

Memorandum and Articles of Association and its Alteration

Lesson 3

KEY CONCEPTS

- Memorandum ■ Articles ■ Incorporation contracts ■ Alteration ■ Name Clause ■ Registered Office Clause
- Object Clause ■ Liability Clause ■ Capital Clause

Learning Objectives

To understand:

- The concept of Memorandum of Association and Articles of Association
- Their purpose, contents and registration
- Incorporation contracts
- Scope and procedural aspects of alteration of various clauses contained in MoA & AoA of the company
- The legal effect of these documents

Lesson Outline

- Memorandum of Association (MoA)
- Forms of Memorandum of Association
- Contents of Memorandum of Association
- Articles of Association (AoA)
- Contents of Articles of Association
- Distinction between Memorandum and Articles
- Alteration in Memorandum and Article of Association
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings
- Other References

REGULATORY FRAMEWORK

- The Companies Act, 2013 [Section 2(56), 2(5), 4, 5, 7 13 and 14]
- The Companies (Incorporation) Rules, 2014
- The SEBI (LODR) Regulations, 2015

MEMORANDUM OF ASSOCIATION

Introduction

A company is formed and registered when a number of people come together for achieving a specific purpose. This specific purpose is usually commercial in nature. Companies are generally formed to earn profit from business activities. To register a company, an application form has to be filed with the Registrar of Companies (ROC). This application form is required to be submitted with a certain number of specified documents. One of the fundamental documents that are required to be submitted with the application form for incorporation of company is the Memorandum of Association (MoA).

What is Memorandum of Association?

- Memorandum of Association is a legal document which describes the purpose for which the company is formed and therefore identified the possible scope of its operations beyond which its action cannot go. It defines as well as confines the powers of the company. If anything is done beyond these powers that will be *ultra vires* (beyond the powers) of the company and so void.
- The first step in the formation of a company is to prepare a document called the memorandum of association. In fact, memorandum is one of the most essential pre-requisites for incorporating any form of company under the Companies Act, 2013 (hereinafter referred to as 'Act').

“The Memorandum of Association”, as observed by Palmer, “is a document of great importance in relation to the proposed company”.

The requirement of memorandum is evidenced in Section 3 of the Act, which provides the mode of incorporation of a company and states that a company may be formed for any lawful purpose:




- by seven or more persons, where the company to be formed is a public company;
- two or more persons, where the company to be formed is a private company; or
- one person, where the company to be formed is a One Person Company

by subscribing their names or his name to a **memorandum** and complying with the requirements of this Act in respect of its registration.

Definition and provisions pertaining to Memorandum under the Companies Act, 2013:

According to Section 2(56) of the Act “memorandum” means the memorandum of association of a company as originally framed and altered, from time to time, in pursuance of any previous company law or this Act.

Section 4 of the Act specifies in clear terms:

-  The contents of memorandum, which is the charter of the company.
-  The memorandum of association of a company contains the objects of the company which it shall pursue.
-  It not only shows the objects of formation of the company but also determines the scope of its operations beyond which its actions cannot go.

CASE LAWS

In the celebrated case of *Ashbury Railway Carriage & Iron Co. Ltd. v. Riche*, (1875) L.R. 7 H.L. 653, Lord Cairn observed: “The memorandum of association of a company is its charter and defines the limitations of the powers of the company. It contains the both which is affirmative and that which is negative. It states affirmatively the ambit and extent of vitality and powers which by law are given to the corporation, and it states negatively, if it is necessary to state, that nothing shall be done beyond that ambit” [*Egyptian Salt and Soda Co. Ltd. v. Port Said Salt Association Ltd.* (1931) A.C. 677].

In Re Attorney General Vs. Great Eastern Railway (1880) 5 AC 473, It was held that the court will consider ancillary/incidental objectives along with main objects of the company.

Memorandum enables shareholders, creditors and all those who have business terms with company to know what its powers are and what is the range of its activities. An intending shareholder can find out the purposes for which his money is going to be used by the company and what type of risk he is taking by investing the company. In same manner, anyone dealing with the company, viz. supplier of goods, will know whether the transaction he intends to make with the company is within the objects of the company and not *ultra vires* its objects.

Question: Do all the companies require MoA?

Answer: Yes, it is mandatory for every company to have a MoA as it defines the scope of its operations. The entire structure of the company is detailed in the MoA. It is to be submitted to the Registrar of Companies. It is a public document, and any person can view the MoA of the company by paying the required fees to the Ministry of Corporate Affairs (MCA).

FORM OF MEMORANDUM OF ASSOCIATION

Section 4(6) of the Act provides that the memorandum of association should be in any one of the Forms specified in Tables A, B, C, D or E of Schedule I to the Act, as may be applicable in relation to the type of company proposed to be incorporated or in a Form as near thereto as the circumstances admit.

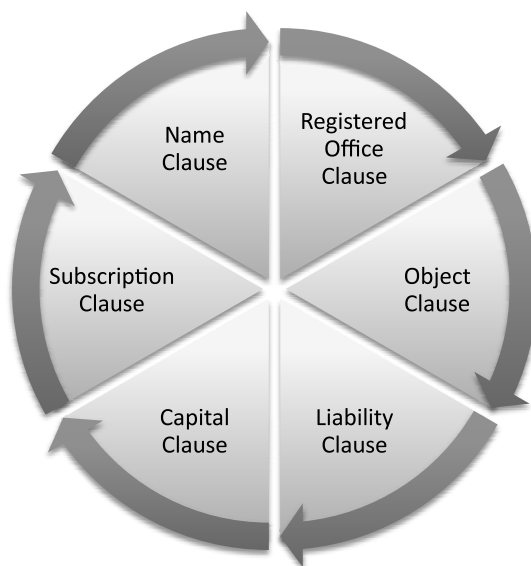
<i>Tables</i>	<i>Company</i>
Table A	Companies limited by shares
Table B	Companies limited by guarantee not having a share capital
Table C	Companies limited by guarantee having a share capital
Table D	Unlimited companies not having a share capital
Table E	Unlimited companies having a share capital

A company shall adopt any of the model Forms of the memorandum of association mentioned above, as may be applicable to it.

The memorandum should be printed, numbered and divided into paragraphs. It should also be signed by the subscribers of the company.

CONTENTS OF MEMORANDUM [SECTION 4 READ WITH SCHEDULE I]

Memorandum of Association (MoA) consists of the following clauses:



As per Section 4(1), the memorandum of a limited company must state the following:

- (a) the name of the company with “Limited” as its last word in the case of a public company; and “Private Limited” as its last words in the case of a private company; (Name Clause)

This shall not apply in case of companies registered under section 8.

Similarly, in case of government companies the name of the company need not be ended with the words “Limited” or “Private Limited”. This is as per the exemptions to Government Companies under Section 462 of Companies Act, 2013 vide notification dated June 5, 2015;

- (b) the State in which the registered office of the company is to be situated (Situation Clause);
- (c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof (Objects Clause);

- (d) the liability of members of the company, whether limited or unlimited, and also state (Liability Clause),–
- (i) in the case of a company limited by shares, that liability of its members is limited to the amount unpaid, if any, on the shares held by them; and
 - (ii) in the case of a company limited by guarantee, the amount up to which each member undertakes to contribute –
 - (A) to the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be; and
 - (B) to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves.
- (e) in the case of a company having a share capital (Capital Clause), – the amount of share capital with which the company is to be registered and the division thereof into shares of a fixed amount;
- (Subscription Clause):
- (i) the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share; and
 - (ii) the number of shares each subscriber to the memorandum intends to take, indicated opposite his name;
- (f) in the case of a One Person Company, the name of the person who, in the event of the death of the subscriber, shall become the member of the company.

According to section 4(7), any provision in the memorandum or articles, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

The above clauses are compulsory and are designated as “conditions” prescribed by the Act, on the basis of which a company is incorporated.

It is to be noted that the Companies Act, 2013 shall override the provisions in the Memorandum and Articles of a company, if the latter contains anything contrary to the provisions in the Act (Section 6).

1. Name Clause:

This clause defines the name of the company. The name of the company should not be identical or resemble too nearly to any existing company. Also, if it is a private company, then it should have the word ‘Private Limited’ at the end. And in case of public company, then it should add the word “Limited” at the end of its name.

Example:

- a) ABC Private Limited in case of the private company;
- b) ABC Limited for a public company.

A company being a legal entity must have a name of its own to establish its separate identity. The name of the company is a symbol of its independent corporate existence. The first clause in the memorandum of association of the company states the name by which a company is to be known. The company may adopt any suitable name provided it is not undesirable.

According to section 4(2), the name stated in the memorandum shall not –

- (a) be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law; or
- (b) be such that its use by the company –
 - (i) will constitute an offence under any law for the time being in force; or
 - (ii) is undesirable in the opinion of the Central Government.

Section 4(3) of the Act provides that without prejudice to the provisions of section 4(2), a company shall not be registered with a name which contains –

- (a) any word or expression which is likely to give the impression that the company is in any way connected with, or having the patronage of, the Central Government, any State Government, or any local authority, corporation or body constituted by the Central Government or any State Government under any law for the time being in force; or
- (b) such word or expression, as prescribed in rule 8 of the Companies (Incorporation) Rules, 2014, unless the previous approval of the Central Government has been obtained for the use of any such word or expression.

As per section 4(4), a person may make an application for reservation of name by using web service SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32), and for change of name by using web service RUN (Reserve Unique Name), in prescribed manner and accompanied by prescribed fee to the Registrar for the reservation of a name set out in the application as –

- (a) the name of the proposed company; or
- (b) the name to which the company proposes to change its name.

Section 4(5)(i) lays down that upon receipt of an application under sub-section (4), the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of twenty days from the date of approval or such other period as may be prescribed.

Section 4(5)(ii) states that where after reservation of name under clause (i), it is found that name was applied by furnishing wrong or incorrect information, then,—

- (a) if the company has not been incorporated, the reserved name shall be cancelled and the person making application under sub-section (4) shall be liable to a penalty which may extend to one lakh rupees;
- (b) if the company has been incorporated, the Registrar may, after giving the company an opportunity of being heard—
 - (i) either direct the company to change its name within a period of three months, after passing an ordinary resolution;
 - (ii) take action for striking off the name of the company from the register of companies; or
 - (iii) make a petition for winding up of the company.

Provided that in case of an application for reservation of name or for change of its name by an existing company, the Registrar may reserve the name for a period of sixty days from the date of approval.

The object is to prevent the use of a name which is likely to mislead the public. For example, a company is not 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.

CASE LAWS

The Registrar must make preliminary enquiries to ensure that the name allowed by him is not misleading or intended to deceive with reference to the Objects Clause of the memorandum [*Methodist Church v. Union of India, (1985) 57 Com Cases 443 (Bombay)*].

The Registrar is not, however, required to carry out any elaborate investigation at the time of registration of the company. Unless the purpose of the company appears to be unlawful ex-facie or is transparently illegal or prohibited by any statute, it cannot be regarded as an unlawful association [*T.V. Krishna v. Andhra Prabha (P) Ltd., (1960) 30 Com Cases 437 (AP)*].

In the case of *Atlas Cycles (Haryana) Ltd. v. Atlas Products Pvt. Ltd [146 (2008) DLT 274 (DB)]*, use of the brand name as corporate name was settled. Both the plaintiff and the defendant companies belong to the same family. The Appellant-plaintiff was the proprietor of the trade mark in the name “Atlas”. The Respondent- defendant company containing the name “Atlas” in its corporate name started dealing in bicycles. The plaintiff objected to the use of the name “Atlas” by the defendant company. The Defendants were restrained from using the word ‘Atlas’ in their corporate/trade name in respect of bicycles and bicycle parts.

Where a company is directed to change the name, the court cannot directly tell the Registrar to effect the change in the name of the company. The Court can only direct the company to do so. The company cannot simply file the Court order regarding the change, but it will have to follow the prescribed procedure. [*Halifax Plc v. Halifax Repossessions Ltd. (2004) 2 BCLC 455 (CA)*].

A person cannot be permitted to name a company even after his personal name if that name resembles the name of an existing company. [*K.G. Khosla Compressors Ltd. v. Khosla Extractions Ltd., (1986) 1 Comp LJ 211: AIR 1986 Del 181*]

In Re Vardhaman Crop Nutrients (P.) Ltd. Vs. Union of India High Court of Punjab and Haryana LPA No. 101 of 2015 (O&M).

Brand name ‘Vardhaman’ was already registered trade mark of respondent-company Vardhaman Fertilizers and Seeds (P.) Ltd. and both appellant (Vardhaman Crop Nutrients Private Limited) and respondent companies were doing same business, the respondent-company filed an application under section 22 seeking direction to the appellant-company to change/delete the brand name ‘Vardhaman’, the registered Trade Mark of the respondent-company, as the same was undesirable and causing great loss of business, reputation and goodwill of its company, and the appellant-company, on merits it was held that appeal was dismissed and the appellant company was granted three months’ time from the date of receipt of certified copy of order, to change its name to some other name, after deleting the word “VARDHAMAN” from its existing name.

2. Situation Clause:

This clause connotes the name of the State in which the registered office of the company is situated. This helps to determine the jurisdiction of the Registrar of Companies (RoC). The company is required to inform the location of the registered office to the Registrar of Companies within 30 days from the date of incorporation of the company and all time thereafter, the company must have a registered office to which all communications and notices may be sent.

Example:

Registered office of Reliance Capital Limited is “Trade World, B-Wing, 7th Floor, Kamala Mills Compound, Senapati Bapat Marg, Lower Parel, Mumbai Mumbai City MH 400013.”

Source: Master data of Company

Publication of Name and Address of the Company:

According to Section 12(3) of the Act, every company is required to display its name and address in legible letters in conspicuous position and in all its business letters, bill heads, letter papers. Accordingly, the company shall –

- (a) paint or affix its name, and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters, and if the characters employed therefor are not those of the language or of one of the languages in general use in that locality, also in the characters of that language or of one of those languages;
- (b) have its name engraved in legible characters on its seal, if any;
- (c) get its name, 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, printed in all its business letters, billheads, letter papers and in all its notices and other official publications; and
- (d) have its name printed on negotiable instruments such as hundies, promissory notes, bills of exchange and such other document as may be prescribed.

Every company which has a website, shall disclose/publish its name, address of its registered office, the Corporate Identity Number, Telephone number, fax number if any, email and 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. The Central Government may as and when required, notify the other document on which the name of the company shall be printed.

However, where a company has changed its name or names during the last two years, it shall paint or affix or print, as the case may be, along with its name, the former name or names so changed during the last two years.

Further, in case of One Person Company, the words “One Person Company” shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

Ministry of Corporate Affairs (MCA) has clarified that display of its name in English in addition to the display in the local language will be a sufficient compliance with the requirements of the section.

CASE LAW

The words ‘outside of every office’ do not mean outside the premises in which the office is situated [*Dr. H.L. Batliwalla Sons & Company Ltd. v. Emperor (1941) 11 Com Cases 154 : AIR 1941 (Bom.) 97*]. Where office is situated within a compound, the display outside the office room, though inside the building, is sufficient.

3. Object Clause:

Under section 4(1)(c) of the Act, all companies must state in their memorandum the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof. It defines the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.

It indicates the purpose for which the company has been set up and its actual capability, besides its sphere of activities. It states affirmatively the ambit and extent of powers of the company and, stated negatively, that nothing should be done beyond that ambit and that no attempt shall be made to use the company for any other purpose than that which is specified. The purpose of the objects clause is to enable the persons dealing with the company to know its permitted range of activities. The acts beyond this ambit are *ultra vires* and hence void. Even the entire body of shareholders cannot ratify such acts.

Although express powers are necessary, a company may do anything which is incidental to and consequential upon the powers specified, and the act will not be *ultra vires* [*Attorney General v. G.E. Rly. Co., (1880) 5 A.C. 473*]. Thus, a trading company has an implied power to borrow money, draw and accept bills of exchange in the ordinary form, but a railway company cannot issue bills although it may borrow money.

CASE LAWS

The memorandum of association of a company is its charter defining the objects of its existence and operations. As pointed out in *Cotman v. Brougham 1918 AC 514*, its purpose is 'to enable the shareholders, creditors and those dealing with the company to know what is the permitted range of the enterprise. The objects clause or clauses in the memorandum are to be so construed as to confer on the company all powers reasonably required to the attainment of the objects.' "A memorandum of association like any other document must be read fairly and its importance derived from a reasonable interpretation of the language which it employs" [*Egyptian Salt and Soda Co. Ltd. v. Port Said Salt Association Ltd. AC 677: (1931) 1 Com Cases 285; AIR 1931 PC 182; 62 MLJ 163; Deuchar v. Gas, Light and Coke Co., (1925) AC 691*]. The natural and ordinary meaning of the language used in several clauses should be taken into consideration for determining whether a particular transaction does or does not fall within the objects stated in the memorandum [*Bell Houses Ltd. v. City Wall Properties Ltd. (1966) 36 Com Cases 779: (1966) 2 All ER 674 (CA)*].

It is *ultra vires* for a company to act beyond the limits of its memorandum. Any attempted departure will be invalid and cannot be validated even if assented to by all the shareholders of the company. *Ultra vires* means an act or transaction of a company, which though it may not be illegal, is beyond the company's powers by reason of not being within the objects of the memorandum of association. The memorandum is, so to speak, the limit beyond which a company cannot travel. [*Ashbury Railway Carriage and Iron Company v. Riche, (1875) LR 7 HL 653*]. An act beyond the objects mentioned in the memorandum is *ultra vires* and void and cannot be ratified [*Dr. Lakshmanaswami Mudaliar A. v. LIC (1963) Comp LJ 248: 1963 33 Com Cases 420: AIR 1963 SC 1185*]. Where no connection or nexus exists between the exercise of a power and the attainment of an object, exercise of power will be *ultra vires* [*Radha Cinema & Co. v. Chitralipi Films, 1974 Tax LR 2180 (Cal)*].

4. Liability Clause:

It states the liability of the members of the company. In case of an unlimited company, the liability of the members is unlimited whereas in case of a company limited by shares, the liability of the members is restricted by the amount unpaid on their share. For a company limited by guarantee, the liability of the members is restricted by the amount each member has agreed to contribute at the time of incorporation.

Section 4 sub-section 1(d) of the Act, states that the liability of members of the company is to be specifically mentioned in the MoA. It is provided that the liability of member may either be limited or unlimited.

5. Capital Clause:

This clause specifies the maximum capital that a company can raise which is also called the authorized/nominal capital of the company. This also explains the division of such capital amount into the number of shares of a fixed amount each.

The capital is variously described as “nominal”, “authorized” or “registered”.

The amount of nominal capital is determined having regard to the present as well as future requirements of the company with reference to its objects. The usual way to state the capital in the memorandum is:

“The capital of the company is 10,00,000 rupees divided into 1,00,000 equity shares of 10 rupees each”.

This amount lays down the maximum limit beyond which the company cannot issue shares without altering the memorandum as provided by Section 61 of the Companies Act, 2013.

If there are both equity and preference shares, then the division of the capital is to be shown under these two heads. A company is not authorized to issue capital beyond its authorized/nominal/registered capital. If it receives applications for shares beyond the shares covered by the authorized capital, the amount received on excess number of shares should be returned.

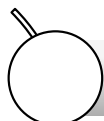
Out of the issued capital, the total amount actually subscribed or agreed to be subscribed is known as subscribed capital, and this subscribed capital again may be wholly paid or partly paid, in which latter case the balance would be payable on future calls when made. The amount actually paid by the shareholders is called the paid- up capital.

6. Subscription Clause:

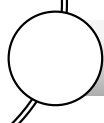
The Subscription Clause defines who are signing the memorandum of company. Each subscriber must state the number of shares he is subscribing to. The subscribers have to sign the memorandum in the presence of two witnesses. Each subscriber must subscribe to at least one share.

The subscribers to the memorandum declare: “We, the several persons whose names and addresses are subscribed below, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names”. Then follow the names, addresses, description, occupations of the subscribers, and the number of shares each subscriber has agreed to take and their signatures attested by a witness.

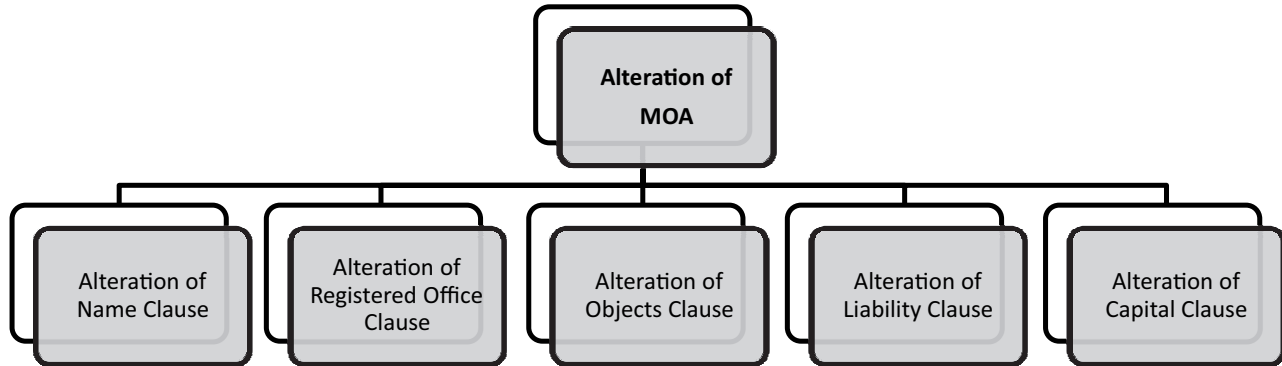
The statutory requirements regarding subscription of memorandum are that:



each subscriber must take at least one share;



each subscriber must write opposite his name the number of shares which he agrees to take.
[Section 4(1)(e)]

ALTERATION OF MEMORANDUM OF ASSOCIATION (MOA)**Applicable section for alteration of MoA:**

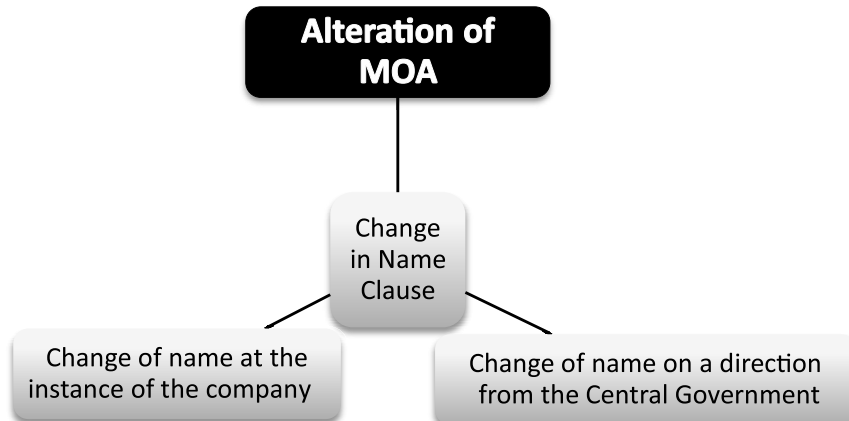
Section 13(1) of the Act provides that save as provided in section 61 (Dealing with power of limited company to alter its share capital), a company may, by a special resolution and after complying with the procedure specified in this section, alter the provisions of its memorandum. The memorandum of association of a company may be altered in the following respects:

1. Alteration in the Name clause;
2. Alteration in the Registered Office Clause;
3. Alteration in the Object clause;
4. Alteration in the Capital clause;
5. Alteration in the Liability Clause.

The provisions or conditions of the memorandum of association relating to the name clause, registered office clause, the objects clause, limited liability clause, capital clause, subscriber's share clause as provided in Section 4 of the Companies Act, 2013 or any other specific provisions contained therein, can be altered by following the prescribed procedure laid down in the Act. Strict compliance of the prescribed procedure is demanded by law. Failure to comply with the express provisions made under the Act for the purpose of alteration of the provisions or conditions contained in the memorandum will be deemed as a nullity.

- Section 13(6) provides that a company shall, in relation to any alteration of its memorandum, file with the Registrar the special resolution passed by the company under section 13(1).
- Section 13(10) provides that no alteration made under this section shall have any effect until it has been registered in accordance with the provisions of the said section.
- Further, any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void. [Section 13 (11)].

The procedure for the alteration of the compulsory clauses or conditions of the memorandum is discussed in detail in the following paragraphs.

A. ALTERATION OF MOA DUE TO CHANGE IN NAME CLAUSE [SECTION 13 (2) AND (3)]

- The name of the company can be altered by a special resolution and with the approval of the Central Government in writing. Approval of the Central Government is not required, in case where the change in the name of the company relates to the addition/deletion of the word 'Private' to the name of the company consequent to the conversion of a company into a public company and vice versa [Section 13 (2)].
- If through inadvertence or otherwise, a company on its first registration or on its registration by a new name has been registered with a name which, in the opinion of the Central Government, is identical with or too closely resemble the name of an existing company, it may direct the company to change its name and the company shall change its name or new name, within a period of three months from the issue of such direction by passing an ordinary resolution and by obtain the approval of the Central Government in writing. (Section 16)
- When any change in the name of a company is made under section 13(2), the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and such change in the name shall be complete and effective only on the issue of such a certificate [Section 13(3)].

According to Rule 29 of the Companies (Incorporation) Rules, 2014, the change of name shall not be allowed to a company which has not filed annual returns or financial statements due for filing with the Registrar or which has failed to pay or repay matured deposits or debentures or interest thereon.

Provided that the change of name shall be allowed upon filing necessary documents or payment or repayment of matured deposits or debentures or interest thereon as the case may be.

An application shall be filed in Form No. INC-24 along with the fee for change in the name of the company and a new certificate of incorporation in Form No. INC-25 shall be issued to the company consequent upon change of name.

CASE LAW

In Re cGMP Pharmaplan (Pvt) Ltd. Vs. Regional Director, Ministry of Corporate Affairs (2011) 105 SCL 675

NNE Pharmaplan Ltd. filed a representation before the office of Regional Director of MCA under section 16 (the then section 22) seeking a direction that the petitioner company incorporated on later date with the name cGMP Pharmaplan (Pvt) Ltd, it should change its name. Regional Director of the MCA concluded that the use of name by petitioner of the word 'pharmaplan' in its name would have a misleading effect in the minds of general public and it was fit case for issue of direction under section 16 {the then section 22(i)(b)} and directed petitioner to delete the word 'pharmaplan' from its existing name and change its name to some other name. The Hon'ble Delhi High Court held that since the names of both the companies structurally and phonetically too nearly resembled each other, Regional Director of MCA was right in directing the petitioner to change it name.

Procedure for Alteration in Name Clause of Memorandum:**1. Calling of Board Meeting**

- (a) Issue notice in accordance with the provisions of section 173(3) of the Companies Act, 2013, for convening a meeting of the Board of Directors to consider the reason for changing name of the company and get its approval for change in name of the Company.
- (b) Pass a Board resolution authorizing the Company Secretary/ Director to make the required application to the Registrar of Companies.

2. Seeking name availability for proposed new name from the ROC

As per section 4(4) of the Act read with Rule-9 of Companies (Incorporation) Rules, 2014, application for the reservation/availability of name shall be in RUN along with prescribed fee of Rs. 1,000/- .

In selection of a Company name, it should be in accordance with name guidelines given in Rule-8 of Companies (Incorporation) Rules, 2014.

As per rule 9 of the Companies (Incorporation) Rules, 2014, an application for reservation of name shall be made through the web service available at www.mca.gov.in by using web service SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32), and for change of name by using web service RUN (Reserve Unique Name) along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014, which may either be approved or rejected, as the case may be, by the Registrar, Central Registration Centre after allowing re-submission of such web form within fifteen days for rectification of the defects, if any, with effect from the 23rd February, 2020.

3. Obtaining ROC Approval and Name Availability Letter

After approval of name, ROC will issue a name availability letter w.r.t. approval for availability of name for a proposed company. As per section 4(5), upon receipt of an application for reservation of name, the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of twenty days from the date of approval or such other period as may be prescribed.

Provided that in case of an application for reservation of name or for change of its name by an existing company, the Registrar may reserve the name for a period of sixty days from the date of approval.

On receipt of approval of name, the Company Secretary/Director shall convene another Board meeting:

- (a) To take note of the name approval received from ROC.
- (b) To fix date, time and place for holding Extra-ordinary General meeting (EGM) to get approval of shareholders, by way of Special Resolution, for amendment in Name clause of Memorandum. This amendment in Name clause of Memorandum shall be in accordance with the requirement of section 13 of the Companies Act, 2013.
- (c) To approve notice of EGM along with agenda and explanatory statement pursuant to section 102 of the Companies Act, 2013 to be annexed to the notice of General Meeting as per section 102(1) of the Companies Act, 2013.
- (d) To authorize the Director or Company Secretary to issue Notice of the Extra-ordinary General meeting (EGM) as approved by the board.

4. Issue of Notice of Extra-ordinary General Meeting (EGM)

Issue Notice of the EGM to all the Members, Legal Representatives of any deceased member or assignee of an insolvent member, Directors and the Auditors of the company in accordance with the provisions of Section 101 of the Companies Act, 2013.

5. Holding of Extra ordinary General Meeting

Hold the Extra-ordinary General meeting on the fixed date and pass the necessary Special Resolution under section 13(1) of the Companies Act, 2013, for change in the Name clause of Memorandum.

6. ROC filings

As per section 13(6), the Company is required to file Special Resolution passed by shareholders for alteration of Memorandum with concerned ROC and file Form MGT -14 (certified by a Practicing Professional i.e. CS/ CA/CWA) within 30 days of passing the resolution with prescribed fees.

Also, the application for the fresh certificate of incorporation in the new name of the company be made in form INC-24 to the Registrar within the 30 days along with the prescribed fees.

7. After scrutiny of the documents filed, the ROC shall issue a fresh certificate of incorporation digitally signed in Form INC-25.
8. Intimate all concerned persons/authorities about the changed name of the Company, particularly the Stock Exchanges, National Securities Depository Ltd., Central Depository Services (India) Ltd., statutory and other authorities like Inspector of Factories, Regional Provident Fund Commissioner, suppliers of raw materials, customers, banks etc.
9. Arrange for a new Common Seal and have the same adopted at a meeting of the Board of directors and keep it under safe custody and get stationery printed with the new name and/or affix rubber stamp of the new name on all the existing documents. However, it is also to be noted that having the common seal is no longer mandatory requirement.
10. Get the new name of the Company painted on all the signboards or name boards wherever they are displayed.
11. Correct all records, registers including the Register of Members, every copy of Memorandum and Articles of Association, other books and documents pertaining to the company's business and affairs to display the new name.
12. It is also to be noted that in every document as above-mentioned the company shall paint, affix or print as the may be the former name or names so changed during the period of last two years. (First proviso to Section 12(3)).

Name change requirement under regulation 45 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015

All listed companies which decide to change their names shall be required to comply with the following conditions:

1. A time period of at least 1 year should have elapsed from the last name change;
2. At least 50% of its total revenue in the preceding one year period should have been accounted for by the new activity suggested by the new name; or
3. The amount invested in the new activity/project is at least fifty percent. of the assets of the listed entity.

Provided that if any listed entity has changed its activities which are not reflected in its name, it shall change its name in line with its activities within a period of six months from the change of activities in compliance of provisions as applicable to change of name prescribed under Companies Act, 2013.

For the purpose of this regulation - (i) 'assets' of the listed entity means the sum of fixed assets, advances, works in Progress / Inventories, investments, trade receivables cash & cash equivalents;

- (ii) 'advances' shall include only those amounts extended to contractors and suppliers towards execution of project, specific to new activity as reflected in the new name.
4. On satisfaction of conditions as laid above, the listed entity shall file an application for name availability with Registrar of Companies.
 5. Upon compliance with the conditions for change of name laid down in Companies Act, 2013 and rules made thereunder, the listed entity, in the explanatory statement to the notice seeking shareholders' approval for change in name, shall include a certificate from a practicing chartered accountant stating compliance with aforesaid conditions.
 6. The listed entity shall disseminate on its website, new name and the old name of the listed entity for a continuous period of one year, from the date of the last name change.

EFFECT OF CHANGE IN NAME CLAUSE

The change of name shall not affect any rights or obligations of the company or render defective any legal proceedings by or against it, and any legal proceedings which might have been continued or commenced by or against the company in its former name may be continued by or against the company in its new name.

By change of name, constitution of company does not change; the only thing changes is its name; all the rights and obligations under the law of old company pass to the new company.

CASE LAWS

In Re Malhati Tea Syndicate Ltd. v. Revenue Officer, (1973) 43 Com Cases 337


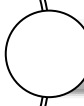

Where a company changes its name and the new name has been registered by the Registrar, the commencing of legal proceedings in the former name is not valid.

In Re Pioneer Protective Glass Fibre (P) Ltd. v. Fibre Glass Pilkington Ltd., (1986) 60 Com Cases 707 (Cal.)

In spite of a change in name the entity of the company continues. The company is not dissolved nor does any new company come into existence. If any legal proceeding is commenced, after change in the name, against the company in its old name, the company should be treated as if it is not in existence. It is not an incurable defect and the plaint can be amended to substitute the new name.

Methods of changing the name

After incorporation, a company can change their name through following methods:

-  Conversion of private limited company into public limited company and thereby change in the name from private to public; or
-  Conversion of public limited company into private limited company and thereby change in the name from public to private; or
-  Change of name from ABC limited to XYZ limited.

Recapitulate: As per Section 13 of the Companies Act, 2013, the name of the company can be changed by passing a Special Resolution by the members of the company in their general meeting and with the approval of the Central Government. But on the other hand, if the change relates to the addition/deletion of the words “private” to the name, then approval of Central Government is not required.

SPECIMEN RESOLUTIONS:

Sample Board Resolution for Change in the Name of the Company

“RESOLVED THAT pursuant to the provisions of section 13 and other applicable provisions of the Companies Act, 2013 if any and the rules framed there under, and subject to the approval of the Registrar of Companies, Central Registration Center, Ministry of Corporate Affairs and the approval of the members, the consent of the board be and is hereby accorded to change the name of the company from to..... or or as may be approved by the Registrar.

FURTHER RESOLVED THAT for the purpose of giving effect to this resolution Director of the Company be and is hereby authorized, on behalf of the Company, to make an application to the MCA for ascertaining availability of proposed name and to do all acts, deeds, and things as may be necessary, proper or desirable and to sign and execute all necessary documents, applications and returns, e-forms for the purpose of giving effect to the aforesaid resolution.”

Sample Shareholder’s Resolution to be passed in the General Meetings for Change in the Name Clause of MOA

“RESOLVED THAT pursuant to section 13(2) and other applicable provisions of the Companies Act, 2013 if any and the rules framed there under, the consent of members be and is hereby accorded to change the name of the company from _____ PRIVATE LIMITED to _____ PRIVATE LIMITED”.

RESOLVED FURTHER THAT Clause I of the Memorandum of Association of the Company be substituted by the following:

‘The Name of the company is _____ PRIVATE LIMITED”.

RESOLVED FURTHER THAT Clause _____ of the Articles of Association of the Company be substituted by the following:

The company means _____ PRIVATE LIMITED”.

Explanatory Statement pursuant to section 102 of the Companies Act, 2013

Item No.....

The Board of Directors of the Company at its meeting held on DD/MM/YYYY decided to change the name of the Company from _____ to _____.

Pursuant to provisions of Section 4 and 13(2) of the Companies Act, 2013, any change in name of the Company and alteration in the name clause of the Memorandum of Association of the Company shall be made only after obtaining the consent of the shareholders by passing a Special Resolution and the approval of the Central Government, Registrar of Companies and all other statutory approvals.

None of the Directors, Key Managerial Personnel of the Company or their relatives is in any way, concerned or interested, financially or otherwise, in the Resolution, except as shareholders of the Company.

The Board of Directors recommend passing of the Special Resolution.

B. ALTERATION OF SITUATION/REGISTERED OFFICE CLAUSE IN THE MOA [SECTION 13(4)(5) AND (7)]

(a) Change within the local limits of same town

A company by passing Board Resolution can change the situation of its registered office within the limits of same city, town or village

An intimation of the change of registered office and verification of registered address shall be given to the Registrar

E-Form INC-22 is required to be filed within 30 days of such change

This does not involve alteration of memorandum

(b) Change outside the local limits of any city, town or village

According to Section 12(5) of the Act, except on the authority of a special resolution passed by a company, the registered office of the company shall not be changed –

- (i) in the case of an existing company, outside the local limits of any city, town or village where such office is situated at the commencement of this Act or where it may be situated later by virtue of a special resolution passed by the company; and
- (ii) in the case of any other company, outside the local limits of any city, town or village where such office is first situated or where it may be situated later by virtue of a special resolution passed by the company.

In case the company is eligible for conducting business through postal ballot any change in place of registered office outside the local limits of any city, town or village the same shall be transacted only by means of voting through a Postal Ballot [Rule 22 of the Companies (Management and Administration) Rules, 2014].

(c) Change within the same State from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies

- No company shall change the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State unless such change is confirmed by the Regional Director. {Proviso to Section 12(5)}
- Rule 28 (2) The Regional Director shall examine the application referred to in sub-rule (1) and the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within fifteen days of the receipt of application complete in all respects.
- The certified copy of order of the Regional Director, approving the alternation of memorandum for transfer of registered office company within the same State, shall be filed in Form No.INC-28 along with fee with the Registrar of State within thirty days from the date of receipt of certified copy of the order.
- The said ROC shall record the ordered changes in its records.
- The ROC of the state where the registered office of the company was previously situated, shall transfer all the documents and papers to the new ROC.

Rule 28 of Companies (Incorporation) Rules, 2014 states that an application seeking confirmation from the Regional Director for shifting the registered office within the same State from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies, shall be filed by the company with the Regional Director in Form No.INC.23 along with the fee and following details and documents,-

- (a) Board Resolution for shifting of registered office;
- (b) Special Resolution of the members of the company approving the shifting of registered office;
- (c) a declaration given by the Key Managerial Personnel or any two directors authorised by the Board, that the company has not defaulted in payment of dues to its workmen and has either the consent of its creditors for the proposed shifting or has made necessary provision for the payment thereof ;
- (d) a declaration not to seek change in the jurisdiction of the Court where cases for prosecution are pending;
- (e) acknowledged copy of intimation to the Chief Secretary of the state as to the proposed shifting and that the employees interest is not adversely affected consequent to proposed shifting.

The Regional Director shall examine the application and the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within fifteen days of the receipt of application complete in all respects.

The certified copy of order of the Regional Director, approving the alternation of memorandum for transfer of registered office company within the same State, shall be filed in Form No.INC-28 along with fee with the Registrar of State within thirty days from the date of receipt of certified copy of the order.

(d) Change of Registered office from one State to another

- The change of registered office from one State to another State involves alteration of memorandum, and the change can be effected by a special resolution passed by the company which must be confirmed by the Central Government on an application made to it [Section 13(4)].
- The Central Government shall dispose of the application under sub-section (4) within a period of sixty days and before passing its order may satisfy itself that the alteration has the consent of the creditors, debenture-holders and other persons concerned with the company or that a sufficient provision has been made by the company either for the due discharge of all its debts and obligations or that adequate security has been provided for such discharge. [Section 13(5)].
- A company shall, in relation to any alteration of its memorandum involving change of registered office from one State to another, file with the Registrar the special resolution passed by it in MGT-14 [Section 13(6)].
- Where an alteration of the memorandum results in the shifting 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 within 30 days' time from the receipt of the certified copy of the order and in INC-28, who shall register the same, and the Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration. [Section 13(7) read with Rule 31 of the Companies (Incorporation) Rules, 2014].

Procedure to be followed as laid down in Rule 30 of the Companies (Incorporation) Rules, 2014 (as amended from time to time) are enumerated below:

1. Send notice of Board Meeting at least seven days before the date of Board Meeting for:
 - Shifting of Registered office from one state to another state.
 - Approval of Notice for Calling of Extraordinary General Meeting (EGM) for passing special resolution for altering the memorandum.
 - Authorization to Director/ Company Secretary to sign the documents.
 - Engagement of Company Secretary to represent the company before Regional Director (RD).
2. In Case of Listed Company, at least 7 days before of the Board Meeting, publish notice of the board meeting in the newspaper. Simultaneously, send the copies of said publication to the Stock exchanges.
3. Hold the Board Meeting and approve the :
 - Resolution Shifting of Registered office from one state to another state.
 - Notice for Calling of EGM for passing special resolution for shifting of registered office.
 - Authorization to Director/ Company Secretary to sign the documents.
 - Engagement of Company Secretary to represent the company before RD.
4. Intimate the Stock Exchanges about passing of resolution in the board meeting at the earliest within 24 hours of the occurrence of such event or information and in case of any delay the disclosure should be made along with an explanation for such delay [Regulation 30(6) of the SEBI (LODR) Regulations, 2015].
5. Send Notice of the EGM to at least 21 days clear days before the members of the company. Send copies of the notice to the stock exchanges simultaneously. Also, an intimation to be sent to the concerned stock exchanges that the notice of the extra-ordinary general meeting was sent to the shareholders of the company at the earliest within 24 hours of the occurrence of such event or information and in case of any delay the disclosure should be made along with an explanation for such delay. [Regulation 30(6) of SEBI (LODR) Regulations, 2015].
6. Publish the notice of EGM in newspaper and send the copy of such publication to the stock exchanges.
7. Hold EGM of the company and pass the special resolution for shifting of registered office from one state to another state and authorize Director/ Company Secretary to sign/ file/ deal with department.
8. Intimate about the proceedings of the EGM and the amendments to the memorandum and articles of association to the stock exchanges at the earliest within 24 hours of the conclusion of such extra-ordinary general meeting and in case of any delay the disclosure should be made along with an explanation for such delay. [Regulation 30(6) of SEBI (LODR) Regulations, 2015].
9. File e-form MGT-14 with ROC for registering special resolution passed in the EGM within 30 days from the date of passing such resolution.
10. Prepare the application for shifting of registered office to be filed to RD. File a copy of the application along with all annexures to ROC in form INC-23 along with the following details and documents:-
 - a. A copy of Memorandum of Association, with proposed alterations;
 - b. A copy of the minutes of the general meeting at which the resolution authorising such alteration was passed, giving details of the number of votes cast in favour or against the resolution;

- c. A copy of Board Resolution or Power of Attorney or the executed vakalatnama, as the case may be.
 - d. There shall be particulars of, a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than one month, setting forth the following details in the application, namely:-
 - (i) the names and address of every creditor and debenture holder of the company;
 - (ii) the nature and respective amounts due to them in respect of debts, claims or liabilities
 - e. List of creditors and debenture holders, accompanied by declaration signed by the Company Secretary of the company, if any, and not less than two directors of the company, one of whom shall be a managing director, where there is one, stating that:
 - (i) they have made a full enquiry into the affairs of the company and, having done so, have concluded that the list of creditors are correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of or claims against the company to their knowledge, and
 - (ii) no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state and also there shall be an application filed by the company to the Chief Secretary of the concerned State Government or the Union territory.
 - f. A duly authenticated copy of the list of creditors shall be kept at the registered office of the company and any person desirous of inspecting the same may, at any time during the ordinary hours of business, inspect and take extracts from the same on payment of a sum not exceeding ten rupees per page to the company.
 - g. There shall also be attached to the application a copy of the acknowledgment of service of a copy of the application with complete annexures to the Chief Secretary of the State Government or Union territory where the registered office is situated at the time of filing the application.
 - h. Applicant need not to submit separate copy of application with the Registrar and an intimation of filing of application in Form no. INC-23 with the Regional Director shall be shared with the Registrar through MCA system.
11. The company shall, not more than thirty days before the date of filing the application in Form No. INC-23 -
- (a) advertise in the Form No. INC-26 in the vernacular newspaper in the principal vernacular language in the district and in English language in an English newspaper with the wide circulation in the State in which the registered office of the company is situated:
Provided that a copy of advertisement shall be served on the Central Government immediately on its publication.
 - (b) serve, by registered post with acknowledgement due, individual notice, to the effect set out in clause (a) on each debenture-holder and creditor of the company; and
 - (c) serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar and to the Securities and Exchange Board of India, in the case of listed companies and to the regulatory body, if the company is regulated under any special Act or law for the time being in force.

12. There shall be attached to the application a duly authenticated copy of the advertisement and notices issued, a copy each of the objection received by the applicant, and tabulated details of responses along with the counter response from the company received either in the electronic mode or in physical mode in response to the advertisements and notices issued under sub-rule (5).
13. Where no objection has been received from any person in response to the advertisement or notice or otherwise, the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within fifteen days of the receipt of the application.
14. Where an objection has been received,
 - (i) the Central Government shall hold a hearing or hearings, as required and direct the company to file an affidavit to record the consensus reached at the hearing, upon executing which, the Central Government shall pass an order approving the shifting, within sixty days of filing the application.
 - (ii) where no consensus is reached at the hearings the company shall file an affidavit specifying the manner in which objection is to be resolved within a definite time frame, duly reserving the original jurisdiction to the objector for pursuing its legal remedies, even after the registered office is shifted, upon execution of which the Central Government shall pass an order confirming or rejecting the alteration within sixty days of the filing of application.

15. The order passed by the Central Government confirming the alteration may be on such terms and conditions, if any, as it thinks fit and proper:

Provided that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

Provided further that where the management of the company has been taken over by new management under a resolution plan approved under section 31 of the Insolvency Bankruptcy Code, 2016 and no appeal against the resolution plan is pending in any Court or Tribunal and no inquiry, inspection, investigation is pending or initiated after the approval of the said resolution plan, the shifting of the registered office may be allowed.

16. On completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed.
17. The change of address of the registered office shall be effective from the date of issue of registration certificate by the ROC of the State to which the registered office is shifted.
18. Once the order is passed by the RD, approving shifting of the registered office, file form INC-22 with the ROC along with supportive documents –
 - the registered document of the title of the premises of the registered office in the name of the company; or
 - the notarized copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;
 - the authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office altered, Memorandum of Association; and
 - the proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months;
 - Certified copy of order passed by the competent Authority.
 - List of Companies (mentioned along with CIN) having same registered office address, if any.

If the documents are in order, Registrars of both states will approve the forms and the change in registered office will be updated in register of companies with the Registrar and new Certificate of Incorporation will be issued by the Registrar of the State within 30 days, where the company's registered office is going to be shifted.

Rule 31 the Companies (Incorporation) Rules, 2014: The certified copy of the order of the Central Government, approving the alteration of the memorandum for transfer of registered office of the company from one State to another, shall be filed in Form No.INC-28 along with the fee as with the Registrar of the State within thirty days from the date of receipt of certified copy of the order.

Steps after obtaining new certificate from ROC

- Make alteration in the MOA with respect to the state in every copy of Memorandum.
- Each stationery, banner, signboard, bills, invoice etc. should show the new address and necessary advice should be sent to shareholders, debenture holders, and other concerned parties.
- Necessary changes are required to be made in the letter heads, books, records etc. of the company. The necessary changes are required to be made in PAN, TAN or various returns under the GST etc and inform all the Government departments, banks, customers and others wherever required.

CASE LAWS

- No notice of the petition is required to be served on the State, but in view of the wider language of Section 17 [Corresponds to section 13 of the Companies Act, 2013] Central Government may direct notice to be served on the State if it is of the view that the interest of the State will be affected by the alteration. Where the alteration is affected by changing the registered office from one State to another State, the loss of revenue in one State would be accompanied by increase in revenue in the other and in such a case the interest of a particular State ought not to be considered but it is the interest of the country as a whole which should be considered. The decision to shift the registered office of the company to another state being a domestic matter rests with shareholders and the company is the best judge of how to run its business more economically, efficiently or conveniently, even though it would result in loss of revenue to the State. [*Satyashree Balaji Wires & Cables (P) Ltd., In re (2006) 71 CLA 231 (CLB)*].
- A company was allowed to shift its registered office from Bihar to West Bengal in spite of the fact that Bihar Government had granted lease of land for the company's factory on the condition that it would not shift its registered office. The CLB also held that interest free loans, sales tax, electricity and other subsidies would have no bearing on the shifting [*Usha Beltron Re, (2000) 27 SCL 124*].

Employees' right to object in case of shifting of registered office from one state to another – Some legal cases

CASE LAWS

- In the case of *Bharat Commerce and Industries Ltd., Re, (1973) 43 Com Cases 162 (Cal.)*, it was held that employees' union, which was a registered body and which represented quite a number of the employees at the registered office of the company, would have the legal standing to appear before the court and oppose the application on the ground that their interests are likely to be prejudicially affected if the resolution for shifting the registered office of the company from one state to another is confirmed by the court. However, it was held that the employees' union cannot oppose on the ground that there would be loss of revenue or unemployment in the State or that the meeting at which the special resolution was passed was itself not valid.

- Further, in the case of *Metal Box India Ltd. Re, (2000) 37 CLA 15*, it was held that where the shifting of the registered office was in accordance with a scheme approved by the BIFR, it was held that the workers had no right of objection because their continuation in the company's employment was ensured unless, of course, a worker preferred voluntary retirement.
- A different dimension to the employees' right can be seen in the case of *Kwality Ice Creams (India) P Ltd., Re, (2009) 91 SCL 231 : (2009) 148 Com Cases 631 : (2010) 98 CLA 218 (CLB)*. In that case, the company's petition for shifting its registered office from West Bengal to Delhi was opposed by two employees of the head office on the ground that their action against the company would be prejudiced.

The CLB said that the facility for litigation is not a valid ground to stall shifting. There was no restraint order from any Court against the proposed shifting. The Company Law Board allowed shifting subject to the condition that the interest of none of the employees at the registered office would be prejudiced by retrenchment or otherwise.

SPECIMEN RESOLUTIONS

Sample Board Resolution for Changing the Situation of Registered Office Clause in MOA:

“RESOLVED THAT pursuant to the provisions of Sections 12 and 13 of the Companies Act, 2013 and the rules made there under (including any statutory modifications or re-enactment thereof for the time being in force) and subject to the confirmation of the Central Government and subject to the confirmation of the members, approval of the Board of Directors of the company be and is hereby accorded for shifting of the registered office of the company from the state of Maharashtra to the state of Gujarat”.

“RESOLVED FURTHER THAT Shri _____ and Shri _____, the Company Secretary and

Director of the company respectively, be and are hereby jointly and severally authorised –

- to sign and file, the petition under Sub-section (4) of Section 13 of the Act to the Regional Director for securing confirmation to the alteration to the memorandum of association of the company so as to change the place of the Registered office of the company from the State of Maharashtra to the State of Gujarat;
- to represent the company in all hearings concerning the petition of the company; and
- to appoint, on behalf of the company, Company Secretaries in whole-time practice, Advocates, lawyers, counsels and other consultants, if and when required, to represent the company and plead on its behalf before the concerned Regional Director and or any other agency in all matters connected with the petition of the company”.

“RESOLVED FURTHER THAT Shri _____, Director of the Company be & is hereby authorised on behalf of the Company, including to prepare, sign, execute Power of Attorney in favour of Shri. _____ and Shri _____, the Company secretary and the Director of the company respectively in this regard but not limited to file & submit necessary E-forms, applications, documents & returns with Registrar of Companies, Ministry of Corporate of Affairs & to do all acts, deeds & things as may deem necessary, proper or desirable for the purpose of giving effect to above resolution”.

Sample Shareholder's Resolution to be passed in the General Meeting for Shifting of Registered Office of the Company from One State to Another

“RESOLVED THAT pursuant to the provisions of section 13 read with section 12 and other applicable provisions, if any, of the Companies Act, 2013 and rules made thereunder, and subject to the approval of the Regional Director, _____ Region or any other Government Authority, the consent of the members of the Company be and is hereby accorded to shift the registered office of the Company from the State of _____ (State) to (State)”.

“RESOLVED FURTHER THAT Clause No. II of the Memorandum of Association of the Company be and is hereby substituted by the following clause:

‘II. The Registered Office of the Company shall be situated in the State’“ _____”

“RESOLVED FURTHER THAT Mr. _____ and Mr. _____, the director and the company secretary of the Company respectively, be and are hereby severally authorized for and on behalf of the Company to do all such acts, deeds and things as may be necessary or desirable in this regard for the purpose of giving effect to this resolution.”

Explanatory Statement Pursuant to Section 102 of the Companies Act 2013

Item No. _____

When the company was incorporated it was decided that the main manufacturing unit of the company would be located in the State of Maharashtra and in the memorandum of association it was stated that the registered office of the company would be situated in that State.

Subsequently it was found that the location of the main manufacturing unit in the State of Gujarat would be more advantageous to the company. At present, all the factories of the company are located in the State of Gujarat. for better management and control, the Head Office of the company has already been shifted to Ahmedabad. Gujarat. The directors, therefore, consider that the memorandum of association of the company should be altered so as to change the place of its registered office from its present situation at _____ in the State of Maharashtra to _____ a place situated in the State of Gujarat. After the proposal is approved by the shareholders, a petition is required to be made, under Section 13(4) of the Companies Act, 2013, to the Regional Director for confirmation of the alteration to the memorandum of association of the company so as to shift the company's registered office from the State of Maharashtra to the State of Gujarat. It is also proposed to authorize severally to Mr. _____ and Mr. _____, the Director and Company Secretary of the company respectively to sign and file the petition and appear before the Regional Director in connection with the petition. An enabling clause has also been provided authorizing the Director and Company Secretary of the company to appoint any other authorized representative such as the company secretary in the whole-time practice, Advocate, counsel etc., as they consider necessary in connection with the petition.

The Board recommends the resolution to the members for their consideration and approval.

None of the directors of the company or KMP or their relatives are concerned or interested in the proposed resolution.

C. ALTERATION OF MOA DUE TO CHANGE IN OBJECT CLAUSE [SECTION 13 (8) AND (9)]

- According to section 13(1), a company may, by a special resolution and after complying with the procedure specified in this section, alter the provisions of its memorandum.
- It means that a company can change its objects by passing a special resolution.

- Further section 13(6)(a) provides that a company shall, in relation to any alteration of its memorandum, file with the Registrar the special resolution passed by the company under section 13(1).
- As per section 13(9), 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 thirty days from the date of filing of the special resolution in accordance with section 13(6)(a).

Further, in case the company is eligible for conducting business through postal ballot any alteration in the objects clause of the Memorandum of Association, shall implement the same through Postal Ballot in terms of section 110 read with Rule 22 of the Companies (Management & Administration) Rules, 2014.

Further, section 13(8) lays down that a company, which has raised money from public through prospectus and 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, as may be prescribed, in respect of such resolution shall 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 there in 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 regulations to be specified by the Securities and Exchange Board.

Also, for deleting any portion of the objects clause, the procedure laid down in this section has to be followed. A company may wish to alter its objects stated in its memorandum due to various reasons e.g. if a company wishes to cut-back i.e. where it feels it has diversified in various directions and that management of the company has become difficult or uneconomical, it may alter its objects to sell or dispose of whole or part of its undertaking(s).

Following companies are required to pass special resolution for alteration of Object clause of Memorandum of Association by means of Postal Ballot only:

- All Companies having more than 200 members. [Section 110 read with Rule 22 of the Companies (Management and Administration) Rules, 2014,
- Company which has raised money from public through prospectus and still has any unutilized amount out of the money so raised. [Section 13(8) read with Rule 32 of the Companies (Incorporation) Rules, 2014].

Procedure is to be followed for alteration of objects clause of MOA under Section 13 read with Rule No.32 of Companies (Incorporation) Rules, 2014 and Rule No 22 (Postal Ballot, if applicable) of Companies (Management and Administration) Rules, 2014:

1. Issue not less than 7 days' notice and agenda of Board meeting, or a shorter notice in case of urgent business, in writing to every director of the company at his address registered with the company and call a Board Meeting to consider the proposal of alteration of objects clause of memorandum of association of company. [Section 173(3)]. Also follow the procedure prescribed for issuing and signing of notice of Board Meeting.
2. Hold a meeting of Board of Directors-
 - To pass the Board Resolution for approving the proposed amendments to the objects clause of MOA of the company subject to the approval of shareholders in General meeting.

- To delegate authority to any one director of the company to sign, certify and file the requisite forms with ROC and to do all such acts and deeds as may be necessary to give effect to the proposed alteration.
 - To fix day, date, time and venue for holding the general meeting of the Company for passing a special resolution as required by section 13.
 - To approve the draft notice of general meeting along with explanatory statement annexed to the notice as per requirement of the Section 102.
 - To authorize the Director or Company Secretary to sign and issue notice of the general meeting.
3. If the company has raised money from public through prospectus and has any unutilized amount out of the money so raised, it shall follow the following additional steps for altering the objects clause of MOA of the Company:
- (a) Pass special resolution for alteration of Object clause of Memorandum of Association by means of Postal Ballot only.
 - (b) Notice of the resolution for altering the objects shall contain the following particulars:
 - total money received;
 - total money utilized for the objects stated in the prospectus;
 - unutilized amount out of the money so raised through prospectus,
 - particulars of proposed alteration/ change in the objects;
 - justification for the alteration/change;
 - amount proposed to be utilized for the new objects;
 - estimated financial impact of the proposed alteration on the earnings and cash flow of the company;
 - other relevant information which is necessary for the members to take an informed decision on the proposed resolution;
 - Place from where any interested person may obtain a copy of the notice of the resolution to be passed.
 - (c) Publish an advertisement, giving above mentioned details of special resolution to be passed, which shall be published simultaneously with the dispatch of postal ballot notices to shareholder at least once in a vernacular newspaper in the principal vernacular language and in English language in an English newspaper circulating at the place where the registered office of the company is situated and place it on the website of the Company if any, along with the justification for such change.
 - (d) Give an opportunity to the dissenting shareholders to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.
4. Send notice of the General meeting proposing the aforementioned special resolution to all the shareholders, directors, auditors and other persons entitled to receive it, by giving not less than clear 21 days' notice or shorter notice, if consent for shorter notice is given by at least 95% of members entitled to vote at such meeting, either in writing or through electronic mode in accordance with Section 101 of the Act.

5. Hold a shareholders meeting on the date for the meeting and pass the Special Resolution for altering the object clause of Memorandum of Association by 3/4th majority in accordance with Section 114 (2) of the Act.

Special Resolution shall be passed by means of Postal ballot, if company has more than 200 members or the company has raised money from public through prospectus and still has any unutilized amount out of the money so raised.

6. Follow the procedure prescribed for preparing, signing and compiling of minutes of General Meeting.
7. After passing special resolution, file a certified copy of special resolution with the Registrar in form MGT-14 under Section 117 of the Act within 30 days of passing Special Resolution in general meeting along with the following attachments:
 - (a) Copy of Special Resolution passed along with explanatory statement.
 - (b) Notice for convening the General Meeting of the Company
 - (c) Altered Memorandum of Association.
 - (d) Shorter Notice Consent Letters from the members in case the General Meeting was convened and held at a shorter notice.
 - (e) Any other attachment as may be considered as necessary in this regard.

Notes:

1. No alteration of object clause of Memorandum of Association shall have any effect until it has been registered in accordance with the provisions of this section. [Section 13(10)]
2. Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void. [Section 13(11)]
3. The Registrar shall register the alteration of objects in Memorandum and certify the registration within a period of 30 days from the date of filing of the special resolution. [Section 13(9)]
4. Every Alteration made in the memorandum of the company shall be noted in every copy of the Memorandum of Association. [Section 15(1)]

SPECIMEN RESOLUTIONS

Sample Board Resolution for Alteration of Object Clause in MOA

“RESOLVED THAT pursuant to the provisions of section 13 and other applicable provisions, if any, of the Companies Act, 2013 (Act) read with rule 32 of the Companies (Incorporation) Rules, 2014 (including any statutory modification(s) or re-enactment thereof for the time being in force) and subject to the consent of the members in General meeting and approval from the Registrar of Companies and or any other statutory or regulatory authority, as may be necessary, Clause III (Objects Clause) of the Memorandum of Association of the Company, be and is hereby altered by inserting the following sub-clause under Part - A of Clause III, after the existing sub-clause 3 and the remaining sub-clauses be re-numbered accordingly:

‘.....’

RESOLVED FURTHER THAT any of the Directors, and the Company Secretary of the company, be and are hereby severally authorized to file, sign, verify, execute and submit all such e-forms, papers or documents, as may be required and do all such acts, deeds and things as may be necessary and incidental for giving effect to this Resolution.”

Sample Shareholder’s Resolution to be passed in the General Meeting for Alteration of Object Clause in MOA

“RESOLVED THAT pursuant to the provisions of section 13 and other applicable provisions, if any, of the Companies Act, 2013 (Act) read with rule no. 32 (to be mentioned if applicable), of Companies (Incorporation) Rules, 2014 (including any statutory modification(s) or re-enactment thereof for the time being in force) consent of the members in General meeting be and is hereby given for re-structuring of the Object clause of the memorandum of association of the company subject to the approval from the Registrar of Companies and or any other statutory or regulatory authority, as may be necessary, Clause III (Objects Clause) of the Memorandum of Association of the Company, be and is hereby altered by inserting the following sub-clause under Part - A of Clause III, after the existing sub-clause 3 and the remaining sub-clauses be re-numbered accordingly:

‘.....’

“RESOLVED FURTHER THAT any Director, the Chief Financial Officer and the Company Secretary of the Company, be and are hereby severally authorized to file, sign, verify, execute and submit all such e-forms, papers or documents, as may be required and do all such acts, deeds, matters and things as may be necessary and incidental for giving effect to this Resolution, including agreeing to any change to the aforesaid sub-Clause 4 under Clause III of the Memorandum of Association of the Company which pertains to the Objects of the company, as may be required by the ROC and/or any statutory/regulatory authority.”

Explanatory Statement Pursuant to Section 102 of the Companies Act, 2013

Item No. _____

The principal business of the Company is providing long term finance to any person or persons, company or corporation, society or association of persons with or without interest and with or without any security, to construct/ purchase any houses, buildings or flats, furnished or otherwise. The Company proposes to undertake the activity of distribution of life insurance products of PQR Life Insurance Company Limited with no risk participation.

To enable the Company to commence the aforesaid business, it is proposed to amend the Main Objects under the Objects Clause of the Memorandum of Association of the Company, by the insertion of sub-clause 4 after the existing sub-clause 3 as stated in the Resolution in the annexed notice. The above amendment would be subject to the approval of the Registrar of Companies, Maharashtra, Mumbai and any other Statutory or Regulatory Authority, as may be necessary in this regard.

A copy of the Memorandum and Articles of Association of the Company together with the proposed alterations is available for inspection by the Members of the Company at its Registered Office during normal business hours on all working days up to the date of the Meeting and is also attached to the annexed notice, The Directors recommend the passing of the Draft Resolution placed under Item No. 1 of the accompanying Notice for the approval of the Members of the Company.

None of the other Directors of the Company or the Key Managerial Persons of the Company or their relatives, are concerned or interested in the passing of the above resolution.

D. ALTERATION OF LIABILITY CLAUSE

According to section 13(1) of the Act, a company may, by a special resolution and after complying with the procedure specified in this section, alter the provisions of its memorandum. It means that a company can change the liability clause of its memorandum of association by passing a special resolution.

Further section 13(6)(a) provides that a company shall, in relation to any alteration of its memorandum, file with the Registrar the special resolution passed by the company under section 13(1) through E-Form MGT-14.

SPECIMEN RESOLUTION:

Sample Shareholders' Resolution to be passed in the General Meeting

“RESOLVED THAT pursuant to the provisions of Section 13 and other applicable provisions of the Companies Act, 2013 read with rules made thereunder, as amended time to time and subject to such approvals, permissions and sanctions of Registrar of Companies, the consent of the members of the company be and is hereby accorded for substitution of Clause VI of the Memorandum of Association of the company the following clause:

“The liability of members is limited and this liability is limited to the amount unpaid, if any, on the shares held by them.”

RESOLVED FURTHER THAT the Board of Directors of the company or any other officer, authorized by the Board, be and are/is hereby authorized to do all such, acts, things, deeds and matters that may be deemed necessary, proper, expedient or incidental for the purpose of giving effect to the aforesaid resolution.”

E. ALTERATION OF CAPITAL CLAUSE IN MOA [SECTION 61 READ WITH SECTION 64]

Types of alteration of capital clause in the general meeting of a company limited by shares as per section 61 (1) of the Companies Act, 2013 can be enumerated as below: -

- (a) increase its authorised share capital by such amount as it thinks expedient;
- (b) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares:
 Provided that no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;
- (c) convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;
- (d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

All the above alterations do not require the confirmation by the Tribunal except that alteration relating to consolidation and division which results in changes in the voting percentage of shareholders shall not take effect unless it is approved by the Tribunal on an application made in the prescribed manner.

These alterations are, however, required to be notified and a copy of the resolution should be filed with the Registrar within 30 days of the passing of the resolution along with an altered memorandum. [Section 64(1)]

The Registrar shall record the notice and make any alteration which may be necessary in the company's memorandum or articles or both.

The cancellation of shares under section 61(1) of the Act shall not be deemed to be a reduction of share capital. Section 64 (1) provides that a notice is required to be given to the Registrar for alteration for share capital.

Procedure for altering the Memorandum of Association for increasing the Authorised Capital of the Company under Section 61 and 64 of the Companies Act 2013 read with Rule 15 of the Companies (Share Capital and Debenture) Rules, 2014

1. **Check for Authorization in Articles:** Section 61 of the Companies Act, 2013, mandates that for increasing the Authorised share capital, authorization in Articles of Association is a pre-condition.

If there is no such provision then the company has to take steps for alteration of its Articles of Association in accordance with the provision of Section 14 of the Companies Act, 2013, so as to insert the clause enabling increase in the authorised share capital.

2. **Calling of Board Meeting:** Issue notice in accordance with the provisions of section 173(3) for convening a meeting of the Board of Directors. Main agenda for this Board meeting would be:
 - (a) To get in-principal approval of Directors for Increase in authorised share Capital;
 - (b) Fix date, time and place for holding Extra-ordinary General meeting (EGM) to get approval of shareholders, by way of Ordinary Resolution, for amendment in authorised share Capital clause of Memorandum of Association. This amendment in authorised share Capital clause of Memorandum of Association shall be in accordance with the requirement of section 61 of the Companies Act, 2013;
 - (c) To approve notice of EGM along with Agenda and explanatory statement pursuant to be annexed to the notice of General Meeting as per section 102(1) of the Companies Act, 2013;
 - (d) To authorize the Director or Company Secretary to issue Notice of the Extra-ordinary General meeting (EGM) as approved by the board under clause 2(c) mentioned above.
3. Issue Notice of the EGM to all members, legal representative of deceased member, assignee of an insolvent member if any, directors and the auditors of the company in accordance with the provisions of Section 101.
4. Holding of general meeting: To hold the EGM on fixed date and pass the necessary ordinary resolution under section 61(1)(a) for increase in the authorized share capital of the Company.
5. ROC Form filing: File Form SH-7 within 30 days of passing of Ordinary Resolution with the concerned ROC, with prescribed fees and along with following attachments as desired by section 64 read with Rule 15 of the Companies (Share Capital and Debentures) Rules, 2014:
 - a. Notice of EGM;
 - b. Certified True copy of Ordinary Resolution along with the explanatory statement pursuant to Section 102 of the Act;
 - c. Altered Memorandum of Association.
6. Concerned ROC will check the e-form and attached documents and will approve the increase in authorize share capital.

7. The company shall file a notice in the prescribed form with the Registrar within a period of 30 days of alteration to its share capital along with a copy of altered Memorandum. [Section 64].
8. No need to pass Special Resolution for increase in authorised share capital.

However, in case the alteration of capital clause of the Memorandum of Association of the company requires the alteration of the Articles of Association of the company then, the special resolution for the alteration of articles of association of the company be passed and form MGT-14 should also be filed for the filing of copy of such special resolution with the concerned Registrar within 30 days from the date of passing of such resolution along with the prescribed fees.

SPECIMEN RESOLUTIONS

Sample Board Resolution for Alteration of Capital Clause in MOA

A. Increase in Authorised Share Capital

“RESOLVED THAT pursuant to the provisions of Section 61 and 64 and other applicable provisions, if any, of the Companies Act, 2013 (including any amendment thereto or re-enactment thereof) and the rules framed there under, the consent of the Board of Directors of the Company be and is hereby accorded, subject to the approvals of shareholders in the General meeting, to increase the Authorized Share Capital of the Company from existing Rs. 50,00,000 (Rupees Fifty Lacs) divided into 5,00,000 (Five Lacs) Equity Shares of Rs. 10/- each to Rs. 75,00,000 (Rupees Seventy Five Lacs) divided into 7,50,000 (Seven Lacs Fifty Thousand) Equity Shares of Rs. 10/- each by creation of additional 2,50,000 (Two Lacs Fifty Thousand) Equity Shares of Rs. 10/- each ranking pari passu in all respect with the existing Equity Shares of the Company.

B. Alteration in the Capital Clause of Memorandum of Association of the company

“RESOLVED THAT pursuant to the provisions of Section 13, 61 and 64 and other applicable provisions of the Companies Act, 2013 (including any amendment thereto or re-enactment thereof) and the rules framed thereunder, the consent of the Board of Directors of the Company be and is hereby accorded, subject to the approvals of shareholders in the General meeting, for substituting Clause V of the Memorandum of Association of the Company with the following clause.

- “V. The Authorised Share Capital of the Company is Rs. 75,00,000/- (Rupees Seventy Five Lacs Only) divided into 7,50,000 (Seven Lacs Fifty Thousand) Equity Shares of face value of Rs. 10/- (Rupees Ten Only) each.”

Sample Shareholders’ Resolution to be passed in the General Meeting

- a. Increase in Authorised Share Capital

Special Business

To consider, and if thought fit, to pass with or without modification(s), the following resolution as an Ordinary Resolution:

“RESOLVED THAT pursuant to the provisions of Section 61 read with Section 64 and other applicable provisions, if any, of the Companies Act, 2013 (including any amendment thereto or re-enactment thereof) and the rules framed there under, the consent of the members of the Company be and is hereby accorded to increase the Authorized Share Capital of the Company from existing Rs. 50,00,000/- (Rupees Fifty Lacs Only) divided into 5,00,000 (Five Lacs) Equity Shares of Rs.10/- each to Rs. 75,00,000/- (Rupees Seventy Five Lacs Only) divided into 7,50,000 (Seven Lacs Fifty Thousand) Equity Shares of Rs.10/- (Rupees Ten Only) each by creation of additional 2,50,000 (Two Lacs Fifty Thousand) Equity Shares of Rs.10/- each ranking pari passu in all respect with the existing Equity Shares of the Company.”

“RESOLVED FURTHER THAT the Memorandum of Association of the Company be altered in the following manner i.e. existing Clause V of the Memorandum of Association of the company be deleted and the same be substituted with the following new clause as Clause V:

‘V. The Authorised Share Capital of the Company is Rs.75,00,000/- (Rupees Seventy Five Lacs) divided into 7,50,000 (Seven Lacs Fifty Thousand) Equity Shares of face value of Rs.10/- (Rupees Ten Only) each.’”

“RESOLVED FURTHER THAT for the purpose of giving effect to this resolution, the Board of Directors of the Company (hereinafter referred to as “Board” which term shall include a Committee thereof authorized for the purpose) be and is hereby authorized to take all such steps and actions and give such directions as may be in its absolute discretion deemed necessary and to settle any question that may arise in this regard, without being required to seek any further consent or approval of the shareholders or otherwise and that the shareholders shall be deemed to have given their approval thereto expressly by the authority of this resolution.”

REGISTRATION OF ALTERATION

Section 13(6)(a) provides that a company shall, in relation to any alteration of its memorandum, file with the Registrar:

- (a) the special resolution passed by the company under section 13(1); and
- (b) the approval of the Central Government under section 13(2), if the alteration involves any change in the name of the company.

The special resolution shall be filed with the Registrar within thirty days of the passing or making thereof in the prescribed manner and payment of prescribed fees within the time specified under section 403.

As per section 13(9), 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 thirty days from the date of filing of the special resolution in accordance with section 13 (6)(a).

Further section 13(7) provides that 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 within such time and in such manner as may be prescribed, who shall register the same, and the Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.

The certificate of incorporation shall be conclusive evidence that all the requirements of this Act with respect to the alteration and confirmation thereof have been complied with. The Registrar of the State from which the registered office is transferred will send to the Registrar of the other State all the documents relating to the company registered in his office.

No alteration made under section 13 (i.e., alteration of memorandum) shall have any effect until it has been registered in accordance with the provisions of this section. [Section 13(10)].

The main spirit behind Section 13(7) of the Companies Act, 2013 in regard to the filing of the order confirming the transfer of the company’s registered office from one State to another State with the Registrar of Companies of each State is that the Registrar of Companies from whose State the registered office is transferred should keep the order duly registered in his office as an evidence to such shifting and should transfer all other records of the company to the Registrar of Companies to whose State the Registered Office of the company has been so shifted. The other Registrar of Companies will register the other copy of the order and keep that order with the records transferred to him by his counterpart.

ARTICLES OF ASSOCIATION

Introduction

- Articles of association form a document that specifies the regulations for a company's operations and defines the company's purpose.
- The document can be thought of as a user's manual for a company, defining its purpose and outlining the methodology for accomplishing necessary day-to-day tasks.
- Articles of association lays out how tasks are to be accomplished within the organization, including the process for appointing directors and the handling of financial records.

Definition and provisions pertaining to Articles

According to Section 2(5) of the Companies Act, 2013, 'articles' means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act. It also includes the regulations contained in Table A in Schedule I of the Act, in so far as they apply to the company.

Further, In terms of section 5(1), the articles of a company shall contain the regulations for management of the company.

The articles of association of a company are its bye-laws or rules and regulations that govern the management of its internal affairs and the conduct of its business. The articles play a very important role in the affairs of a company. It deals with the rights of the members of the company *inter se*. They are subordinate to and are controlled by the memorandum of association. The general functions of the articles have been aptly summed up by Lord Cairns, L.C. in *Ashbury Railway Carriage and Iron Co. Ltd. v. Riche*, (1875) L.R. 7 H.L. 653 as follows:

"The articles play a part that is subsidiary to the memorandum of association. They accept the memorandum of association as the charter of incorporation of the company, and so accepting it, the articles proceed to define the duties, rights and powers of the governing body as between themselves and the company at large, and the mode and form in which business of the company is to be carried on, and the mode and form in which changes in the internal regulations of the company may from time to time be made... The memorandum, is as it were... the area beyond which the action of the company cannot go; inside that area shareholders may make such regulations for the governance of the company as they think fit".

Thus, the memorandum lays down the scope and powers of the company, and the articles govern the ways in which the objects of the company are to be carried out and can be framed and altered by the members.

The articles must be printed, divided into paragraphs, numbered consecutively, stamped adequately, signed by each subscriber to the memorandum and duly witnessed and filed along with the memorandum. The articles must not contain anything illegal or *ultra vires* the memorandum, nor should it be contrary to the provisions of the Companies Act 2013.

CASE LAWS

The articles regulate the internal management of the affairs of the company by way of defining the powers of its officers and establishing a contract between the company and the members and between the members *inter se*. This contract governs the ordinary rights and obligations incidental to membership in the company [*Naresh Chandra Sanyal v. The Calcutta Stock Exchange Association Ltd.*, AIR 1971 SC 422, (1971) 41 Com Cases 51].

But the Articles of Association of a company are not 'law' and do not have the force of law. In *Kinetic Engineering Ltd. v. Sadhana Gadia*, (1992) 74 Com Cases 82 : (1992) 1 Comp LJ 62 (CLB), the Hon'ble CLB held that if any provision of the articles or the memorandum is contrary to any provisions of any law, it will be invalid in total.

Articles Subordinate to Memorandum

CASE LAWS

The articles of a company are subordinate to and subject to the memorandum of association and the Act. Any clause in the Articles going beyond the memorandum will be *ultra vires*. But the articles are only internal regulations, over which the members of the company have full control and may alter them according to what they think fit. Only care has to be taken to see that regulations provided for in the articles do not exceed the powers of the company as laid down by its memorandum [*Ashbury v. Watson*, (1885) 30 Ch. D 376 (CA)]. Articles that go beyond the company's sphere of action are inoperative, and anything done under the authority of such article is void and incapable of ratification.

But, neither the articles nor the memorandum can authorize the company to do anything so as to contravene any of the provisions of the Act. [*See Re Peveril Gold Mines*, (1989) 1 Ch 122 (CA)].

The functions of the Articles in relation to the Memorandum have already been summed up in the *Ashbury Railway Carriage* case and even though the articles are subordinate to the memorandum yet if there be any ambiguity in the memorandum, the articles may be used to explain it but not so as to extend the objects. [*Re. South Durham Brewery Company* (1885) 3 Ch. D 261]. The memorandum of a company was not clear as to the classes of shares to be issued by a company, but the articles made clear the doubt by giving the power to the company to issue shares of different classes.

The relationship between the two documents was further emphasized in *Guinness v. Land Corporation of Ireland*, (1882) 22 Ch D 349, where it was observed: "The memorandum contains the fundamental conditions upon which alone the company is allowed to be incorporated. They are conditions introduced for the benefit of the creditors, and the outside public, as well as of the shareholders. The articles of association are the internal regulations of the company. How can it be said that in all cases the fundamental conditions of the charter of incorporation and the internal regulations of the company are to be construed together... In any case it is, as it seems to me, certain that for anything which the Act of Parliament says shall be in the memorandum you must look at the memorandum alone. If the legislature has said one instrument is to be dominant you cannot turn to another instrument and read it in order to modify the provisions of the dominant instrument".

Where the memorandum clearly establishes the rights of shareholders, a reference in the memorandum to the articles and an ambiguity said to arise from the construction of the articles should not be used to depart from the clear meaning of the memorandum so as to diminish those rights [*Scottish National Trust Co. Ltd.* 1928 SC 499 (Scot); *Kinetic Engineering Ltd. v. Sadhana Gadia*, (1992) 1 Comp LJ 62 (CLB)].

REGISTRATION OF ARTICLES

Section 7(1) provides that at the time of incorporation of a company the company shall file 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 the prescribed manner.

- 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 either in totality or otherwise. [Section 5(6)].
- A company may adopt all or any of the regulations contained in the model articles applicable to such company. [Section 5(7)].
- In case of any company, which is registered after the commencement of this Act, in so far as the registered articles of such company do not exclude or modify the regulations contained in the model articles applicable to such company, those regulations shall, so far as applicable, be the regulations of that company in the same manner and to the extent as if they were contained in the duly registered articles of the company. [Section 5(8)].
- The articles of a private company must contain the three restrictions as contained in Section 2(68).
- However, nothing in section 5 shall apply to the articles of a company registered under any previous company law unless amended under this Act [Section 5(9)].

Alignment of AoA with the Companies Act, 2013:

Section 6 of the Companies Act, 2013 provides that: -

- (a) the provisions of this Act shall have effect notwithstanding anything to the contrary contained in the memorandum or articles of a company, or in any agreement executed by it, or in any resolution passed by the company in general meeting or by its Board of Directors, whether the same be registered, executed or passed, as the case may be, before or after the commencement of this Act; and
- (b) any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

In the light of above provisions, if there is a provision in the Articles empowering the Directors of the company to expel any member of the company under any of the given conditions, then such a provision shall be totally inconsistent with the provisions of Section 6 of the Act. It is opposed to the fundamental principles of the company's jurisprudence and is *ultra vires* of the company. [(Circular No. 32 of 1975) dated 01.11.1975]

But the Stock exchanges, registered under the provisions of the Companies Act, can carry such a provision in its Articles. The regulation of stock exchanges is mainly governed by Securities Contracts Regulation Act, 1956 (SCRA) and SEBI, Act, 1992 which are Special Acts. Hence, the Articles of Stock Exchange may provide for additional matters as per SCR Act, which may not be possible for inclusion in the Articles of a company, as per the provisions of the Companies Act. [*Madras Stock Exchange Ltd. v. S.S.R. Rajkumar* (2003) 116 Com Cases 214 (Mad.)].

ENTRENCHMENT PROVISIONS

The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures that are more restrictive than those applicable in the case of a special resolution, are met or complied with. [Section 5 (3)]

The Companies Act 2013, recognizes an interesting concept of entrenchment. Essentially, the entrenchment provisions allow for certain clauses in the articles to be amended upon satisfaction of certain conditions or restrictions greater than those prescribed under the Act (such as obtaining 100% consent). This provision acts as a protection to the minority shareholders and is of specific interest to the investment community. This shall empower the enforcement of any pre-agreed rights and provide greater certainty to investors, especially in joint ventures.

According to section 5(4), the provisions for entrenchment referred in section 5(3) shall be made either :

(a) on formation of a company, or

(b) 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 such form and manner as may be prescribed. [Section 5 (5)].

Where the articles contain the provisions for entrenchment, the company shall give notice to the Registrar of such provisions in SPICe+ (*Simplified Proforma for Incorporating company Electronically Plus: INC-32*) as the case may be, along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 at the time of incorporation of the company or in case of existing companies, the same shall be filed in Form No.MGT.14 within thirty days from the date of entrenchment of the articles, as the case may be, along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.

CONTENTS OF ARTICLES

The articles of association usually specifies the way a company issues securities, distributes dividends, and performs financial records. The document is focused on giving the streamlined information about the methods a company uses to achieve its goals. In general, it includes the following:

1. Exclusion wholly or in part of Table F
2. Adoption of preliminary contracts
3. Share capital variation of rights, Number and value of shares.
4. Meetings and rules regarding committees of the Board.
5. Provisions on shareholder meetings

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.

INTERPRETATION OF MEMORANDUM AND ARTICLES

Articles should be construed as a business document so as to give business efficacy preference to a construction which will prove unworkable [*Holmes v. Keyes (Lord) (1958) 2 All ER 129 (CA)*]. Where the conduct of the parties reveals that there has been some practice in vogue for several years which was accepted by everyone concerned without any challenge or question, then that practice in the course of long years in itself becomes an indication that the rules or articles which are framed by way of internal management were understood in that sense [*Krishnaswamy (S) v. South India film Chamber of Commerce, AIR 1969 Mad 42 : (1968) 1 Comp LJ 75*; cited in *Sunil Dev v. Delhi and District Cricket Assn., (1990) 2 Comp LJ 245, 255 : (1994) 80 Com Cases 174 (Del)*].

The memorandum must like any other document be construed according to accepted principles applicable to the interpretation of all legal documents. No rigid canon of construction is to be applied to such a document. Like any other document, it must be read fairly and its import derived from a reasonable interpretation of the language which it employs. [*A Lakshmanaswami Mudaliar v. LIC of India (1963) 33 Com Cases 420, 430 (SC)*; *Egyptian Salt & Soda Co. Ltd. v. Port Said Salt Assn Ltd., (1931) AC 677 : AIR 1931 PC 182*].

The memorandum and articles must be read together in the event of any ambiguity. In *Angostura Bitters & Co. Ltd. v. Kerr*, (1933) AC 550 : (1934) 4 Com Cases 1; the Privy Council held, “Except in respect of such matters as must be statutorily provided for by the conjunction with the articles. The two documents must be read together at all events so far as may be necessary to explain any ambiguity appearing in the terms of the memorandum or to supplement it upon any matter as to which it is silent” – quoted with approval by the Supreme Court in *A. Lakshmanaswami Mudaliar v. LIC of India Ltd.* (1963) SC 1185.

DISTINCTION BETWEEN MEMORANDUM AND ARTICLES

The main points of distinction between the memorandum and articles are given below:

<i>Memorandum of Association</i>	<i>Articles of Association</i>
Memorandum of association is the charter of the company and defines the fundamental conditions and objects for which the company is granted incorporation.	Articles of association are the rules and regulations framed to govern this internal management of the company.
Clauses of the memorandum cannot be easily altered. They can only be altered in accordance with the mode prescribed by the Act. In some of the cases, alteration requires the permission of the Central Government or the Court.	In the case of articles of association, members have a right to alter the articles by a special resolution. Generally, there is no need to obtain the permission of the Court or the Central Government for alteration of the articles.
Memorandum of association cannot include any clause contrary to the provisions of the Companies Act.	The articles of association are subsidiary both to the Companies Act and the memorandum of association.
The memorandum generally defines the relation between the company and the outsiders.	The articles regulate the relationship between the company and its members and between the members <i>inter se</i> .
Acts done by a company beyond the scope of the memorandum are absolutely void and <i>ultra vires</i> and cannot be ratified even by unanimous vote of all the shareholders.	The acts of the directors beyond the articles can be ratified by the shareholders.

LEGAL EFFECT OF THE MEMORANDUM AND ARTICLES

According to section 10(1):

The memorandum and articles, when registered, bind the company and its members to the same extent as if they have been signed by the company and by each member to observe and be bound by all the provisions of the memorandum and of the articles.

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

We shall examine the extent to which the memorandum and articles bind:

- (a) the members to the company;
- (b) the company to the members;

- (c) the members *inter se*; and
- (d) the company to outsiders.

Members Bound to the Company

The memorandum and articles constitute a contract binding on the members of the company. The members, as members, are bound to the company. Each member must, therefore, observe the provisions of the memorandum and articles.

Each member is bound by the covenants of the Memorandum as originally made and as altered from time to time [*Malleson v. National Insurance Co.*]. In another case, the shareholders could not enter into an agreement which was contrary to or inconsistent with the articles of association of the company [*V.B. Rangaraj v. V.B. Gopalkrishnan (1992) 73 Com Cases 201 (SC)*].

CASE LAW

In *Boreland's Trustee v. Steel Brother and Co. Ltd. (1901) 1 Ch. 279*, the articles of a company contained a clause that on the bankruptcy of a member his shares would be sold to other persons and at a price fixed by the directors. B, a shareholder was adjudicated bankrupt. His trustee in bankruptcy claimed that he was not bound by these provisions and should be at liberty to sell the shares at their true value. It was held that the trustee was bound by the articles, as the shares were purchased by B in terms of the articles

Company Bound to the Members

Since the articles constitute a contract binding the company to its members in their capacity as members, a member can bring an action against the company for infringement by it of the memorandum or articles. For example, an individual member can sue the company for an injunction restraining it from improper payment of dividend [*Hoole v. Great Western Railway (1867) 3 Ch. D. 262*]. Further, the company is bound to individual members in respect of their ordinary rights as members, e.g. the right to receive share certificate in respect of shares allotted to them, or to receive notice of general meeting, etc. Normally, action for breach of articles against the company can be brought only by a majority of the members. Individual or minority members cannot bring such a suit except when it is intended for enforcement of personal rights of members or to prevent the company from doing any *ultra vires* or illegal act, fraud, or oppression and mismanagement.

Member bound to Member

As between the members *inter se* each member is bound by the articles to the other members but that does not mean the memorandum and articles create an express contract among the members of the company. Thus, a member of a company has no right to bring a suit to enforce the articles in his own name against any other member or members. It is the company alone which can sue the offender so as to protect the aggrieved member. It is in this way that the rights of members *inter se* are regulated. A shareholder may, however, sue in his own name to restrain another, or others from doing fraudulent or *ultra vires* acts.

Articles do not affect or regulate the rights arising out of a commercial contract, with which the members have no concern, i.e., rights completely outside the company's relationship.

Company not bound to Outsiders

The term "outsider" signifies a person who is not a member of the company even if he is a director of or solicitor to the company. Even in regard to members, the articles bind the company to them in their capacity as members.

As between outsiders and the company, neither the memorandum nor the articles would give any contractual rights to outsiders against the company or its members even though the names of outsiders are mentioned in those documents in connection with the arrangements that the company might have contemplated for carrying on its business. The articles do not confer any contractual rights even upon a member in a capacity other than that of a member. To succeed, the party suing must prove a contract outside and independent of the articles [*Eley v. Positive Life Insurance Co., (1876) 1 E.X.D. 88*].

In this case the articles provided that the solicitor to the company would not be removed from office except for misconduct. Eley acted as solicitor to the company and also became a member of the company. The company discontinued his services and then he sued the company for damages for breach of contract. It was held that he had no cause of action because the articles did not constitute any contract between the company and himself. His action was dismissed.

This rule, however, proved to be rather harsh and so the Courts later on modified it. The modified rule is as follows:

- (i) While the articles cannot create a contract between the company and any person other than a member in his capacity as a member, they may indicate the basis upon which contracts may be made by the company. If such a contract is entered into whether with a member of the company or any other person, the conditions stated in the articles will be tacitly adopted by that contract, unless expressly stated in the negative form or varied by the contract itself.
- (ii) The question sometimes arises as to whether directors are bound by whatever is contained in the articles. In case the directors contravene the provisions in the articles, the directors render themselves liable for an action by members. On the other hand, members can also ratify acts of directors. If any loss is incurred by the company, directors are liable to reimburse to the company any loss so incurred.

ALTERATION OF ARTICLES OF ASSOCIATION OF A COMPANY

Any Company which intended to make any change to the Articles, will have to comply with the provisions as mentioned under section 14 of Act along with any other applicable provisions of the Act and applicable rules.

A Company may alter its Articles in accordance with the above provisions in any of the following manner:

- (a) by adoption of new set of articles;
 - (b) by addition/insertion of a new Clause/s;
 - (c) by deletion of a Clause/s ;
 - (d) by amendment of a specific Clause/s ;
 - (e) by substitution of a specific Clause/s.
- i) Section 14(1) provides that subject to the provisions of the Act and the conditions contained in its memorandum, if any, a company may, by a special resolution, alter its articles including alterations having the effect of conversion of –
 - A) a private company into a public company; or
 - B) a public company into a private company.

First proviso to section 14(1) lays down that where a company being a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, the company shall, as from the date of such alteration, cease to be a private company.

Further, the second proviso to section 14(1) stipulates that any alteration having the effect of conversion of a public company into a private company shall not take effect unless it is approved by an order of the Central Government on an application made in prescribed form shall make such order as it may deem fit.

- ii) Every alteration of the articles under this section and a copy of the order of the Central Government approving the alteration as per section 14(1) shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same. [Section 14 (2)]
- iii) Any alteration of the articles registered under section 14(2) shall, subject to the provisions of this Act, be valid as if it were originally in the articles. [Section 14(3)]

CASE LAWS

In Re Cyrus Investments (P) Ltd. vs. Tata Sons Ltd. [2019] 112 taxmann.com 264 (NCLAT)

If any company decides to alter its articles having effect of conversion of a 'Private Company' into a 'Public Company' or a 'Public Company' into a 'Private Company', it is required to pass a special resolution and as per sub-section (2) of section 14, it requires approval by Tribunal

In Re Walker v. London Tramway Co. (1879) 12 Ch. D. 705

The right to alter the articles is so important that a company cannot in any manner, either by express provisions in the articles or by independent contract, deprive itself of the powers to alter its articles.

Alterations 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. [Section 15(1)]

If a company makes any default in complying with the provisions of section 15(1), the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the memorandum or articles issued without such alteration. [Section 15(2)]

Limitations on power to alter Articles

Articles must not exceed the powers given by the MoA

Must not be inconsistent with provisions of Companies Act

Alteration not be inconsistent with any alteration made by the Tribunal

Alteration must not include anything which is illegal or opposed to public policy

Alteration must be bonafide for the benefit of the company

Alteration must not constitute fraud on the minority

Alteration of articles cannot operate retrospectively

In spite of the power to alter its articles, a company can exercise this power subject only to certain limitations. These are:

1. The alteration must not exceed the powers given by the memorandum. In the event of conflict between the memorandum and the articles, it is the memorandum that will prevail.
2. The alteration must not be inconsistent with any provisions of the Companies Act or any other statute.

Similarly, where a resolution was passed expelling a member and authorizing the director to register the transfer of his shares without an instrument of transfer, the resolution was held to be invalid as being against the provisions of the Act [*Madhava Ramachandra Kamath v. Canara Banking Corporation* [1941] 11 Com Cases 78 (Mad)].

On the other hand, articles may impose on the company conditions stricter than those provided under the law; for example, they may provide that a matter should be passed by a special resolution when the Act requires it to be passed by an ordinary resolution.

3. The Articles must not include anything which is illegal or opposed to public policy.
4. The alteration must be bona fide for the benefit of the company as a whole.
5. The alteration must not constitute a fraud on the minority by a majority. If the alteration is not for the benefit of the company as a whole, but for majority of shareholders, then the alteration would be bad. In other words, an alteration to the articles must not discriminate between the majority shareholders and the minority shareholders so as to give the former an advantage over the latter. [All India Railway Mens Benefit Fund v. Jamadar Baheshwarnath Bali (1945) 15 Com Cases 142 (Nag.)]

In *Mathrubhumi Printing & Publishing Co. Ltd. v. Vardhaman Publishers Ltd.* [1992] 73 Com Cases 80 (Ker.), the Hon'ble Kerala High Court held that no majority of shareholders can, by altering the article retrospectively, affect the prejudice of the consenting owners of shares, the right already existing under a contract nor take away the right accrued, e.g., after a transfer of share is lodged, the company cannot have a right of lien so as to defeat the transfer.

6. Articles cannot be altered so as to compel an existing member to take or subscribe for more shares or in any way increase his liability to contribute to the share capital, unless he gives his consent in writing (Section 38 of the Companies Act, 1956).
7. By effecting alteration in its articles, a company cannot defeat escape from its contractual obligation with any person. The company will always be liable in such a case.
8. The Articles of Association cannot be altered so as to have retrospective effects. The articles only operate from the date of the amendment [*Pyare Lal Sharma v. Managing Director, J.K. Industries Ltd.* (1989) 3 Comp LJ (SL) 70].

CASE LAWS

In Re See Menier N. Hooper Telegraph Works (1874) 9 Ch. App. 350

A section or a class of shareholders cannot be unfairly or oppressively treated. Thus, though the requisite majority of members could pass a special resolution to alter the Articles and if the alteration has the effect of making a fraud on the minority, the minority shareholders not being less than the number specified under law could move the Court for redressing their grievances. The Courts have entertained such applications from shareholders even where they are smaller in number.

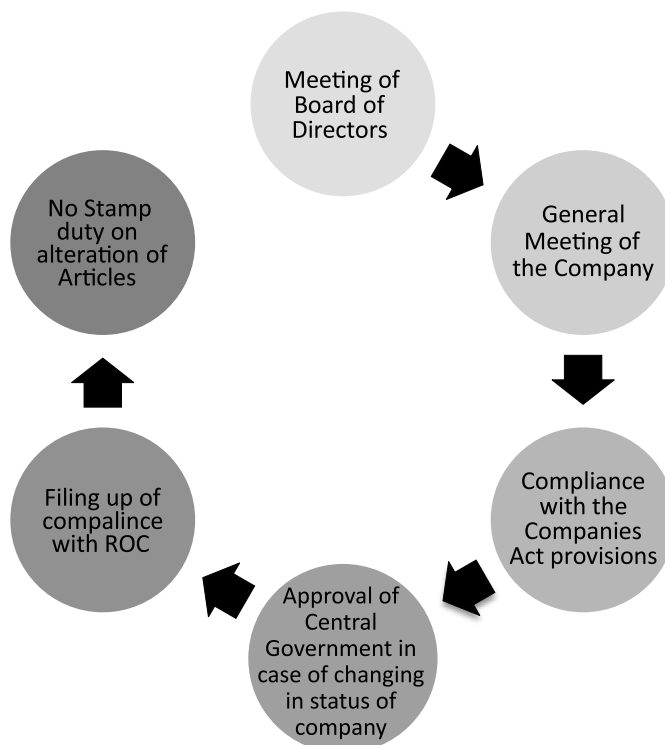
In Re Southern Foundries v. Shirlaw, [1940] AC 701

As already mentioned, a company is not prevented from altering its Articles on the ground that such an alteration would be breach of a contract but an action for damages may lie against the company.

In Re Foss v. Harbottle (1843) 2 Hare 461

The discussion on the above matter will not be complete without referring to the rule in *Foss v. Harbottle (1843) 2 Hare 461* where the court held that no individual shareholder nor a minority of shareholders in a company can take it upon himself or themselves to remedy an alleged wrong involved in the actions of directors if the said wrongful act is something which the majority can regularize and approve.

Procedure for alteration of AOA under Section 14



1. Meeting of Board of Directors:

Issue not less than 7 days' notice and agenda of Board meeting, or a shorter notice in case of urgent business, in writing to every director of the company at his address registered with the company and call a Board Meeting to consider the proposal of alteration of articles of association of a company.

1.1 Hold a meeting of Board of Directors-

- To consider and decide the articles required to be changed/alterd.
- To pass the necessary Board Resolution for approving proposal of alteration of articles of association of a company subject to the approval of Shareholders.
- To delegate authority to any one director of the company to sign, certify and file the requisite forms with Registrar of Companies or any statutory authority to do all such acts, deeds as may be necessary to give effect to the proposed alteration.

- To fix day, date, time and venue for holding general meeting of the Company for passing a special resolution as required by section 14(1) of the Companies Act, 2013.
 - To approve the draft notice of general meeting along with Explanatory Statement.
 - To authorize the Director or Company Secretary to sign and issue notice of the general meeting.
- 1.2 Prepare and circulate draft minutes within 15 days from the date of the conclusion of the Board Meeting, by hand/speed post/registered post/courier/e-mail to all the Directors for their comments. Follow the procedure prescribed for preparing, circulation, signing and compiling of Board Minutes.
- 2. General Meeting of the company:**
- Send notice of the General meeting proposing the aforementioned special resolution to all the shareholders, directors, auditors and other persons entitled to receive it, by giving not less than clear 21 days' notice or shorter notice, if consent for shorter notice is given by at least 95% of members entitled to vote at such meeting, either in writing or through electronic mode in accordance with the Section 101 of the Act. Also follow the procedure prescribed for issuing and Signing of notice and convening of General Meeting.
- 2.1 Hold a shareholders meeting on the date fixed for the meeting and pass the Special Resolution for altering the Articles of Association by 3/4th majority or unanimously, in case of insertion of provisions of entrenchment by a private company in accordance with Section 114 (2) of the Act read with Section 5(4) and Section 14 of the Companies Act, 2013.
- 2.2 After passing special resolution, file a certified copy of special resolution with the Registrar in e-Form MGT- 14 under Section 117 of the Act within 30 days of passing Special Resolution in general meeting along with the following attachments:
- (a) Copy of Special Resolution passed along with explanatory statement.
 - (b) Notice for convening the General Meeting of the Company along with explanatory statement as an optional attachment.
 - (c) Certified True copy of the Altered Articles including the provisions of entrenchment inserted in the articles, if any.
 - (d) Shorter Notice Consent Letters from at least 95% of the members in case the General Meeting was convened at a shorter notice.
 - (e) Any other attachment as may be required/applicable.
- 2.3 Follow the procedure prescribed for preparing, signing and compiling of minutes of General Meeting.
- 3. Make necessary amendments in all the copies of Articles of association of the Company. [Section 15(1)]**
- 4. Compliance with the Companies Act, 2013 and Memorandum of Association**
- The alteration to AOA should conform to the provisions of the Companies Act, 2013. For example, the alteration should not modify the membership or shareholding of the company. The alteration should not increase or alter the liability of any member or shareholder of the company. The articles are procedural, and hence the alteration can be of only the procedural matters contained therein.
- Likewise, the alteration of the articles should not violate the memorandum of association of the

company. The alteration should be in accordance with the powers conferred by the memorandum. The AOA is subordinate to the memorandum of association of the company. The alteration cannot alter the objects of the company or the address of the registered office of the company. These matters are dealt with by the Memorandum of Association of the company.

5. Stamp duty on alteration of articles:

The company need not pay any stamp duty on the alteration of articles. Stamp duty has to be paid only at the time of incorporation of a company.

Note:

Where a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, the company shall, as from the date of such alteration, cease to be a private company. [First proviso to Section 14(1)]

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 on an application made in such form and manner as may be prescribed. [Second proviso to section 14(1)]

For effecting the conversion of a public company into a private company, Service Request Number (SRN) of Form No. RD- 1, pertaining to order of the Regional Director approving the alteration, shall be mentioned in Form No. INC-27 to be filed with Registrar along with fee together with the altered e-Memorandum of Association and e-Article of Association within fifteen days from the date of receipt of the order from the Regional Director. Explanation.- the term “competent authority” means, the Central Government. [Section 14 read with rule 33 of the Companies (Incorporation) Rules, 2014]

Section 8(4)(i) provides that a company registered under section 8 i.e. companies with charitable objects shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.

Effect of Altered Articles:

- The altered articles shall bind the company and the members to the same extent as if they had been signed by the company and by each member, means the articles as originally framed, or as they may from time to time stand altered are valid under the provisions of the Act.
- There is clear power to alter the articles, and as altered, they bind members just in the same way as did the original articles.
- The alteration is effective only when the procedure laid down in the Companies Act and Memorandum is followed.
- The changes shall be made in all the copies of the Articles of Association.

SPECIMEN RESOLUTIONS:

Sample Board Resolution for Alteration of Articles of Association of the Company

Adoption of new set of Articles of Association of the Company:

“RESOLVED THAT pursuant to Section 5 and 14 and other applicable provisions, if any, of Companies Act, 2013, (including any statutory modifications or re-enactment thereof, for the time being in force), and the rules framed there under, consent of the Board of Directors of the Company be and is hereby accorded, subject to the approval of the Registrar of Companies, and subject to the approval of Shareholders in General Meeting, to adopt new set of Articles of Association of Company.”

FURTHER RESOLVED THAT for the purpose of giving effect to this resolution, Mr. ABC, Director of the Company be and is hereby authorised, on behalf of the Company, to do all acts, deeds and things as may deemed to be necessary, proper or desirable and to sign and execute all necessary documents, applications and returns for the purpose of giving effect to the aforesaid resolution along with filing of necessary E-forms with the Registrar of Companies,...

Sample Shareholders Resolution for Alteration of Articles

Adoption of new set of Article of Association of the Company:

“RESOLVED THAT pursuant to the provisions of Section 14 and other applicable provisions, if any, of the Companies Act, 2013, (including any amendment thereto or re-enactment thereof), the Articles of Association of the Company be and are hereby altered by replacing all the existing regulations 1 to 49 with the new regulations 1 to 93, a copy of which is annexed to the Explanatory Statement pursuant to Section 102 of the Companies Act 2013, be and is hereby adopted as new regulations of the Articles of Association of the Company.”

FURTHER RESOLVED THAT for the purpose of giving effect to this resolution, Mr. (DIN:), Director of the Company be and is hereby authorized, on behalf of the Company, to do all acts, deeds and things as may be deemed to be necessary, proper or desirable and to sign and execute all the necessary documents, applications and returns for the purpose of giving effect to the aforesaid Resolution along with filing of necessary E-forms with the Registrar of Companies.”

Explanatory Statement pursuant to Section 102 of the Companies Act, 2013

The Existing regulations 1 to 49 of the Articles of Association of the company are being replaced by the new set of Articles containing regulations 1 to 93 and adopted as new set of Articles of Association of the company. The modification in the Articles of Association of the company is carried out to give effect to the provisions of the Companies Act, 2013. Consent of the shareholders by passing a Special Resolution is required in this regard. New set of regulations forming 1 to 93 articles of Articles of Association of the company is attached herewith separately as Annexure A.

Copy of the Articles of Association of the Company together with the proposed alterations is available for inspection by the Members of the Company at its Registered Office during normal business hours on all working days up to the date of the Meeting and is also attached to the accompanying notice.

The Directors recommend the passing of the Resolution under Item No. 1 of the accompanying Notice for the approval of the Members of the Company by way of Special Resolution.

None of the Directors of the Company or the Key Managerial Persons of the Company or their relatives are concerned or interested in the passing of the above resolution.

Specimen of Notice for the Board Meeting for Convening General Meeting for Alteration of Articles to Convert a Public Company into a Private Company

Shri	Managing Director
Shri	Whole-time Director
Shri	Director
Shri	Director
Shri	Director
Shri	Director

Dear Sirs,

Notice is hereby given that the next meeting of the Board of directors of the company will be held at
Hrs. on (day), (month) 20... at the Corporate Office of the company at to
 transact the following business:

1. To grant requests from directors for leave of absence, if any.
2. To confirm the minutes of the previous Board Meeting held on and the chairman to sign the same.
3. Directors to make disclosure of their interest, or changes thereof, if any.
4. To discuss and approve financial results for the quarter ended and to authorise the chairman to sign the same on behalf of the Board of directors of the company.
5. To authorise the company secretary to arrange for the publication of the approved financial results in the English daily newspaper and the Hindi daily newspaper in their earliest available editions and also to send the same to the stock exchanges where the securities of the company are listed within forty-eight hours of the close of the Board meeting.
6. To fix time, date and venue for holding an extraordinary general meeting of the company to transact the business as detailed in the agenda including an item for conversion of the company into a private company the draft whereof would be placed before the meeting as initialled by the chairman as a mark of identification.
7. To authorise the company secretary or any director to issue notice for the general meeting on behalf of the Board in accordance with the provisions of Section 101 of the Companies Act, 2013 along with the Explanatory Statement as required under Section 102 of the Act.
8. Any other business with the permission of the chair. Please make it convenient to attend the meeting.

Thanking you,

Yours faithfully,

(.....)

Company Secretary

Incorporation Contracts and Agreements

A company being an artificial person can contract only through its agents. A contract will be binding on a company only, if it is made on its behalf by any person acting under its authority, express or implied. The powers of the company are defined by its Memorandum of Association and any contract made beyond the limits laid down in the Memorandum of Association, will be *ultra vires* to the company and void even if all the shareholders assent to it.

There are various types of pre-incorporation contracts that can be made by a company according to their need before incorporation, such as a lease agreement, employment agreement, founder's agreement, shareholder agreement, etc.

There are two situations as discussed below in the case of every company (whether public or private) in which contracts are made:

- (a) Contracts made on behalf of the company before its incorporation—preliminary or pre-incorporation contracts.
- (b) Contracts made after the incorporation.

Pre-incorporation Contracts:

It is likely that due to non-availability of a suitable name, lack of clarity among the promoters or for other reasons, the formation of a company may take time. In the meanwhile, the promoters may enter into contracts on behalf of proposed company, like purchase of land, ordering machinery, employing key personnel, investment tie up etc. and also incur expenses relating to incorporation of the company. These must be ratified on the incorporation of the company.

The Articles must authorize the directors to pay the expenses relating to registration of the company. The directors do not have any implied power to incur pre-incorporation expenses.

Promoter's Liability:

During execution, the promoters enter into the contracts on behalf of the company. Although, the promoters act as company's agent to represent their interest, the principal is not in existence while registration. The contracts entered into by the promoters are therefore not binding on the company or third parties.

As per section 15 of Specific Relief Act, 1963; if promoters have made a contract before incorporation of a company for the purpose of the proposed company, and if the contract is warranted by the terms of incorporation, the company may adopt and enforce the contract. The term 'warranted by the terms of incorporation' means 'within the scope of the company's objects as stated in the memorandum of the company'. Thus, the contract should be for the purposes of the company.

As per section 19 of Specific Relief Act, 1963, if the pre-incorporation contract is adopted or accepted by the company after its incorporation and if it is within the terms of incorporation, the other party can also enforce the contract, if such acceptance was communicated to other party to the contract.

However, pre-incorporation contracts are not binding upon the company, if these are not adopted or accepted by the company after its incorporation. Adoption or acceptance of contracts practically means ratification of contract. A Board resolution should be passed for adoption of pre-incorporation contracts at the first Board meeting of the company. On passing such resolution, the contract shall be binding on the company.

CASE LAWS

Preliminary contracts are contracts purported to be made on behalf of a company before its incorporation. Before incorporation, a company is non-existent and has no capacity to contract. Consequently, nobody can contract as agent on its behalf because an act which cannot be done by the principal himself cannot be done by him through an agent. Hence, a contract by a promoter purporting to act on behalf of a company prior to its incorporation never binds the company because at the time the contract was concluded the company was not in existence. Therefore it has no legal existence. Even if the parties act on the contract it will not bind the company. [*Northumberland Avenue Hotel Co., (1886) 33 Ch.D.16 (CA)*].

In *Kelner v. Baxter (ibid)* three persons A B and C purported to enter into a contract as agents on behalf of a company before its incorporation for the purchase of certain goods from Kelner and signed it : "A, B and C, Directors". The company later obtained the certificate of incorporation but collapsed before the money was paid for the goods which were supplied to it by Kelner. It was held that A, B and C were personally liable on the agreement and no subsequent ratification by the company would relieve them from that liability without the assent of Kelner.

A company cannot acquire shares prior to its incorporation. Where a company was named as the transferee in the share transfer forms prior to its incorporation, it was held that such transfers could not be registered. [*Inlec Investment (P) Ltd. v. Dynamic Hydraulics Ltd., (1989) 3 Comp LJ 221, 225 (CLB)*].

In *Weavers Mills Ltd. v. Balkies Ammal* [AIR 1969 Mad 462], In this case, the promoters had agreed to purchase some properties for and on behalf of the company which was yet to be incorporated. After incorporation of the company, the company assumed possession of the properties and constructed some structures on the property. It was held that even in absence of conveyance of property by the promoter in favor of the company after its incorporation, the company's title over the property could not be set aside.

The procedure for ratification of pre-incorporation contract is as under:-

- Ensure that the power to enter and adopt pre-incorporation contracts is given in the objects, incidental or ancillary to the attainment of the main objects clause of the memorandum of the company.
- Ensure that the articles also give power to the directors to adopt such pre-incorporation contracts in the board meeting.
- Prepare a statement of the pre-incorporation contracts giving the amount involved in the each contract separately.
- Convene the first board meeting after giving notice to all the directors of the company as per section 173 and place the above mentioned statement before the board meeting.
- The statement should be initialed by the Chairman of the Board meeting and then pass a resolution adopting the pre-incorporation contract.

SPECIMEN RESOLUTION AND FORMAT

Specimen of Board Resolution for Adoption of Pre-Incorporation Contracts

“RESOLVED THAT the consent of the Board of Directors be and is hereby given ratifying all the contracts entered into by the promoters of the company before incorporation of the company, as per the statement tabled before the Board and initialed by the chairman for the purpose identification.

RESOLVED FURTHER THAT the preliminary contracts entered into by the promoters in connection with the incorporation of the company as per the statement before the meeting be and are hereby approved.

RESOLVED FURTHER THAT any of the directors of the company and/or Company Secretary, be and are hereby severally authorized to do all acts, deeds and things, including but not limited to execution of any required documents or instruments, which may be necessary to give effect to the foregoing resolution.”

Model General Power of Attorney

(On non-judicial Stamp Paper of Requisite Value)

The Registrar of Companies I/We, the undersigned, subscribers to the Memorandum and Articles of Association, do hereby authorise Shri son of..... resident of..... to make any alteration, addition, correction, deletion, amendment, and such other work as may be necessary on our behalf in the Memorandum and Articles of Association and all other documents filed with you relating to the registration of the above-mentioned company and attest the same on my/our behalf and to receive/collect the Certificate of Incorporation on our behalf and to do such other things as may be necessary in connection with the incorporation of the above named company.

Accepted.

Subscriber(s) to the Memorandum and Articles of Association

Place:

Date:

LESSON ROUND-UP

- The Memorandum of Association is a document which sets out the constitution of the company and is the foundation on which the structure of the company stands. It defines as well as confines the powers of the company. If the company enters into contract or engages in any trade or business which is beyond the powers conferred on it by the memorandum, such a contract or the act will be *ultra vires* the company and hence void. However, the Companies Act, 2013 shall override the provisions in the memorandum of a company, if the latter contains anything contrary to the provisions in the Act.
- A company may, by a special resolution and after complying with the procedure specified in this section, alter the provisions of its memorandum.
- The memorandum of association of a company may be altered by changing its name, altering it in regard to the State in which the registered office is to be situated or its objects, altering or reorganizing its share capital, reducing its capital or making the liability of the directors unlimited.
- Articles means the articles 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 also includes the regulations contained in Tables F to J in Schedule I of the Act, in so far as they apply to the company.
- The memorandum lays down the scope and powers of the company and the articles govern the ways in which the objects of the company are to be carried out and can be framed and altered by the members.
- A company has a statutory right to alter its articles of association. But the power to alter is subject to the provisions of the Act and to the conditions contained in the memorandum. Any alteration so made shall be as valid as if originally contained in the articles.
- The memorandum and articles, when registered, bind the company and its members to the same extent as if they have been signed by the company and by each member to observe and be bound by all the provisions of the memorandum and of the articles.
- Pre-incorporation contracts are contracts purported to be made on behalf of a company before its incorporation. Before incorporation, a company is non-existent and has no capacity to contract. Consequently, nobody can contract as agent on its behalf because an act which cannot be done by the principal himself cannot be done by him through an agent. Hence, a contract by a promoter purporting to act on behalf of a company prior to its incorporation never binds the company because at the time the contract was concluded the company was not in existence.

GLOSSARY

Alteration : The state of being altered; a change made in the form or nature of a thing; changed condition. In Company Law the memorandum and articles sometime require alterations

Clause : One of the sections of a legal document that says that something must or must not be done

MoA : Memorandum of Association

AoA : Articles of Association

TEST YOURSELF

(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)

1. What do you understand by the memorandum of association? What is its purpose?
2. “Memorandum of association is a charter of the company”. Comment upon the statement and explain the clauses which are included in a memorandum of association of a company.
3. What is “registered office” of a company? Within how much time a company must have a registered office? Explain the procedure brief for shifting of Registered office from the jurisdiction of one Registrar of Companies to another within the same state.
4. What do you understand by the doctrine of “*ultra-vires*”? Discuss the decided case “*Ashbury Railway & Iron Co. v. Riche*”.
5. What is the importance of the objects clause of the memorandum of association? If a company undertakes to do anything which is not either expressly or impliedly provided for by the objects clause, what would be the consequences?
6. “The power of altering the articles is wide, yet it is subject to a large number of limitations”. Explain.
7. Discuss the extent to which articles of association binds:
 - (a) the members to the company,
 - (b) the company to the members,
 - (c) the members among themselves, and
 - (d) the company to the outsiders.
8. Distinguish Articles from Memorandum.
9. “The articles may contain provisions for entrenchment.” Comment upon the statement and explain the significance of the entrenchment provisions.
10. What is the meaning and significance of the doctrine of “Indoor Management”. Discuss with reference to decided case “*Royal British Bank v. Turquand*”.
11. While inspecting the Delhi branch of M/s ABC Bank Ltd., the statutory auditor of ABC Bank Ltd. stated that a loan of Rs. 25.00 Lacs sanctioned to M/s STW Private Limited is “*ultra vires*”. Which among the following meant by the statutory auditors while categorizing the loan in the above category?
 - (a) There is serious contravention of provisions of Companies Act, 2013
 - (b) There is some violation relating to some internal procedures i.e. AOA on the part of the company
 - (c) The loan has been sanctioned for an activity which is not stated in the objective clause in the MOA of the company
 - (d) There is some problem in execution of security documents.
12. The directors of M/s Rajshekar Impex Private Limited wanted to alter its Articles of Association. For that purpose they visited Mr. Abhay, Practicing Company Secretary for redrafting of their AOA. They want to understand the contents of AOA. As an expert, suggest which of the following will not be included in article of association?
 - (a) Lien of share
 - (b) Objective of the company

