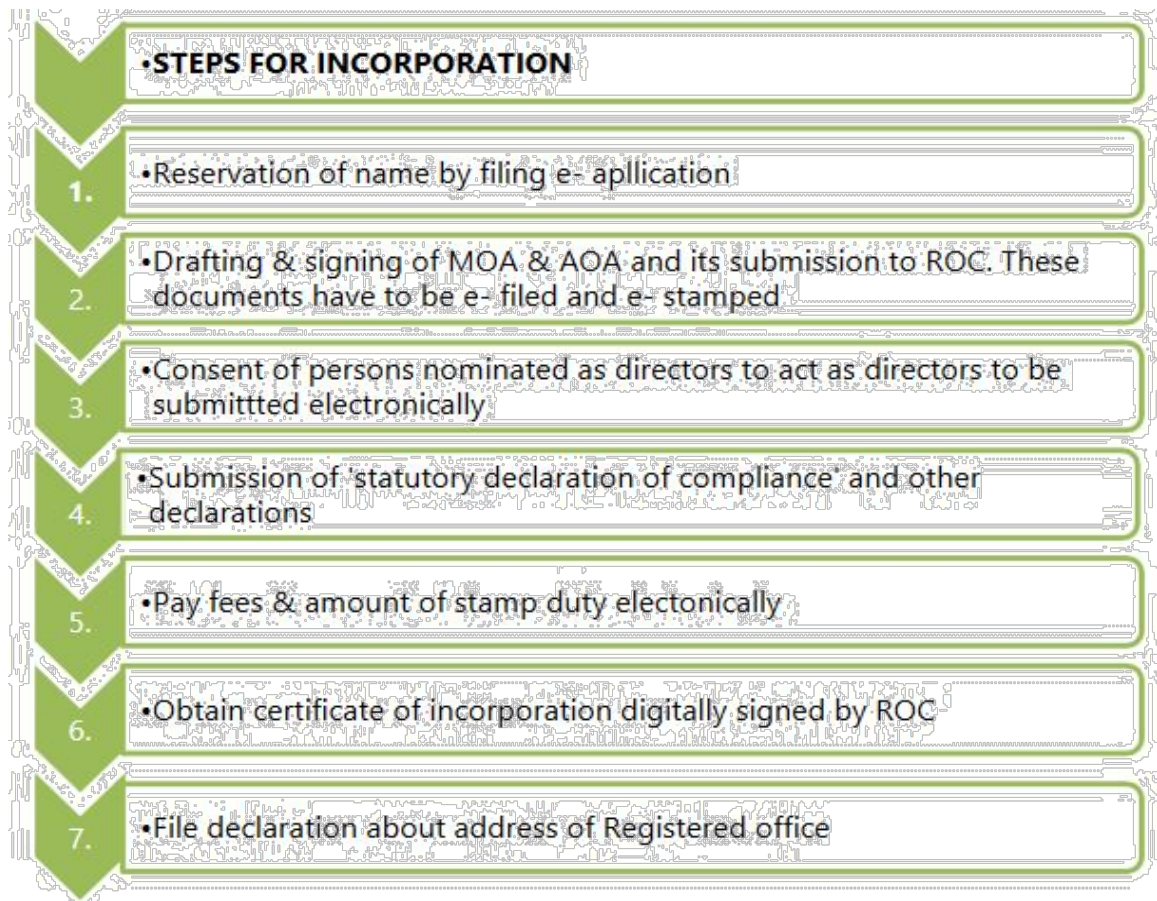
If, with a minimum of effort, the irregularities within a company could be discovered, the benefit of the rule of indoor management would not apply.
 - **Forgery :**

It apply where a person relies upon a document that turns out to be forged since nothing can validate forgery. A company can never be held bound for forgeries committed by its officers.

SECTION 6 - ACT TO OVERRIDE MEMORANDUM, ARTICLES, ETC. :

- The provisions of this Act shall have overriding effect on provisions contained in memorandum or articles or in an agreement or in resolution passed by the company in the general meeting or by its board of directors, whether they are registered, executed or passed before or after the commencement of this Act.

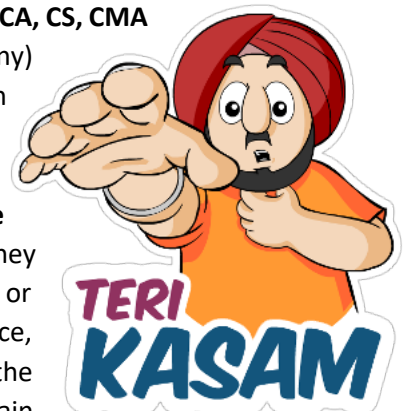
SECTION 7 - INCORPORATION OF COMPANY:



- **7(1) Filing of the documents and information with the registrar :** Following documents will be submitted to ROC under whose jurisdiction the Registered Office is located SPICe+(Simplified Proforma for Incorporating company Electronically Plus: INC-32)-
 - **MoA & AoA duly signed by all subscribers of MoA:** The memorandum (e-MOA in Form No. INC-33) and article (e-AOA in Form No. INC-34) of company so furnished shall be duly signed by all the subscribers to the memorandum in the manner prescribed by rule 13 as stated below-
 - a. Each subscriber shall add his name, address, description & occupation, if any, in of at least one witness who shall attest the signature ,shall sign and add his name, address, description and occupation, if any.
 - b. Where a subscriber is illiterate, he shall affix his thumb impression or mark which shall be described as such by the person, writing for him, who shall place the name of the subscriber against or below the mark and authenticate it by his own signature and he shall also write against the name of the subscriber, the number of shares taken by him.
 - c. Where the subscriber is a body corporate, the memorandum and articles of association shall be signed by director, officer or employee of the body corporate duly authorized in this behalf by a resolution of the board of directors.
 - d. Where the subscriber is a Limited Liability Partnership, it shall be signed by a partner of the Limited Liability Partnership, duly authorized by a resolution approved by all the partners of the Limited Liability Partnership

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.

 - e. Where subscriber to the memorandum is a foreign national residing outside India his signatures and address on the memorandum and articles of association and proof of identity shall be notarized by a Notary (Public) with a certificate. Further, if such person residing in a country outside the Commonwealth or which is not a party to the Hague Apostille Convention, 1961, the certificate of the Notary (Public) shall be authenticated by a Diplomatic or Consular Officer.
 - f. Where subscriber to the memorandum is a foreign national residing outside India and visited in India and intended to incorporate a company, in such case the incorporation shall be allowed if, he/she is having a valid Business Visa. In case of Person is of Indian Origin or Overseas Citizen of India, requirement of business Visa shall not be applicable.
 - **Declaration of compliance by person engaged in formation of Company (Adv, CA, CS, CMA in practise) & person named in the AoA (Director, Manager, CS of the Company) that all requirements of this Act & Rules have been complied will be filed in Form No. INC-8**
 - **Declaration from each of the subscribers to the memorandum and from the first directors has to be filed with the ROC in Form INC-9**, to the effect that : they are **not convicted** of any **offence** in connection with promoting, forming or managing a company **or** have not been **found guilty** of any **fraud** or misfeasance, or any breach of duty etc., under the 2013 Act **during the last five years, &** all the documents filed with the Registrar for registration of the company contain information that is correct and **complete and true** to the best of his knowledge and belief.
 - address for correspondence till its registered office is established;



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- particulars of **every subscriber** to the memorandum:
 - a. Name (including surname or family name) and recent Photograph affixed
 - b. Father's/Mother's name
 - c. Nationality, Proof of nationality in case the subscriber is a foreign national
 - d. Date and Place of Birth (District and State)
 - e. Educational qualification and Occupation
 - f. Permanent Account Number
 - g. Email id and Phone number of Subscriber
 - h. Permanent residential address and also Present address
 - i. Residential proof such as Bank Statement, Electricity Bill, Telephone / Mobile Bill, **provided that Bank statement Electricity bill, Telephone or Mobile bill shall not be more than two months old**
 - j. Proof of Identity (For Indian Nationals - Voter's identity card, Passport copy, Driving License copy, Unique Identification Number (UIN) & for Foreign nationals and Non Resident Indians – Passport)
 - k. If the subscriber is already a director or promoter of a company(s), the particulars relating to name of the company; Corporate Identity Number; Whether interested as a director or promoter

Where the subscriber to the memorandum is a body corporate, then the following particulars shall be filed with the Registrar

- a. The name of the body corporate and Corporate Identity Number of the Company or Registration number of the body corporate, if any
- b. GLN, if any
- c. The registered office address or principal place of business
- d. E-mail Id
- e. If the body corporate is a company, certified true copy of the board resolution specifying inter-alia the authorization to subscribe to the MOA
- f. If the body corporate is a limited liability partnership or partnership firm, certified true copy of the resolution agreed to by all the partners specifying inter alia the authorization to subscribe to the MOA
- g. In case of foreign bodies corporate, the details relating to the copy of certificate of incorporation of the foreign body corporate; & the registered office address

As per rule 12: In case any of the objects of a company requires registration or approval from sectoral regulators such as the **RBI and SEBI**, then such registration or approval shall be obtained by the proposed company before pursuing such objects and a declaration in this behalf shall be submitted at the stage of incorporation.

In case of a Company being incorporated as a **Nidhi**, the declaration by the Central Government under Section 406 of the Act shall be obtained by the Nidhi before commencing the business and a declaration in this behalf shall be submitted at the stage of incorporation by the Company.

- particulars (name, including surname or family name, the Director Identification Number (DIN), residential address, nationality) of the persons mentioned in the articles as the **first directors** and such other particulars including proof of identity
- particulars of the **interests** of the persons mentioned in the articles as **the first directors** of the **company in other firms or bodies corporate** along with their consent (**Form No. DIR-2**) to act as directors of the company, will be filed in **Form No. DIR-12**
-
- **7(2) Issue of certificate of incorporation on registration:** The ROC on basis of documents & information furnished, shall register all documents & information in the register and issue a COI in **Form No. INC-11**. COI shall mention PAN where PAN is issued by Income-tax Department.
- **7(3) Allotment of Corporate Identity Number (CIN):** On and from the date mentioned in the certificate of incorporation, the Registrar shall allot to the company a **corporate identity**

number, which shall be a **distinct identity** for the company and which shall also be included in the certificate. CIN is 21 alpha-numeric digit based unique identification number

- **7(4) Maintenance of copies of all documents and information:** The company shall maintain and preserve at its registered office copies of all documents and information as originally filed, till its dissolution under this Act
- **7(5) Furnishing of false or incorrect information or suppression of material fact at the time of incorporation (i.e. during incorporation process):** If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the ROC in relation to the registration of a company, he shall **be liable for action for fraud u/s 447.**
- **7(6) Company already incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact (i.e. post Incorporation):** Where, at any time after the incorporation of a company, it is proved that the company has been got incorporated by furnishing **any false or incorrect information or representation or by suppressing any material fact** or information in any of the documents or declaration filed or made for incorporating such company, **or by any fraudulent action**, the promoters, the persons named as the **first directors** of the company and the persons making declaration under this section shall each be **liable** for action for **fraud u/s 447.**
- **7(7) Order of the Tribunal:** Where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, **the Tribunal may, on an application made to it**, on being satisfied that the situation so warrants—
 - (a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
 - (b) direct that liability of the members shall be unlimited; or
 - (c) direct removal of the name of the company from the register of companies; or
 - (d) pass an order for the winding up of the company; or
 - (e) pass such other orders as it may deem fit
 Provided that before making any order,—
 - the company shall be given a reasonable opportunity of being heard in the matter; and
 - the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

SECTION 9 - EFFECT OF REGISTRATION:

- From the **date of incorporation** (mentioned in the certificate of incorporation), the subscribers to the memorandum and all other persons, who may from time to time become **members** of the company.
- The company shall be capable of exercising all the functions of an incorporated company under this Act and having **perpetual succession with power to acquire**, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name
- It has **perpetual existence until it is dissolved by liquidation or struck out of the register.**
- A company may purchase shares of another company and thus become a controlling company.

SECTION 10 - EFFECT OF MEMORANDUM AND ARTICLES:

(1) The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants (agreements) on its and his part to observe all the provisions of the memorandum and of the articles.

(2) All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

SECTION 10A - COMMENCEMENT OF BUSINESS ETC.:

(1) A company incorporated and having a share capital shall not commence any business or exercise any borrowing powers unless—

(a) a declaration is filed by a director within a period of 180 days of the date of incorporation of the company in such form and verified in such manner as may be prescribed, with the Registrar 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; and

(b) The company has filed with the Registrar a verification of its registered office as provided in sub-section (2) of section 12.

(2) **Penalty for non-compliance:** Company shall be liable to a penalty of Rs. 50,000 and every officer who is in default shall be liable to a penalty of Rs. 1,000 for each day during which such default continues but not exceeding Rs. 1 lac.

(3) Where no declaration has been filed with the Registrar under Sec.10A (1)(a) i.e. within 180 days of incorporation of the company and the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the register of companies.

SECTION 12 - REGISTERED OFFICE OF COMPANY:

- Once a company gets incorporated, it is required to maintain a registered office.
- This address cannot be a P.O. box but must be a physical location where someone is present, to receive service of legal documents during normal business hours.
- Registered office of the companies is required for the communication and serving of necessary documents, notices letters etc. It is also important for determining the jurisdiction of the court.
- **Sec. 12(1) Registered office:** A company shall, within thirty days of its incorporation & at all times thereafter, have a registered office capable of receiving & acknowledging all communications and notices as may be addressed to it
- **Sec. 12(2) Verification of registered office:** The company shall furnish to the Registrar, verification of its registered office within a period of 30 days of its incorporation. **(Form No. INC. 22)**
- **Sec. 12(3) Labeling of company:** Every company shall—
 - paint or affix its name, and the address of its registered office, on the outside of every office or place in which its business is carried on,
 - address of its registered office and the Corporate Identity Number along with telephone number, fax number, if any, e-mail and website addresses, if any, its business letters, billheads, letter papers and in all its notices and other official publications,
- **Sec. 12(4) Name change by the company:** if any has changed its name/s during the last two years, it shall paint or affix or print, along with its name, the former name or names so changed during the last two years.

- **Sec. 12(5) In case of OPC:** The words “One Person Company” shall be **mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.** Eg. VEDISH VENTURES (OPC) PRIVATE LIMITED
- **Sec. 12(6) Notice of change to registrar:** Every change of the situation of the registered office shall be given to the Registrar **within 30 days** of the change, who shall record the same.
- **Sec. 12(7) Change by passing of special resolution:** **Registered office of the company shall be changed only by passing of Special Resolution** outside the local limits of any city, town or village where such office is situated.
 - Ordinary and Special Resolution as has been notified w.e.f 12/9/2013 under the new Companies Act 2013 clearly states more than 50% of Voting for Ordinary and 75% for special resolution is required for a resolution to be passed.
- **Sec. 12(8) Change of registered office outside the jurisdiction of registrar:** **Where a company changes the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State, then such change is to be confirmed by the Regional Director on an application made by the company.**
- **Sec. 12(9) Communication and filing of confirmation:** The confirmation of change of registered office from jurisdiction of one registrar to another registrar within the same state, shall be -
 - communicated **within 30 days from the date of receipt of application** by the Regional Director to the company, and
 - the company shall **file the confirmation with the Registrar within a period of 60 days of the date of confirmation** who shall register the same, and
 - **Certify the registration within a period of thirty days from the date of filing of such confirmation.**
- **Sec. 12(10) Certificate, a conclusive evidence of compliance of requirements of this Act:** The certificate shall be conclusive evidence that all the requirements of this Act with respect to change of registered office have been complied with and the change shall take effect from the date of the certificate.
- **Sec. 12(11) Penalty for non-compliance:** the company and every officer who is in default shall be liable to a **penalty of Rs. 1,000 for every day during which the default continues but not exceeding Rs. 1 lac.**
- **Sec. 12(12) If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company in such manner as may be prescribed and if any default is found to be made in complying, he may without prejudice to penalty provisions, initiate action for the removal of the name of the company from the register of companies**

SEC 13 - ALTERATION OF MEMORANDUM:

- Alteration 2(3): includes the making of **additions, omissions and substitutions**
- Company may alter the provisions of its memorandum with the approval of the members by a **special resolution**. Only for alteration of Capital Clause Sec. 61 to be followed.
- **Name change of the company:** shall be effected only with the approval of the **Central Government** (delegated to ROC) in writing; no such approval shall be necessary where the change in the name is due to the conversion of any one class of companies to another class (i.e.). A company shall not be

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allowed to change name if Annual Returns or FS are not filed with ROC or have not paid due Deposits / Debentures or interest thereon.

- **Application of change of place of the registered office from one state to another:**
 - Approval from **Central Government** is required.
 - The Central Government shall dispose of the application of change of place of the registered office **within a period of 60 days**.
- **Filing of the certified copy of the order with the registrar of the states:**

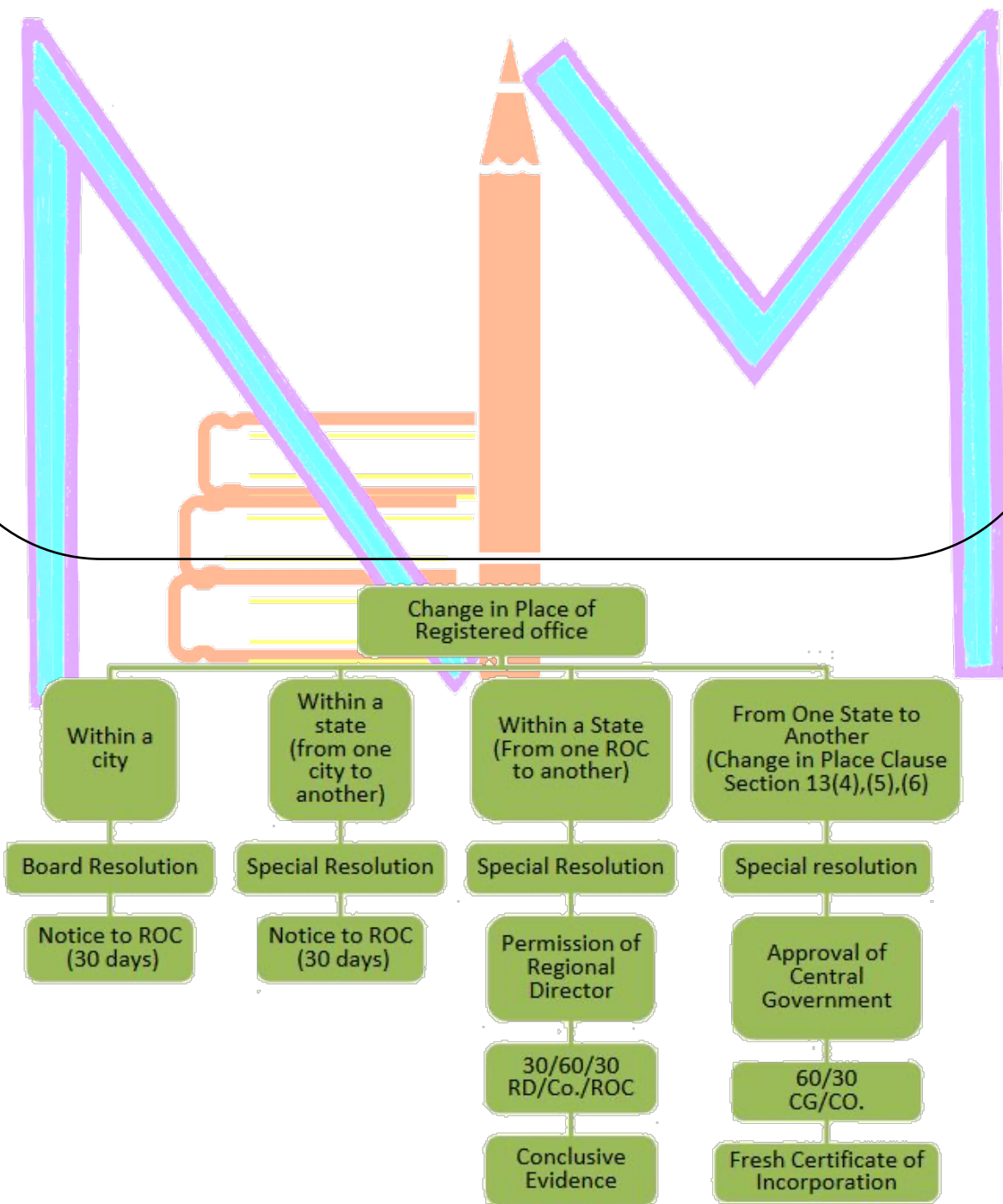
Where an alteration of the memorandum results in the transfer of the registered office of a company from **one State to another**, a certified copy of the order of the **Central Government** approving the alteration shall be filed by the company with the Registrar of each of the States.
- **Issue of fresh Certificate of Incorporation:**

The Registrar of the State where the registered office is being shifted to, shall issue a **fresh certificate of incorporation indicating the alteration**.
- **Change in the object of the company:**
 - A company, which has raised money from public through prospectus and still has any unutilised amount, shall not change its objects for which it raised the money, unless a **special resolution** through **postal ballot** is passed by the company, and
 - the details, in respect of such resolution shall also be published in the newspapers.
 - The dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board of India.
- **Change in Registered office address of the company :**

If the change is **within same State, no alteration of MoA required.**
If change is outside State, approval of Central Government is also required.
- **Liability Clause cannot be altered once the Company is Incorporated**
- **Change of Object Clause to be registered with RoC within 30 days of passing of SR in MGT-14. Thereafter RoC will register within 30 days.**
- **Alteration to be Registered :**

No alteration to MoA will have effect till it is Registered with ROC.

Procedure to change Registered Address within local limits/ outside local limits same ROC / outside local limits different ROC / outside State:



Example:

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

SECTION 14 & SECTION 15 - ALTERATION OF ARTICLES:

- Matters as to which the memorandum is silent can be dealt with by the alteration of article.
- **Section 14** of the Companies Act, 2013 vests companies with power to alter or add to its articles.
- **Company may, by a Special Resolution alter its articles** (subject to MoA & CA 2013)
- Alteration to include **conversion of class of companies** (Pvt to Public or vice-versa)
- **Any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of the Central Government**
- **Section 15** applicable
- **The alteration must not exceed the powers given by the memorandum. In the event of conflict between MoA and AoA, the MoA shall prevail.**
- The alteration cannot be with **retrospective** effect. The effect of altered AoA is binding of members and company just like the original AoA
- **Every alteration** of the articles shall be filed with the Registrar, **together** with a **printed copy** of the altered articles, **within** a period of **15 days**
- **Section 8 Company cannot alter AoA except with prior approval** of Central Government.

SECTION 15 - ALTERATION OF MEMORANDUM OR ARTICLES TO BE NOTED IN EVERY COPY:

- Every *alteration* made in the **memorandum or articles** of a company shall be noted in every copy of the memorandum or articles, as the case may be
- **Penalty:** the company and every officer who is in default shall be liable to a penalty of **Rs. 1,000** for every copy of the memorandum or articles issued without such alteration

SECTION 16 - RECTIFICATION OF NAME OF COMPANY:

- 16(1) (a) If due to inadvertence, a company is already registered with a name which is:
 - **identical with or too nearly resembles the name** by which a company in existence had been previously registered, the **Central Government (power delegated to RD)** suo-motu may order to rectify/change the name. This has to be done in **3 months of Order, after adopting an Ordinary resolution.**

- 16(1) (b) If due to inadvertence, a company is already registered with a name which is:
 - identical with or too nearly resembles a registered Trade Mark under Trade Mark Act,
 - Such application/complaint is to be made in **3 years of Incorporation to CG (power delegated to RD) by Trade Mark owner**
 - Central Government may order to change/rectify the name **within 3 months of Order after adopting an Ordinary resolution.**

16(2) When the Company changes its name due to CG order (power delegated to RD), it should inform RoC within 15 days of date of change along with copy of CG order. RoC will issue changed Col and **update memorandum**

- 16(3) **Penalty for non-compliance:**
 - CG shall allot a new name and ROC shall make entry of such new name and issue a fresh COI with new allotted name. The Company is free to change its name thereafter by following process as per Sec. 13.
 - For Company, one thousand rupees for every day during which the default continues & every officer who is in default shall be punishable with fine which **shall not be less than 5,000 rupees but which may extend to 1 lakh rupees.**

SECTION 17 - COPIES OF MEMORANDUM, ARTICLES, ETC., TO BE GIVEN TO MEMBERS:

- **within seven days** of the request on the payment of fees, company to send copy of MOA, AOA, every agreement and every resolution referred in section 117;
- **Penalty:** the company and every officer who is in default, **1,000 rupees for each day during which such default continues or 1 lakh rupees, whichever is less.**

SECTION 18 – CONVERSION OF COMPANIES ALREADY REGISTERED:

- Conversion of type of class of Company can be done by **alteration of MoA and AoA.**
- On application to ROC, he shall close the former registration of Company and issue Certificate Of Incorporation.
- There shall be no change at all of any debts, liabilities, obligations, or contracts incurred or entered into, before conversion under this section.

SECTION 19 - SUBSIDIARY COMPANY NOT TO HOLD SHARES IN ITS HOLDING COMPANY:

- **No company shall, either by itself or through its nominees hold any shares in its holding company, and**
- **no holding company shall allot or transfer its shares to any of its subsidiary companies. Otherwise, it will be treated as Void.**

Exceptions:

- subsidiary company holds such shares as the **legal representative of a deceased member of the holding company;** or
- subsidiary company holds such shares as a **trustee (fiduciary relationship)**, [For instance, when a company holds shares or exercise powers on behalf of any individual, wherein the company is just a trustee holding shares i.e in good faith, trust and confidence for that individual.]; or
- subsidiary company is a **shareholder even before it became a subsidiary company of the holding company,** but in that case, subsidiary has **no voting right** in holding Company.

Example:

Aladeen Ltd. has invested 51% in the shares of SSP Pvt. Ltd. on 31 March 2017. SSP Pvt. Ltd. have been holding 2% equity of Aladeen Ltd since 2011. Is it contravention of Sec. 19 of CA 2013?

SECTION 20 – SERVICE OF DOCUMENTS:

Section 20(1):

Modes of Serving of documents to COMPANY / OFFICER of the Company :

- Registered Post / Speed Post / Courier Service / Leaving at its Registered Office / **Electronic mode**

Section 20(2):

Modes of Serving of documents to ROC or Member :

- Post / Registered Post / Speed Post / Courier Service / Delivering at office or residence / **Electronic mode**
- a member may **request** for delivery of any document **through a particular mode**, for which he shall pay such **fees** as may be **determined** by the company in its **AGM**

Rule 35 of Companies (Incorporation) Rules, 2014:

- Electronic transmission** means record capable of retention, recovery, review. For Eg. Fax, Email etc.
- Courier** means a person or agency which delivers a document and furnishes proof of its delivery
- In case of **delivery by post**, such service shall be deemed to have been effected-
 - in the case of **a notice of a meeting**, at the **expiration of 48 hours** after the letter containing the same is posted; and
 - in any other case, at the time at which the letter would be delivered in the ordinary course of post.

SECTION 21 - AUTHENTICATION OF DOCUMENTS, PROCEEDINGS AND CONTRACTS:

- A document or proceeding requiring authentication by a company or contracts made by or on behalf of a company may be signed by–
 - any **key managerial personnel**, or
 - an **officer** of the company duly authorised by the Board in this behalf

Common Seal:

A company seal (sometimes referred to as the corporate seal or common seal) is an official seal used by a company. The company seal is a tool used to stamp or emboss your company's important documents in order to show the document is certified by, and agreed upon by, the Board of Directors of the company

Not mandatory as per Companies (Amendment) Act, 2015

SECTION 22 - EXECUTION OF BILLS OF EXCHANGE, ETC.:

- A Negotiable Instrument shall be deemed to be drawn/accepted/made/endorsed etc. on behalf of the company, if done by any person acting under authority.

REVISION NOTES

Terms	Description
<p>Rules for Names</p>	<ol style="list-style-type: none"> 1. Name shall not be identical or similar / abbreviated description with existing Company / LLP 2. Shall not be un-desirable in the Opinion of the Regional Director 3. Not reserved by Foreign Company with ROC 4. Words like Private, Pvt. P Ltd shall be allowed 5. Words like Company, and Company shall be allowed 6. Phonetic resemblance should not be same or similar 7. Mere addition of internet related word like .com / .net - not considered as new name 8. Mere addition of new, Modern, Nav along with the existing company name not allowed unless NOC is obtained 9. Different combination of same names shall not be allowed 10. English to Hindi translation not considered as new name 11. Not violative of Names and Emblems act / Trademark act 12. Not offensive to any section of people 13. Should be in consonance with objects 14. Company's main business is Financing, Leasing, Chit Fund, Investment, Securities or Combination thereof name shall indicate the same. 15. The word "Bank" or "Exchange" may be used, only if a "No Objection Certificate" is obtained from RBI or SEBI respectively. 16. Words Electoral Trust is allowed only for registration under Electoral Trust Scheme. 17. Name should not contain the words British India 18. Name should not include any connection with embassy or consulate or a foreign government or a national hero or any person high in esteem or important person holding high position in govt. 19. No vague abbreviations (like ABC Limited) 20. Name is similar to that of company dissolved under liquidation proceedings (can tie used only after the expiry of 2 years) 21. Name is similar to that of company whose name is strike off in pursuance of action u/s 248 of COA 2013 / 560 of COA 1956 (can be used only after the expiry of 20 years) 22. Name is similar to that of LLP whose name is strike off under exit scheme (can be used only after the expiry of 5 years) 23. If Name includes words such as "Insurance", "Bank", "Stock Exchange" retirement of respective Regulator shall be complied. 24. Name State allowed only of it is a government company. 25. Name shall not be too general. 26. Name shall not be mis-leading 27. Name includes any foreign country name, allowed only if the company produces evidence of operation in other country. 28. Change in activity, name change shall be made within 6 months. 29. Use of coined words permitted, if proof thereon, along with NOC is submitted.

Terms	Description
	<p>30. If the proposed name for company incorporation is used as a name for proprietor / firm business proof thereon to be submitted</p> <p>31. Company incorporated u/s 8 shall mandatorily contain the words Foundation, Forum etc.</p> <p>32. Company incorporated as a "Nidhi" shall have the last word "Nidhi Limited" as part of its name.</p> <p>33. Names released pursuant to change in name shall not be taken by any other company for a period of 3 years.</p> <p>34. Names with Government Patronage like Local Authority, State Government permissible only after the previous approval of Central Government.</p> <p>35. Certain words shall not be used - Board, Commission, Authority, etc.</p> <p>36. The word "National" is permissible only for - (a) Govt. Co, or (b) Central / State Govt. has a stake in it.</p>
Painting, Printing of Company Name	<p>Every company to paint or affix its name & address at the RO. [Display past names for 2 years]</p> <p>Every Company which has a Website for conducting online business, shall disclose/publish its Name, Address of its RO, CIN, Contact Number, email & the Name of the Person who may be contacted in case of any queries or grievances on the Landing/Home Page of the said Website.</p> <p>In case of OPC - the word One Person Company within brackets shall be displayed</p> <p>Consequences: Fine of Rs. 1,000/- for every day; Max = Rs. 1 lakh.</p>
Formation of Company [S.12]	(a) Person - 7 for public; 2 for private; 1 for OPC, (b) Associated for Lawful purpose, (c) Shall subscribe their name to MoA, (d) Incorporate a Company with or without limited Liability.
Formation - Step 1 - Name Availability	(a) Prepare Prescribed Form INC-1 (b) Provide 6 names in order of priority (c) ROC to reply within a reasonable period (d) Validity: Valid for 60 days.
Name reserved by giving wrong particulars	Company NOT Incorporated = Cancelled / Penalty of Rs. 1 lakh Company Incorporated = Direction for change in name within 3 mts / take actions for strike off / file petition for winding-up
Formation - Step 2 Drafting of MoA and AoA and stamping & signing of MoA & AoA	<p>(a) Format - Schedule I</p> <p>(b) Signing by Members [All (2/7) Stating Address, Description and Occupation]</p> <p>(c) Minimum Paid-Up Capital (Rs. 5 Lakhs or 1 Lakh) should be compiled with</p> <p>(d) Subscriber to take atleast One Share</p> <p>(e) All subscriber to sign (should be attested Witness Signature)</p> <p>(f) Subscribers are illiterate? Thumb Impression - Read and Signed by Executant</p> <p>(g) Promoter / First Director to self-attest his latest photo & sign in Form No. INC.10.</p> <p>Subscriber having Valid DIN need not to attach Proof of Identity and Residence.</p>
Formation - Step 3 - Preparation of Other Documents	<p>(b) Power of Attorney (if required)</p> <p>(c) Form INC 7 -Application for registration</p> <p>(d) Form INC 9 - Affidavit provided by subscribers to MOA</p> <p>(e) Form INC 22 - Registered Office Particulars</p> <p>(f) Form DIR 12 - Stating particulars of Directors</p> <p>(g) Form DIR 2 - Consent Letter from Directors</p> <p>(h) Form INC 8 - Statutory Compliance Certificate by CA / Cost Acct / Advocate / CS in WTP</p>
Formation - Step 4 - Submission of	(a) Company having Share Capital - On the basis of Authorized Share Capital, (b) Company NOT having Share Capital -- On the basis of No. of Members

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Terms	Description
documents and Payment of Fees	Central Govt. constituted a Central Registration Centre (CRC) all over India, to process e-Form No. INC-1 (for Reservation of Name) and other Forms notified by Central Government. Facility to file Integrated e-Form INC-29 is available instead of processing separate applications for allotment of CIN, Reservation of Name & Incorporation of a Company.
Formation - Step 5 - Certificate of Incorporation	ROC shall grant "Certificate of Incorporation" under his hand in Form. INC.11 , which shall be conclusive evidence as to the Incorporation of the Company. Certificate of Incorporation shall mention PAN of the company where, if it is issued by the Income Tax Department. A Public Company can commence business or exercise borrowing powers only after obtaining Certificate of Commencement of business. ROC shall grant CIN to the company which shall be included in COI and shall have effect from DOI mentioned in certificate.
Effect of Incorporation (S. 7)	All the Subscribers to MOA and AOA shall become Members of the Company and Company capable of exercising all the powers of an incorporated Company.
Certificate of Incorporation (S.7)	Once documents delivered and fees paid for incorporation, ROC shall issue a Certificate under his hand that the Company mentioned therein is duly registered and Certificate Issued by Registrar is called the " Certificate of Incorporation "
Effect of Registration of MOA & AOA	<ol style="list-style-type: none"> 1. Company shall be a body corporate 2. Company can exercise all functions of an incorporated company 3. Gets Perpetual succession and use Common Seal (if any) 4. Gets power to acquire property and enter contracts in its own name.
Effect of furnishing false particulars	<p>(a) Liable u/s 447 (Fraud)</p> <p>(b) Tribunal may pass order as deem fit for regulation of the management, direct removal of name, and including order for winding-up.</p>
Simplified Proforma for Incorporating Company [SPICE]	<ol style="list-style-type: none"> 1. Applicable for a) OPC, (b) Private Company, (c) Public Company, and (c) Sec. B Company. 2. Application for Incorporation of a Company shall be in FORM No.INC 32 (SPICE) along with e-MOA in Form No INC-33 and e-AOA in Form no. INC-34. 3. The total period of resubmission shall not exceed 30 days for removal of defects and resubmitting again. <p>Certificate of Incorporation shall be issued by the Registering Authority in Form No.INC-11. [GSR 1184(E) dated 29.12.2016]</p>
One Person Company	<p>(a) Formed by one person subscribing his name to MOA</p> <p>(b) One person shall appoint a nominee</p> <p>(c) Qualification for Member / Nominee: Natural Person, Indian Citizen, resident in India, Not a Minor.</p> <p>(d) One Person = One OPC / Nominee in 1 OPC</p> <p>(e) Nominee becomes member, pursuant to death or incapacity, intimation to ROC in INC – 4, and also compliance with the above limit shall be made within 180 days.</p> <p>(f) Prohibited: Sec.8 Company, NBFC / Voluntary Conversion to Pvt Public within 2 yrs from the DOI</p> <p>(g) Nominee Details to be furnished in INC - 2.</p> <p>(h) Prior consent of nominee in INC-3.</p> <p>(i) Withdrawal by nominee and appointment of fresh nominee – intimation to ROC within 30 days in INC-4.</p>
Conversion of OPC into Public OR Private	<p>(b) Conversion either into Pvt or Public</p> <p>(c) Increase in number of members / capital</p> <p>(d) Alteration of MOA / AOA</p>

Terms	Description
– Voluntary conversion	(e) Fresh Certificate of Incorporation
Relaxation for OPC	(a) FS need not include CFS (b) Share Certificate, Financial Statements and other documents required to be signed = Signed by one director. (c) Filing of FS = 180 days from the closure of the F.Yr.
Company with Charitable Objects (Sec - 8 Companies)	(a) Condition: Association intends to promote commerce, Art, Science, Religion, Charity or any other useful object. No declaration of dividend. (b) Licence: RD to grant Licence (Prior Approval) (c) Object Clause: No alteration without prior permission of RD
Incorporation of Sec. 8 Company	<ul style="list-style-type: none"> • S1 = Name Availability • S2 = Application for Licence in Form INC 12 - along with draft MOA / AOA / Estimate of Annual Income & Expenditure / Declaration in INC 15 • S3 = Receipt of licence from CG • S4 – Submission of form to ROC for incorporation = INC 7 / affidavit INC 9 / Declaration in INC 14 / MoA & AOA / Licence by CG / INC 22 for regd office / DIR 12 & DIR 2 for directors • S5 = ROC shall register and issue a COI <p>Note: Existing Company may also be converted into Sec.8 Company by complying with procedures given under law.</p>
Benefit for Sec. 8 Co's	(a) Name need not end with "Limited" or "Private Limited", (b) Privileges and obligations of public company shall apply for Sec. 8 Company, (c) A Firm may become member of such company
Restrictions	<ul style="list-style-type: none"> • Alter MOA, AOA only with prior approval from CG • May convert into other kind of companies after satisfying specified conditions • Shall amalgamate only with sec 8 company having same objects
Revocation of Licence	(a) Grounds: Contravention of Law / Condition s.t. which licence granted not satisfied / Fraud / Objects not fulfilled / pre-judicial to public interest, (b) CG shall hear the case [CG's Power delegated to Regional Director, vide SO 1352(E)], (c) Reasonable opportunity of being heard shall be provided, (d) CG may order for (a) Transfer of A & L to another Sec.8 Company (b) direct amalgamation with another Sec.8 Company, (e) Affairs conducted fraudulently- Liable for Fraud u/s 447, (f) Non-compliance with Sec. 8 = Fine of min Rs. 10 lakhs / Max - Rs. 1 Crore, (g) Director and / Officer in default = Imp - 3 Yrs / Fine Rs. 25,000 - Rs. 25 lakhs / Both Note: Section 8 Company may also voluntarily convert itself into a Pvt / Public by complying with the procedures given under law.
Promoters – Definition	(a) Named in the prospectus; (b) Identified in the Annual Return; (c) Person who has control over the affairs of the Company; (d) Person with whose advice, directions or instructions the BOD is accustomed to act (Other than professional capacity)
Promoters – Meaning	The person who is interested or engaged in the formation of Company and must have desire to form a Company. Person assisting the promoters in a professional capacity are not promoters.

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Terms	Description
Duties of Promoter	(a) Not to make any Secret profits. (b) Submission of all profits made to the Company. (c) Disclosure of all Material Facts, (d) Disclosure of real truth
Remuneration to Promoters	(a) Sale of property to Company at a profit, (b) Allotment of certain Shares in the Company at par, Promoters (c) Commission on the Shares sold, (d) Lumpsum amount from the Company
Disclosure in Prospectus	Amount or benefit paid to Promoters or given within 2 preceding years or intended to be paid or given should disclose in Prospectus.
Liabilities of Promoters	(a) Joint and Several, (b) Estate liable even after death of promoter, (c) Promoter failed in the duty (Company can rescind the contract; recover the profits and claim damages)
Liabilities of Promoters under Companies Act	(a) Civil and Criminal liability for misstatements in prospectus (b) Personal liability for pre-incorporation contracts when Company does not ratify. (c) Liability upon winding up if the object is to defraud the creditors
Pre-Incorporation Contract	(a) Meaning: Contracts entered before incorporation of Company (b) Validity: Generally does not bind the Company. (c) Relief: Ratification permissible through special provision in Specific Relief Act, 1963 (S.15 & S.19) (d) Conditions: Contract within the scope of MOA. Company has accepted and communicated the same to the third party.

MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION

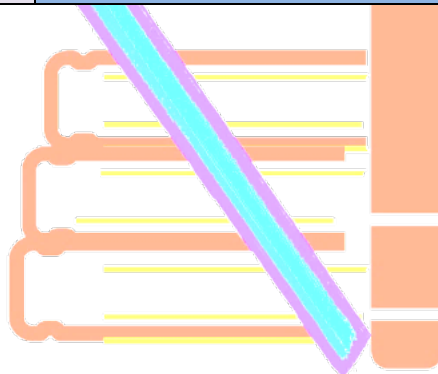
Terms	Description
Meaning	MOA of a Company is its charter and defines the limitations of the powers of a Company.
Forms of MOA	Form of MOA per Schedule I - Company limited by shares - Table A , Company limited by Guarantee & not having Share Capital - Table B , Company limited by Guarantee & having Share capital - Table C , Unlimited Company having no share capital - Table D , Unlimited Company having share capital - Table E .
Contents of MOA	(a) Name Clause, (b) Situation Clause, (c) Object Clause (Main objects/ incidental & ancillary objects ether objects), (d) Liability Clause, (e) Capital Clause, (f) Association Clause
Name Clause Alteration – Compulsory	(a) Situation: Infringement with Trademark/ Incorporated with a name which is too identical of any other Company, (b) Co. shall change name within 6 months from direction by RD only when RD intimates within 3 years from Date of Incorporation, (c) Pass Ordinary Resolution. Obtain RD approval. (d) Change name within 3 months from direction by RD. (e) Non Compliance = Rs. 1,000 fine per day of default.
Name clause alteration – Voluntary name change	(a) Pass SR. Obtain ROC approval in Form INC. 24 (b) Comply with all basic conditions (c) File Form INC 24 and Copy of resolution to ROC (d) ROC shall issue fresh COI in Form INC 25
Effect of change in Name	Change of name shall not affect any rights / obligation of the Co. or render the same defective in legal proceeding by or against it. All legal proceedings can be continued in new name.

Terms	Description
Change of RO -	Change of RO - within the same Village or Town Pass Board Resolution and file Form INC. 22 within 15 days of change of address.
Change of RO – one City to another	(a) Convey General Meeting and Pass a Special Resolution (b) If Jurisdiction changes, obtain confirmation of Regional Director in Form INC 23 (c) Regional Director to give his confirmation within 30 days. (d) File SR Copy in MGT 14 within 30 days of passing SR to ROC (e) File confirmation from RD within 60 days (f) ROC shall register within 30 days. (g) File Form INC 22 within 15 days of change in Registered Office
Change of RO – One State to another (Procedure)	(a) Pass a SR in GM, (b) Application to chief secretary of State/UT, (c) File SR Copy to ROC (Form MGT 14) within 30 days of passing SR, (d) Consent from Creditors, (e) Confirmation from RD. RD shall dispose the application within 60 days , (f) File certified copy of RD approval along with altered MOA to ROC (both old and new) within 30 days from date of order in Form INC 28, (g) ROC shall register., (h) Files and papers from old registrar's office are transferred to new registrar's office, (i) File Form INC 22 within 15 days of change in Registered Office.
Alteration of Object clause – Procedure	Pass SR in GM, File. SR Copy to ROC (Form MGT 14) within 30 days of passing SR, ROC shall register the same within 30 days Note: Additional compliance is applicable in case of alteration of object clause when there is unutilized proceeds of prospectus issue.
Alteration of Liability Clause	Alteration may be from Limited company to unlimited company or vice-versa. Pass SR in GM, File SR Copy to ROC (Form MGT 14) within 30 days of passing SR. A. Conversion of a Company limited by Guarantee into a Company limited by Shares [Rule 39]: Pass special resolution, file copy of special resolution with ROC in Form MGT.14 along with Fee, Application in Form INC. 27 shall be filed along with altered MOA, AOA and list of members with no. of shares held to ROC within 30 days from the date of the passing the Special Resolution On ROC's Approval Certificate of Incorporation shall be issued in Form INC.118 . B. Conversion of. Unlimited Liability Company into a Limited Liability Company by Shares or Guarantee [Rule. 37] Pass special resolution, Application in Form INC. 27 shall be filed along with new paper publication, altered MOA, AOA and list of creditors and debenture holders , certificate from auditors, NOC from Sectoral regulator, secured creditors etc. to ROC within 30 days from the date of the passing the Special Resolution. On ROC's Approval Certificate of Incorporation shall be issued in Form INC.11A .
Alteration of Capital clause	(a) Authorization provision in AOA, (b) Pass Ordinary Resolution in GM, (c) File notice of increase in share capital to ROC in Form SH 7 within 30 days of passing of the resolution.
Alteration of Capital clause – Grounds	(a) Increase Authorized Capital, (b) Consolidate Share Capital, (c) Convert Share to Stock, (d) Subdivision of Shares, (e) Cancellation of Shares / Diminution of Share Capital.
Statutory alternation to Capital Clause – automatic increase	Ground I - CG exercised the option to convert the Debentures subscribed by it or terms loans granted by it to the Company into Shares. Ground II - PFI exercised the option to convert the Debentures subscribed by it or term loans granted by it to the Company into Shares and made an application to CG in this behalf.

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Terms	Description
	Effect: CG shall pass order increasing the nominal value of capital in MUA and intimate the ROC & Company. Company to file form 5 to ROC within 30 days of receipt of order from CG.
AOA Meaning	AOA is bye laws of the Company which lays down the rules and regulation for internal management.
Registration of AOA	Optional - Public Company limited by Shares, Mandatory - Unlimited Company: Company limited by guarantee; Private Company limited by Shares
Format	Table F - AOA of Company limited by Shares Table G - AOA of a Company limited by Guarantee and having SC Table H - AOA of a Company limited by Guarantee and not having SC Table I - AOA of a Unlimited Company, having share capital Table J - AOA of a unlimited Company. Not having share capital
General of contents AOA	(a) Regulations for management, (b) Such matters as may be prescribed, (c) Additional matters if considered necessary for its management
Entrenchment provisions in AOA	(a) It shall be made either on formation of company or amendment in AOA by all members in case of Private Company and passing SR in case of Public Company. (b) Intimate ROC with Form INC 2 (OPC); Form INC 7 (other than OPC) on incorporation. Form MGT 14 within 30 days in case of existing Company.
Alteration of Articles - Procedure	(a) Pass SR in GM (b) File SR Copy (Form 23) within 30 days to ROC along with altered AOA (c) ROC shall register & issue a certificate within 1 month
Conditions for alteration of AOA	(a) Not to be inconsistent with MOA / Statute / Tribunal order (b) Alteration benefits Company as a whole (c) Not to be illegal / opposed to public policy or unlawful (d) Only for bonafide interest of the Company (e) Not to constitute fraud on minority by majority (f) Should not result in increase of liability of Members (g) No alteration in AOA to justify a breach of Contract with third party or avoid a contractual liability.
Conversion of private to public and vice-versa	Apply to CG in Form INC 27 along with prescribed fee File Form INC 27 with fee and altered MOA/AOA within 15 days.
Binding effect of registration of MOA and AOA	(a) Members bound to Co. - Shares liable for forfeiture upon non payment of call money (b) Company bound to Members - Allow to caste vote (c) Members bound to other members - Provision in AOA requiring intimation of fact of transfer of shares provides upon transfer of Shares by Member intimation shall be given to them. (d) MOA and AOA do not confer any rights to outsiders. (Person named as auditor of the company in AOA does not bind the Company, the referred person can be removed and some other person be appointed as Auditor) (e) Directors and Company -A breach of duty resulting in loss to the Company, shall be reimbursed by the Directors.
Copies of MOA, AOA to members	On request of members with prescribed fees, company shall send MOA, AOA, every agreement and resolution within 7 days of request. In case of default Rs. 1,000 per day or Rs. 1,00,000 whichever is less.

Terms	Description
Doctrine of Ultra Vires	Any purported activity beyond the powers conferred by MOA is ultra vires acts. Ultra means "beyond" and Vires means "powers".
Effect of Ultra Vires Acts	(a) Void-ab-intio, (b) Injunction can be issued against performance of ultra vires acts; (c) Personal Liability of Directors, (d) Criminal action for deliberate misapplication.
Exceptions to the Doctrine of Ultra Vires	(a) Ultra Vires Directors but Intra Vires AOA and MOA - SH can ratify. (b) Ultra Vires AOA intravires MOA - SH can ratify by AOA amendment. (c) Ultra Vires MOA intravires statute - SH can ratify by MOA amendment. (d) Ultra Vires statute - Cannot be ratified. Null and Void (e) Company money used to acquire ultravires property will be secured (f) Ultra Vires borrowing used to pay Intra Vires debts - Ultra Vires creditor steps into the shoes of intravires creditor.
Doctrine of Constructive Notice	MOA and AOA are public documents. Third party dealing with Company has means of ascertaining and is presumed to know the powers and the extent to which they have been delegated to Directors
Doctrine of Indoor Management	Persons dealing with the Company can safely presume that internal proceedings have been observed properly or complied with. They need not inquire into the regularity of internal proceedings.
Exceptions to Doctrine of Indoor Management	(a) Knowledge of irregularity, (b) No protection for the person who does not rely on MOA and AOA, (c) Forgery / Void Contracts / Illegal Contracts, (d) Not a tool to protect the person who act negligently.



LET'S TEST OURSELVES!

Source - ICAI Study Material

- The minimum number of members in a private company and public company are
(a) Three and Seven respectively (b) Two and seven respectively
(c) Two and nine respectively (d) None of the above
- Which one of the following is not the content of the MoA?
(a) Name clause (b) Registered office clause (c) Objects clause (d) Board of Directors clause
- The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of from the date of filing of the special resolution.
(a) 30 days (b) 60 days (c) 90 days (d) 6 months
- Only a natural person who is an Indian citizen and who has stayed in India for a period of at least days or not during the immediately preceding one financial year shall be eligible to incorporate a OPC
(a) 180 days (b) 181 days (c) 182 days (d) 120 days
- A section 8 company can call its general meeting by giving a clear at least notice.
(a) 7 days (b) 14 days (c) 21 days (d) 27 days
- XYZ Co; is having 15% share capital held by X Company and 50% held by central Government and 10% held by State Government and 25% held by other people then that company will be _____ .
(a) Government Company (b) Private Company (c) Public Company (d) None of these
- Which one of the following statements is least likely to be true. A company is a subsidiary if another company:
(a) exercises more than 50% of the total voting power
(b) controls the composition of its board of directors
(c) is subsidiary of a company which is subsidiary of the first mentioned company
(d) is holding of a company which is the holding for the first mentioned company
- Forms of (1) Articles of guarantee company having a share capital (2) Articles of a guarantee company not having a share capital (3) Memorandum of an unlimited company with share capital (4) Memorandum of a company limited by shares; are respectively given in:
(a) Table G; H; E & B (b) Table G; H; E & A (c) Table G; H; D & A (d) Table G; H; B & A.
- Tweeter Ltd. has invested 51% in the shares of Snapchat Pvt. Ltd. on 31 March 2018. Snapchat Pvt. Ltd. have been holding 2% equity of Tweeter Ltd since 2011. Snapchat Pvt. Ltd. wants to increase its holdings in equity upto 4% in Tweeter Ltd. after 31 March 2018. Can Snapchat Pvt. Ltd. increase its holdings in equity upto 4% in Tweeter Ltd. after 31 march 2018?
(a) Yes; it can increase its holdings (b) No; it cannot increase its holdings
(c) Can't say (d) None of the above
- A director member deposited with company ₹ 5000 and demanded that AGM notice should be sent by Blue Dart courier only. Is that company bound to serve it that way only?

- (a) Yes because he is a director (b) No because company is allowed to serve documents by ordinary post
(c) Yes because member has deposited money (d) No because directors can't get special privileges

11. To entrench its article after incorporation a public company:
(a) will have to pass a special resolution (b) will have to take consent of all members
(c) is not allowed to do so (d) will have to pass special resolution and take approval of Tribunal
12. AOA of a private company says that Preference shareholders will have right to vote only if last 3 years dividend is not paid. This is:
(a) Void as it is against the companies act
(b) Valid because section 47 is applicable to a private company subject to AOA.
(c) Void because as per section 6 act is superior
(d) Valid because companies act allows voting power to preference shareholders if there dividend is not paid for last 3 years.
13. If a company is registered by incorrect information then its winding up may be ordered by:
(a) Central Government (b) Registrar of Companies
(c) National Company Law Tribunal (d) Court
14. "A not for profit company shall not alter the provisions of its memorandum or articles".
(a) False; it can freely change it
(b) False; It can do so with permission of Central Government
(c) True; because it will be violation of terms of licence
(d) True; because MOA/AOA of a section 8 company is unalterable
15. If a company changes its name; which of the following is most accurate:
(a) It is not allowed to use old name in any way
(b) New name should not be identical with old name
(c) Old name should be painted/printed for next 1 years along with new name
(d) Old name should be painted/printed for next 2 years along with new name
16. A company registered with the name of a trade mark already in existence:
(a) Central Government can give it an order anytime to change its name
(b) Company will have to change its name within 3 months from the order of Central Government
(c) Trademark owner will make complaint within three years
(d) Both b and c

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

According to section 8(1) of the Companies Act, 2013, where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company— (a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object; (b) intends to apply its profits, if any, or other income in promoting its objects; and (c) intends to prohibit the payment of any dividend to its members; the Central Government may, by issue of licence, allow that person or association of persons to be registered as a limited liability company. In the instant case, the decision

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of the group of individuals to form a limited liability company for charitable purpose under section 8 for a period of ten years and thereafter to dissolve the club and to distribute the surplus of assets over the liabilities, if any, amongst the members will not hold good, since there is a restriction as pointed out in point (b) above regarding application of its profits or other income only in promoting its objects. Further, there is restriction in the application of the surplus assets of such a company in the event of winding up or dissolution of the company as provided in sub-section (9) of Section 8 of the Companies Act, 2013. Therefore, the proposal is not feasible.

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

Doctrine of Indoor Management: According to this doctrine, persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association. Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner. The doctrine helps to **protect external** members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies. The doctrine of indoor management is opposite to the doctrine of constructive notice. Whereas the doctrine of constructive notice protects a company against outsiders, the doctrine of indoor management protects outsiders against the actions of a company. This doctrine also is a safeguard against the possibility of abusing the doctrine of constructive notice.

Exceptions to Doctrine of Indoor Management (Applicability of doctrine of constructive notice)(i) Knowledge of irregularity: In case an 'outsider' has actual knowledge of irregularity within the company, the benefit under the rule of indoor management would no longer be available. In fact, he/she may well be considered part of the irregularity. (ii) Negligence: If, with a minimum of effort, the irregularities within a company could be discovered, the benefit of the rule of indoor management would not apply. The protection of the rule is also not available where the circumstances surrounding the contract are so suspicious as to invite inquiry, and the outsider dealing with the company does not make proper inquiry. (iii) Forgery: The rule does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery. A company can never be held bound for forgeries committed by its officers

19. Alfa school started imparting education on 1.4.2010, with the sole objective of providing education to children of weaker society either free of cost or at a very nominal fee depending upon the financial condition of their parents. However, on 30th March 2018, it came to the knowledge of the Central Government that the said school was operating by violating the objects of its objective clause due to which it was granted the status of a section 8 company under the Companies Act, 2013. Describe what powers can be exercised by the Central Government against the Alfa School, in such a case?

REFER AUG 2018 MTP]

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

Alteration of Objects Clause of Memorandum: The Companies Act, 2013 has made alteration of the memorandum simpler and more flexible. Under section 13(1) of the Act, a company may, by a special resolution after complying with the procedure specified in this section, alter the provisions of its Memorandum. In the case of alteration to the objects clause, Section 13(6) requires the filing of the Special Resolution by the company with the Registrar. Section 13 (9) states that the Registrar shall register any alteration to the Memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution by the company. Section 13 (10) further stipulates that no alteration in the Memorandum shall take effect unless it has been registered with the Registrar as above. Hence, the Companies Act, 2013 permits any alteration to the objects clause with ease. Vivek Industries Ltd. can make the required changes in the object clause of its Memorandum of Association.

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

In accordance with the provisions of Section 19 of the Companies Act, 2013, a subsidiary company cannot either by itself or through its nominees hold any shares in its holding company and no holding company shall allot or transfer its shares to any subsidiary companies. Any such allotment or transfer of shares in a company to its subsidiary is void. The section however does not apply where: (1) the subsidiary company holds shares in its holding company as the legal representative of a deceased member of the holding company, (2) the subsidiary company holds such shares as a trustee, or (3) the subsidiary company was a shareholder in the holding company even before it became its subsidiary.

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

Under section 20 of the Companies Act, 2013 a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed. However, in case where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode. Under section 20 (2), save as provided in the Act or the rule thereunder for filing of documents with the registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed. However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

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

As per section 5 of the Companies Act, 2013 the article may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if more restrictive conditions than a special resolution, are met. The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company. Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in prescribed manner. In the present case, Yadav dairy products Private Limited is a private company and wants to protect provisions of articles regarding forfeiture of shares. It means it wants to make entrenchment of articles, which is allowed. But the company will have to pass a resolution taking permission of all the members and it should also give notice to ROC regarding entrenchment of articles.

24. Anushka security equipments limited is a manufacturer of CCTV cameras. It has raised ₹ 100 crores through public issue of its equity shares for starting one more unit of CCTV camera manufacturing. It has utilized 10 crores rupees and then it realized that its existing business has no potential for expansion because government has reduced customs duty on import of CCTV camera hence imported cameras from china are cheaper than its own manufacturing. Now it wants to utilize remaining amount in mobile app development business by adding a new object in its memorandum of association. Does the Companies Act allow such change of object. If not then what advise will you give to company. If yes, then give steps to be followed.

According to section 13 of the Companies Act, 2013 a company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and— (i) the details in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change; (ii) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with SEBI regulations. Company will have to file copy of special resolution with ROC and he will certify the registration within a period of thirty days. Alteration will be effective only after this certificate by ROC. Looking at the above provision we can say that company can add the object of mobile app development in its memorandum and divert public money into that business. But for that it will have to comply with above requirements.

25. Manglu and friends got registered a company in the name of Taxmann advisory private limited. Taxmann is a registered trade mark. After 5 years When the owner of trade mark came to know about the same, it filed an application with relevant

authority. Can the company be compelled to change its name by the owner of trade mark? Can the owner of registered trade mark request the company and then company changes its name at its discretion?

According to section 16 of the Companies Act, 2013 if a company is registered by a name which,—in the opinion of the Central Government, is identical with the name by which a company had been previously registered, it may direct the company to change its name. Then the company shall by passing an ordinary resolution change its name within 3 months. —is identical with a registered trade mark and owner of that trade mark apply to the Central Government within three years of incorporation of registration of the company, it may direct the company to change its name. Then the company shall change its name by passing an ordinary resolution within 6 months. Company shall give notice to ROC along with the order of Central Government within 15 days of change. In case of default company and defaulting officer are punishable. In the given case, owner of registered trade mark is filing objection after 5 years of registration of company with a wrong name. While it should have filed the same within 3 years. Therefore, the company cannot be compelled to change its name. As per section 13, company can anytime change its name by passing a special resolution and taking approval of Central Government. Therefore, if owner of registered trade mark request the company for change of its name and the company accepts the same then it can change its name voluntarily by following the provisions of section 13.

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

According to section 19 of the Companies Act, 2013 a company shall not hold any shares in its holding company either by itself or through its nominees. Also, holding company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void. Following are the exceptions to the above rule— (a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or (b) where the subsidiary company holds such shares as a trustee; or where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company but in this case it will not have a right to vote in the meeting of holding company. In the given case one of the shareholders of holding company has transferred his shares in the holding company to a trust where the shares will be held by subsidiary company. It means now subsidiary will hold shares in the holding company. But it will hold shares in the capacity of a trustee. Therefore, we can conclude that in the given situation S can hold shares in H.

27. Parag Constructions Limited is a leading infrastructure company. One of the directors of the company Mr. Parag has been signing all construction contracts on behalf of company for many years. All the parties who ever deal with the company know Mr. Parag very well. Company has got a very important construction contract from a renowned software company. Parag constructions will do construction for this site in partnership with a local contractor Firoz bhai. Mr. Parag signed partnership deed with Firoz bhai on behalf of company because he has an implied authority. Later in a dispute company denied to accept liability as a partner. Can the company deny its liability as a partner?

As per section 22 of the Companies Act, 2013 a company may authorise any person as its attorney to execute deeds on its behalf in any place either in or outside India. But common seal should be affixed on his authority letter or the authority letter should be signed by two directors of the company or it should be signed by one director and secretary. This authority may be either general for any deeds or it may be for any specific deed. A deed signed by such an attorney on behalf of the company and under his seal shall bind the company as if it were made under its common seal. In the present case company has not neither given any written authority nor affixed common seal of the authority letter. It means that Mr. Parag is not legally entitled to execute deeds on behalf of the company. Therefore, deeds executed by him are not binding on the company. Therefore, company can deny its liability as a partner.

28. Ashok, a director-member of Gama Electricals Ltd. gave in writing to the company that the notice for any general meeting and of the Board of Directors' meeting be sent to him only by registered post at his residential address at Kanpur for which he deposited sufficient money. The company sent notice to him by ordinary mail under certificate of posting. Ashok did not receive this notice and could not attend the meeting and contended that the notice was improper. Decide: (i) Whether the contention of Ashok is valid. (ii) Will your answer be the same if Ashok remains in U.S.A. for one month during the notice of the meeting and the meeting held?

According to section 20(2) of the Companies Act, 2013, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic

or other mode as may be prescribed. Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting. Thus, if a member wants the notice to be served on him only by registered post at his residential address at Kanpur for which he has deposited sufficient money, the notice must be served accordingly, otherwise service will not be deemed to have been effected. Accordingly, the questions as asked may be answered as under: (i) The contention of Ashok shall be tenable, for the reason that the notice was not properly served. (ii) In the given circumstances, the company is bound to serve a valid notice to Ashok by registered post at his residential address at Kanpur and not outside India

Source - ICAI Previous Question Papers, RTP etc.

1. **Company name with "Electoral Trust":** Decide whether Mr. Prabhu can incorporate a new Company using the phrase "Electoral Trust" with the name of the Company. [M 14]
2. **Certificate of Incorporation:** A Company was incorporated on 6th October. The Certificate of Incorporation of the Company was issued by the Registrar on 15th October. On 10th October, the Company entered into a contract, which created its contractual liability. The Company denies from the said liability on the ground that the Company is not bound by the contract entered into by it prior to obtaining Certificate of Incorporation. Can the Company be exempted from the said contractual liability? [N 03]
3. **Certificate of Incorporation:** Six out of seven signatures to the MOA were forged. The Company was registered and the Certificate of Incorporation was issued. Can the registration of the Company be challenged subsequently on the ground of forgery? [RTP N 95]
4. **Certificate of Incorporation:** The Memorandum of Association of a Company was presented to the Registrar of Companies for registration and the Registrar issued the Certificate of Incorporation. After complying with all the legal formalities a Company started a business according to the Objects Clause, which was clearly an illegal business. The Company contends that the nature of the business cannot be gone into, as the Certificate of Incorporation is conclusive. Answer the question whether Company's contention is correct or not. [N 08 (PE II)]
5. **Pre-Incorporation Contract:** A Company was incorporated on 10th April, and had entered into a contract with a third party on 9th March for supply of goods. After incorporation, the Company does not want to proceed with the contract. State in this connection whether the Company is bound by the contract. If not, who can be held personal liable? [RPT, M 08, M 10 (PE II)]
6. **Alteration of Name Clause:** Indian Cosmetics Ltd was Registered Company under the Companies Act, Later on, another Company Indian Cosmetics and Accessories Ltd was formed and registered. Being similarity in the names of both Companies, Indian Cosmetics Ltd lodged the complaint against Indian Cosmetics and Accessories Ltd to the ROC stating that there is sufficient similarity between these 2 names which may mislead or defraud to the public. India Cosmetics and Accessories Ltd intended to alter its name. Advise the India Cosmetics and Accessories Ltd to alter the name of the Company. [M 09]
7. **Alteration of Name Clause:** The Directors of Sunrise Computers Ltd desire to change the Company's name to Royal Computers Ltd. Explain the procedure to be followed in this regard. [M 06]
8. **Alteration of Name Clause:** XYZ (P) Ltd was incorporated on 20th January. A similar Company with identical name and similar objects was inadvertently incorporated on 20th September. On account of similarity in name and objects, XYZ (P) Ltd filed a petition on 18th December that the Central Government should direct the Company incorporated at the latter date (20th Sept) to change its name so that XYZ P Ltd's business interests are protected. State whether the Company incorporated at the latter date can be directed by the Central Government to change its name. [RTP]
9. **Change of Registered Office: Case 1:** A Company wants to shift its Registered Office in Mumbai to Pune (both places are in the State of Maharashtra). State the procedure in this regard. [RTP, N 06]
Case 2: A Company, the Registered Office of which is located in the State of Maharashtra wishes to shift its Registered Office to the State of Andhra. Advise the Company as to the steps to be taken by it in this regard. [RTP, N 04, M 08, M 09 (PE II)]
10. **Alteration of Objects Clause:** The Management of Ambitious Properties Ltd has decided to take up the business of food processing activity because of the downward trend in real estate business. There is no provision in the Objects Clause of the MOA to enable the Company to carry on such business. State with reasons whether its Objects Clause can be amended. State briefly the procedure to be adopted for change in the Objects Clause. [RTP, M 05, N 09 (PE II), M 16, M 17]]
11. **Alteration of Objects Clause:** A Company was started with the object of building "A Mall with Shops". The Building was destroyed by fire and the Company wanted to alter the objects clause in the memorandum by substituting the words "A Mall

with shops" with the words "Shops, Residential Buildings and Warehouses for letting purposes". Will this alteration of the memorandum for the purpose be permissible? Decide referring to the provisions of the Companies Act. [N 08 (PE II)]

12. **Commencement of Other Business:** A Ltd, as a part of revival and profitable strategy, is considering a proposal to start a new additional business which has no relation to the existing business. State whether the proposal can be legally carried out? [RTP]

13. **Alteration of Capital Clause:** The Directors of Mars India Ltd desire to alter Capital Clause of Memorandum of Association of their Company. Advise them, under the provisions of the Companies Act, about the ways in which the said clause may be altered and procedure to be followed for the said alteration. [RTP, M 08 (PE II)]

14. **Contractual rights based on AOA:** Articles of a Public Company clearly stated that Mr. L will be the Solicitor of the Company. The Company in its General Meeting of the Shareholders resolved unanimously to appoint Mr. M in place of Mr. L as the Solicitor of the Company, by altering the Articles of Association. State with reasons, whether the Company can do so? If L files a case against the Company for removal as Solicitor, will he succeed? [RTP, N 081 M 13]

15. **Doctrine of Ultra Vires:** The Object Clause of the MOA of LSR Private Limited, Lucknow, authorized to do trading in fruits and vegetables. The Company, however, entered into a Partnership with J and traded in steel and incurred liabilities to J. The Company, subsequently, refused to admit the liability to Jon the ground that the deal was "Ultra Vires" the Company. Examine the validity of the Company's refusal to admit the liability to J. [M 07 (PE II)]

16. **Doctrine of Ultra Vires:** The Articles of Association of XYZ Ltd provides the Board of Directors has Authority to issue Bonds provided such issue is authorized by the Shareholders by a necessary resolution in the General Meeting the Company. The Company was in dire need of funds and therefore, it issued the Bonds to Mr. X without passing any such resolution in General Meeting. Can Mr. X recover the money from the Company? Decide based on the Companies Act, 2013. [N 16]

17. **Doctrine of Ultra Vires:** A Managing Director of a Company borrowed a sum of money by executing a document in which he forged the signature of two other Directors who are required to sign as per requirements of Articles. Can the Company deny liability to Creditors?

18. **Doctrine of Ultra Vires:** The Objects Clause of the MOA of XYZ Pvt Ltd, New Delhi, authorised to trade directly in mangoes. The Company, however, entered into Partnership with Mr. A and traded in mangoes and incurred liabilities to Mr. A. The Company subsequently denied the liability to Mr. A on the ground of ultra vires the Company. Advice whether the stand of the Company is legally valid and if so give reasons in support of your answer. [N 97]

19. **Doctrine of Indoor Management:** A Company issued a bond under its Common Seal signed by two Directors. Articles provided that Directors might borrow on bond such sums and they should be authorised by an Ordinary Resolution of the Company. No such resolution was passed. Is the Company liable on the bond? [RTP]

20. **Exceptions to Doctrine of Indoor Management:** A Managing Director of a Company borrowed a sum of money by executing a document in which he forged the signature of two other Directors who are required to sign as per the requirements of Articles. Can the Company deny liability to Creditors? [RTP]

21. **Shares held by Subsidiary:** Anson Ltd, held Equity Shares in Booban Ltd. Later on, Anson Ltd, became a Subsidiary Company of Booban Ltd. Decide whether it is necessary for Anson Ltd, to surrender the Equity Shares of Booban Ltd? [M 14]



"A man can be as great as he wants to be. If you believe in yourself and have the courage, the determination, the dedication, the competitive drive and if you are willing to sacrifice the little things in life and pay the price for the things that are worthwhile, it can be done."

—Vince Lombardi