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# VIRTUAL COACHING CLASSES
## ORGANISED BY BOS, ICAI

# INTERMEDIATE LEVEL
# PAPER 2: CORPORATE AND OTHER LAWS

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# COMMENCEMENT OF BUSINESS- SECTION 10A

(1) **A company** incorporated after the commencement of the Companies (Amendment) Ordinance, 2019 and **having a share capital** shall not **commence** any **business** or exercise any **borrowing** powers unless—

- (a) a **declaration** is filed by a director within a period of **180 days** of the date of incorporation of the company with the **Registrar** that every subscriber to the memorandum has **paid** the value of the shares agreed to be taken by him on the date of making of such declaration; and
- (b) The company has filed with the Registrar a **verification of its registered office** as provided in sub-section (2) of section 12.

# COMMENCEMENT OF BUSINESS- SECTION 10A

(2) If **any default is made** ,the **company** shall be **liable to a penalty** of **fifty thousand rupees** and **every officer who is in default** shall be liable to a penalty of **one thousand rupees** for each day during which such default continues but not exceeding an amount of **one lakh rupees**.

(3) **Where no declaration has been filed** with the Registrar within a period of one hundred and eighty days of the date of incorporation of the company and the **Registrar has reasonable cause to believe** that the company is **not carrying on any business** or operations, he may, initiate action for the **removal of the name** of the company from the register of companies.

# COMMENCEMENT OF BUSINESS- SECTION 10A

As per **Rule 23A [Declaration at the time of commencement of business.] of the Companies (Incorporation) Rules, 2014**, the **declaration** under section 10A by a director shall be in **prescribed form with prescribed fees** and the contents of the said form shall be **verified by a Company Secretary or a Chartered Accountant or a Cost Accountant**, in practice:

Provided that in the case of a company pursuing objects requiring registration or approval from any **sectoral regulators** such as the Reserve Bank of India, Securities and Exchange Board of India, etc., **the registration or approval**, as the case may be from such regulator shall also be obtained and **attached with the declaration.**

# MEMORANDUM OF ASSOCIATION

**As per section 2(56)** — *memorandum means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act;*

It is the base document for the formation of the company and along with the Articles of Association (AOA) is regarded as the Constitution of the Company.

A memorandum is a **public document** under Section 399 of the Companies Act, 2013. Consequently, every person entering into a contract with the company is presumed to have the knowledge of the conditions contained therein.

A company cannot depart from the provisions contained in the memorandum however imperative may be the necessity for the departure. It cannot enter into a contract or engage in any trade or business, which is beyond the power confessed on it by the memorandum. If it does so, it would be ultra vires the company and void.

# FORM OF MOA

Table A: is applicable to companies limited by shares

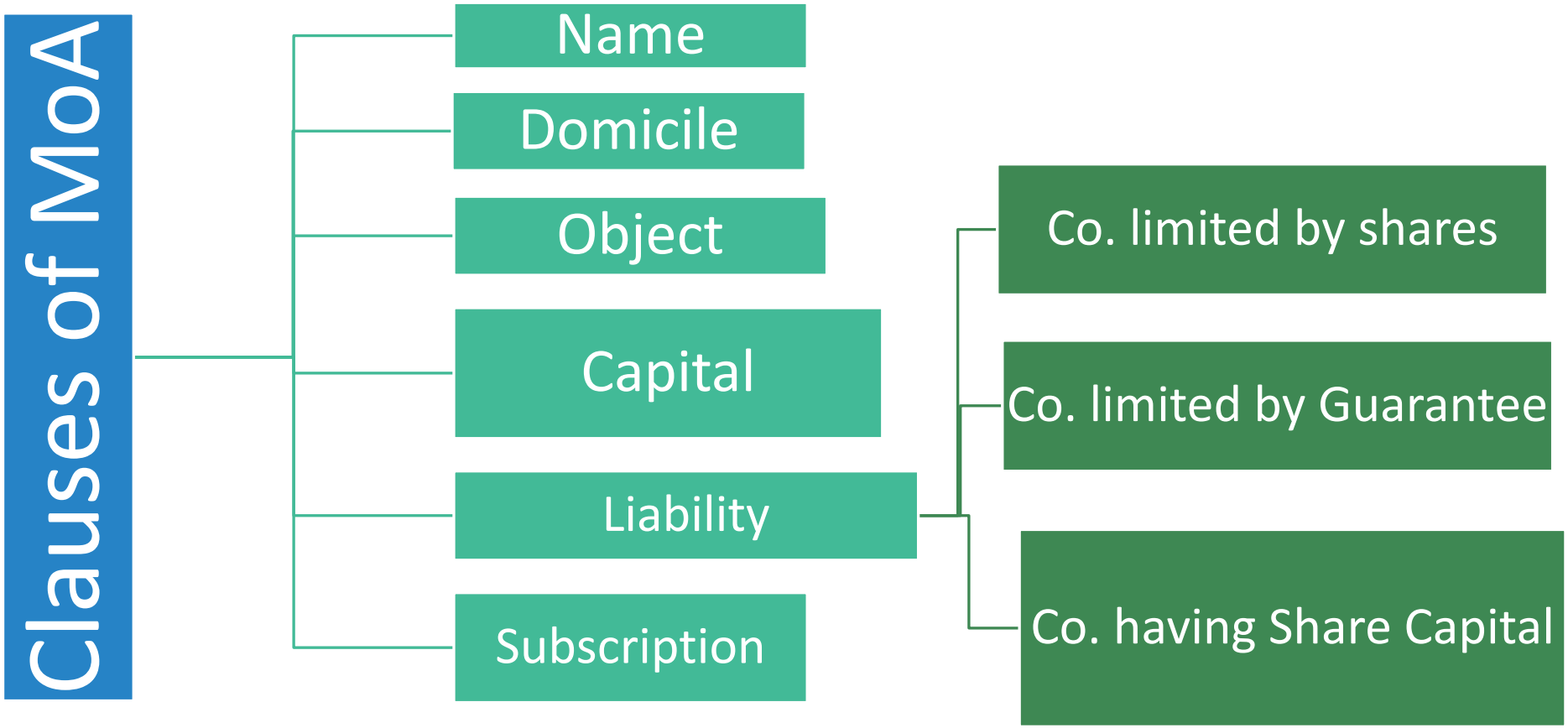
Table B: is applicable to companies limited by guarantee and not having a share capital;

Table C is applicable to the companies limited by guarantee and having a share capital

Table D is applicable to unlimited companies and not having a share capital;

Table E is applicable to unlimited companies and having a share capital.

# CLAUSES OF MOA- S. 4




Note: In case of OPC, Name of person who in the event of death of subscriber, shall become the member of the Co. is also included in the MOA

# NAME CLAUSE

Contain the name of the company with the last word “Limited” in the case of a public limited company, or the last words “Private Limited” in the case of a private limited company.

**Exception:** Sec.8 companies.

**Applying for the name of the company:** The name stated in the memorandum shall not—

- Be **identical with or resemble** too nearly to the name of an existing company registered under this Act or any previous company law; or
- be such that its use by the company—
  - will **constitute an offence** under any law for the time being in force; or
  - is **undesirable i**n the opinion of the Central Government

# NAME CLAUSE

- contains—
  - (i) 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
  - (ii) **such word or expression**, as may be prescribed, **unless the previous approval of the Central Government has been** obtained for the use of any such word or expression. eg,., words like -Board; Commission; Authority; Undertaking; National; Union; Central; Federal; Republic; President etc.

# NAME CLAUSE

**Reservation of name:** A person may make an application, in such form and manner and accompanied by such fee, as may be prescribed, to the Registrar for the **reservation** of a name set out in the application as

(i) the **name** of the proposed company; or

(ii) the name to which the company proposes to **change** its name.

# NAME CLAUSE

**Reserving the name:** Upon receipt of an application for the **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.

# NAME CLAUSE

**Cancelling name:** Where after reservation of name, it is found that name was applied by furnishing wrong or incorrect information, then—

- (i) if the company has **not** been **incorporated**, the reserved name shall be **cancelled** and the person who has made the application shall be liable to a **penalty** which may extend to one lakh rupees;
- (ii) if the company has been **incorporated**, the Registrar may, after giving the company an opportunity of being heard—
  - (1) either direct the company to **change** its name within a period of **3 months**, after passing an **ordinary** resolution;
  - (2) take action for **striking off** the name of the company from the register of companies; or
  - (3) make a petition for **winding up** of the company

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

# NAME CLAUSE

**Note: Circular:**

As per the General Circular No.29/2014, dated 11th of July, 2014, Government directed that while allotting names to Companies/Limited Liability Partnerships, the Registrar of Companies concerned should exercise due care to ensure that the **names are not in contravention of the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950.** It is necessary that Registrars are fully familiar with the provisions of the said Act.

**Note:** Rule 8–Undesirable Names of the Companies (Incorporation) Rules, 2014, determines whether a proposed name is identical with another or other rules which may be kept in mind while dealing with the Name clause of the MOA.

# EXAMPLES

- Green Technology Ltd. is same as Greens Technology Ltd./Greens Technologies Ltd.
- ABC Ltd. is same as A.B.C. Ltd. and A B C Ltd.
- TeamWork Ltd. is same as Team@Work Ltd. and Team-Work Ltd
- Ascend Solutions Ltd. is same as Ascended Solutions Ltd. and Ascending Solutions Ltd.
- chemtech Ltd. is same as Chemtec Ltd., Chemtek Ltd., Cemtech Ltd., Cemtek Ltd., Kemtech Ltd., and Kemtek Ltd
- Ultra Solutions Ltd. is same as Ultrasolutions.com Ltd.
- Ravi Builders and Contractors Ltd. is same as Ravi Contractors and Builders Ltd.
- National Electricity Corporation Ltd. is same as Rashtriya Vidyut Nigam Ltd.
- If Salvage Technologies Ltd. is an existing name, it is same as Salvage Technologies Delhi Ltd and Salvage Delhi Technologies Ltd.

# OBJECT CLAUSE

It contains the **object** for which the company is formed and therefore identifies the possible scope of its operations beyond which its actions cannot go.

It enables **shareholders, creditors** and all those who deal with company to **know** what its powers are and what activities it can engage in.

The **shareholders** must know the **purposes** for which his money can be used by the company and what risks he is taking in making the investment.

A company **cannot depart** from the provisions contained in the memorandum however imperative may be the necessity for the departure. It **cannot enter** into a contract or engage in any trade or business, which is beyond the power confessed on it by the memorandum. If it does so, it would be **ultra vires** the company and **void**.

# DOCTRINE OF ULTRAVIRES

The general rule is that an act which is **ultra vires** the company is **incapable of ratification**. An act which is intra vires the company but **outside the authority of the directors may be ratified** by the company in proper form [*Rajendra Nath Dutta v. Shilendra Nath Mukherjee, (1982) 52 Com Cases 293 (Cal.)*]

The rule is meant to **protect** shareholders and the creditors of the company.

The doctrine of ultra vires was first enunciated by the House of Lords in a classic case, ***Ashbury Railway Carriage and Iron Co. Ltd. v. Riche**, (1878) L.R. 7 H.L. 653***.**

**FACTS: In the given case** the memorandum of the company defined its objects as : "The objects for which the company is established are to make and sell, or lend or hire, railway plants to carry on the business of mechanical engineers and general contractors…….".

# DOCTRINE OF ULTRAVIRES

The company entered into a contract with M/s. Riche, a firm of railway contractors to finance the construction of a railway line in Belgium. On subsequent repudiation of this contract by the company on the ground of its being ultra vires, Riche brought a case for damages on the ground of breach of contract, as according to him the words “general contractors” in the objects clause gave power to the company to enter into such a contract and, therefore, it was within the powers of the company. More so because the contract was ratified by a majority of shareholders.

# DOCTRINE OF ULTRAVIRES

**Decision:** The House of Lords held that the contract was ultra vires the company and, therefore, null and void. The term “general contractor” was interpreted to indicate as the making generally of such contracts as are connected with the business of mechanical engineers. The Court held that if every shareholder of the company had been in the room and had said, “That is a contract which we desire to make, which we authorise the directors to make”, still it would be ultra vires. The shareholders **cannot ratify** such a contract, as the contract was ultra vires the objects clause, which by Act of Parliament, they were prohibited from doing.

The purpose of doctrine of ultra vires has been **defeated** as now the object clause can be easily altered, by passing just a special resolution by the shareholders.

# LIABILITY CLAUSE

(a) This clause covers details on the **liability of members** of the company, whether limited or unlimited, and also state—

- in the case of a company **limited by shares,** that the liability of its members is limited to the **amount unpaid**, if any, on the shares held by them; and
- in the case of a company **limited by guarantee,** the amount up to which each member undertakes to **contribute**—
  - 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
  - to the costs, charges and expenses of winding-up and
  - for adjustment of the rights of the contributories among themselves;

# LIABILITY CLAUSE

- **(b)** in the case of a company having a **share capital**—
  - the **amount** of share capital with which the company is to be registered and the **division** thereof into shares of a fixed amount and the number of shares which the **subscribers** to the memorandum agree to subscribe which shall not be less than **one share**; and
  - the **number of shares** each subscriber to the memorandum intends to take, indicated **opposite his name**;

The clause, in the case of One Person Company, covers the name of the person (nominee) who, in the event of death of the subscriber, shall become the member of the company.

# DOMICILE CLAUSE/ REGISTERED OFFICE CLAUSE

The name of federal **state** is mentioned where the registered office is to be situated. Registered office is the permanent address of the company. It is residence of company.

# SUBSCRIPTION & CAPITAL CLAUSE

***Subscription clause***

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

***Capital Clause***

This clause details 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 and the nominal value of each share.

# ALTERATION OF MOA [ SECTION 13]

As per **Section 2(3)**—*alter or —alteration includes the making of additions, omissions and substitutions.*

Section 13 of the Companies Act, 2013 provides the provisions that deals with the alteration of the memorandum.

Acc. to Section 13, **A Company may alter the provisions of its memorandum with the approval of the members by a special resolution**.

# ALTERATION OF NAME CLAUSE

a. Any change in the name of a company shall be effected by passing of **Special resolution and approval of the Central Government** in writing

b. However, **no such approval shall be necessary** where the change in the name of the company is only the **addition/deletion of the word "Private"**, on the conversion of any one class of companies to another class in accordance with the provisions of the Act.

**c. New Certificate of Incorporation issued by the RoC**

The **change of name** shall **not be allowed** to a company which has defaulted in filing its

- Annual returns
- Financial Statements
- Any document due for filing with Registrar
- repayment of matured deposits or debentures or interest on deposits or debentures

# CHANGE OF REGISTERED OFFICE

**Change in registered office from one State to another** shall not have any effect unless it is **approved by the Central Government**.

For obtaining the approval the application is made to the CG in such form and manner as may be prescribed.

CG shall dispose the application within 60 days.

Before passing of order, Central Government may satisfy itself that-

- the alteration has the **consent** of the **creditors**, **debenture-holders** and other persons **concerned** with the company, or
- the sufficient provision has been made by the company either for the due **discharge** of all its debts and obligations, or
- adequate **security** has been provided for such discharge.

The Company shall within such time and manner as may be prescribed, file with the registrar of each state a copy of the order of CG approving the change.

# ALTERATION OF OBJECT CLAUSE

A company, which has raised money from public through prospectus and still has any unutilized amount out of the money so raised, **shall not change its objects** for which it raised the money through prospectus **unless a special resolution through postal ballot is passed by the company and**—

- **the details**, in respect of such resolution shall also be **published in the newspapers** (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;
- **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

# ALTERATION OF OBJECT CLAUSE

The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a **period of 30 days from** the date of filing of the special resolution.

# ALTERATION OF LIABILITY CLAUSE

The **liability clause** cannot be altered to make the **liability** of the members unlimited.

But if all the members agree, and if the Articles permit, the **liability** of all the directors or any of the directors can be altered by passing a **Special Resolution**

A copy of the resolution should be filed with the Registrar within a period of 30 days.

# Contd..

**Alteration to be registered:** No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.

**Only member have a right to participate in the divisible profits of the company**: Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, intending to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

**Alteration 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. If a **company makes any default** in complying with the stated provisions, **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]

# RECTIFICATION OF NAME OF COMPANY [SECTION 16]

According to **Section 16**

(1) **If, through inadvertence** or otherwise, a company on its first registration or on its registration by a new name, is **registered by a name** which, —

- (a) in the opinion of the **Central Government [ power delegated to R.D]**, is **identical** with or too nearly resembles the name by which a **company** in existence had been previously registered, whether under this Act or any previous company law, it may direct the company to **change its name** and the company shall change its name or new name, as the case may be, within a period of **three months** from the issue of such direction, after adopting an ordinary resolution for the purpose;

# RECTIFICATION OF NAME OF COMPANY [SECTION 16]

**(b) on an application by a registered proprietor of a trade mark** that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999, made to the Central Government within **3 years** of incorporation or registration or change of name of the company, whether under this Act or any previous company law, in the opinion of **the Central Government, is identical with or too nearly resembles to an existing trade mark, it may direct the company to change its name** and the company shall change its name or new name, as the case may be, within a period of **6 months** from the issue of such direction, after adopting **an ordinary resolution for the purpose.**

# RECTIFICATION OF NAME OF COMPANY [SECTION 16]

(2) Where a company changes its name or obtains a new name under sub-section (1), it shall within a period of **15 days** from the date of such change, **give notice** of the change to the Registrar along with the order of the Central Government, who shall carry out necessary changes in the **certificate of incorporation** and the memorandum.

# PUNISHMENT FOR CONTARVENTION of S.16

If a company makes default in complying with any direction—

| Liable person | Penalty/punishment |
|---|---|
| Company | Fine of 1,000 rupees for every day during which the default continues |
| Every Officer who is in default | Fine varying from 5,000 rupees to 1 lakh rupees. |

# ARTICLES OF ASSOCIATION

As per **Section 2(5)**—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.

The article of association of a company contains internal rules and regulation of the company.

Section 5 of the Companies Act, 2013 seeks to provide the contents and model of articles of association.

# ARTICLES OF ASSOCIATION

Section 5 provides for the following:

- **Contains regulations**: The articles of a company shall contain the regulations for management of the company.
- **Inclusion of matters:** The articles shall also contain such matters, as are prescribed under the rules. However, a company may also include such additional matters in its articles as may be considered necessary for its management.
- **Forms of articles:** The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company
- **Model articles:** A company may adopt all or any of the regulations contained in the model articles applicable to such company.

# ARTICLES OF ASSOCIATION

- **Company registered after the commencement of this Act**: 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 not apply on company registered under any previous company law:** Nothing in this section shall apply to the articles of a company registered under any previous company law, unless amended under this Act.

# ENTRENCHMENT OF AoA UNDER SECTION 5

The term entrenchment has not been defined in the Companies Act, 2013. The dictionary meaning is as follows:

(1) The process by which ideas become fixed and cannot be changed.

(2) Under law it is a provision which makes certain amendments either more difficult or impossible.

Usually an article of association may be altered by passing special resolution but entrenchment makes it more difficult to change it. The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

# ENTRENCHMENT OF AoA UNDER SECTION 5

Entrenchment of provisions of Articles of Association is covered under **sub section (3),(4) and (5) of Section 5 of the Companies Act, 2013 read with Rule 10** of the **Companies (Incorporation) Rules 2014**.

According to the companies Act 2013, read with Companies Incorporation rules

A. Article of Association may contains provisions for entrenchment for giving an effect that the specified provisions of AOA may be altered only if conditions or procedures as are more restrictive are met or complied with.

B. The provision for entrenchment shall only be **made either at the time of incorporation of a company**, or **by an amendment in the articles agreed to by all the members of the company in the case of a private company** and by a **special resolution in the case of a public company**.

# ENTRENCHMENT OF AoA UNDER SECTION 5

**Notice to the registrar of the entrenchment provision:** 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.

According to **Rule 10 of Companies (Incorporation) Rules, 2014** Where the articles contain the provisions for entrenchment, **the company shall give notice to the Registrar of such provisions in Form No.INC.2 or, or Form No. INC-32(SPICe)** 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.

# DOCTRINE OF CONSTRUCTIVE NOTICE

Both memorandum of association and the articles of association are public documents. These documents become public documents as soon as they get registered and can be accessible by any members of the public under the provision of the Act. Therefore, notice about the contents of memorandum and articles is said to be within the knowledge of both members and non-members of the company. Such notice is a deemed notice in case of a members and a constructive notice in case of non-members.

Consequently, if a person enters into a contract which was against the Memorandum, or beyond the powers which have been conferred on the directors in the Articles of Association, then the contract is void and cannot be enforced by the person even if he/she had acted in good faith and the money was utilized to achieve the objective of the company, as given in its Memorandum.

The doctrine of constructive notice provides protection to the company from outsiders.

# DOCTRINE OF CONSTRUCTIVE NOTICE

***Kotla Venkataswamy v. China Ramamurthy***.

In this, the Articles of Association of the company made it mandatory for all the deeds to be signed by the managing director, the secretary, and a working director on behalf of the company. The secretary and the working director of the company signed a mortgage deed which was executed in the favour of the plaintiff. At a later date, the company opted for voluntary liquidation and sold the mortgaged property to the defendant. The plaintiff then approached the court.

The court in its decision upheld the sale of the mortgaged property. The reason given by the court was that the Articles of Association of the company specifically asked for the signature of four officers of the company, and this was public knowledge. But since the plaintiff didn't act prudently and dodged its duty to read the documents, the doctrine of constructive notice will apply and the mortgage deed will be considered as an incomplete document.

# DOCTRINE OF INDOOR MANAGEMENT (TURQANDS RULE)

This Doctrine was laid down in famous case of *Royal British Bank vs Turquand (1856) 119 E.R. 886.*

According to this doctrine**, persons dealing with the company cannot be assumed to have knowledge of internal problems of the company**. He can simply assume that all the required things were get done properly in the company.

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

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

# BASIS OF DOCTRINE OF INDOOR MGMT.

1. What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but not know the information he/she is not privy to.

2. If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

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

**Knowledge of irregularity**: In case this 'outsider' has actual knowledge of irregularity within the company, the benefit under the rule of indoor management would no longer be available. In fact, he/she may well be considered part of the irregularity.

# BASIS OF DOCTRINE OF INDOOR MGMT.

**Negligence:** If, with a minimum of effort, the irregularities within a company could be discovered, the benefit of the rule of indoor management would not apply. The protection of the rule is also not available where the circumstances company does not make proper inquiry.

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

# ALTERATION OF ARTICLES OF ASSOCIATION [S.14]

Section 14 of the Companies Act, 2013, vests companies with power to alter or add to its articles. **A company cannot divest itself of these powers** [Andrews vs. Gas Meter Co. [1897] 1 Ch. 161].

Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company **may, by a special resolution alter its articles**.

**Alteration of articles include alterations having the effect of conversion of— (a) a private company into a public company; or (b) a public company into a private company:**

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# CONVERSION OF PVT. COMPANY TO PUBLIC CO.

According to first proviso to S.14(1**) A private company may get converted into public company** by altering its article and passing a **SR i**n such a manner that its article no longer includes  the restrictions and limitations which are required to be included in the articles of a private company as per section 2(68) of this Act

# CONVERSION OF PUBLIC COMPANY TO PRIVATE CO.

A **Public company may get converted into a private company** by altering its article through **SR** so as to include the restrictions and limitations required to be included in the articles of a private company **and obtaining the approval of CG**.

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 o**n an application made in such form and manner as may be prescribed

**Every alteration of the articles and a copy of the order of the Central Government approving the alteration**, shall be filed with the Registrar, together with a printed copy of the **altered articles**, within a period of **fifteen days** in such manner as may be prescribed, who shall register the same.

# ALTERATION OF ARTICLES OF ASSOCIATION [S.14]

**Alteration noted in every copy:** Every **alteration** made in articles of a company shall be **noted in every copy** of the articles, as the case may be. If a company makes any default in complying with the stated provisions, the company and every officer who is in default shall be liable to a **penalty** of one thousand rupees for every copy of the articles issued without such alteration. **[Section 15].**

**According to Section 14(3)** Any alteration of the articles registered by the registrar shall as be valid as if it were originally contained in the articles.

# SECTION 6: AN ACT TO OVERRIDE MEMORANDUM, ARTICLES ETC.

This provision is applicable to all companies.

The provisions of the Companies Act, 2013 shall have effect disregarding anything to the contrary contained in the following:

- Memorandum or Articles of association of a Company, or
- in any agreement executed by the Company, Or
- in any resolution passed by the Company in general meeting or by its Board of Directors.

# SECTION 6: AN ACT TO OVERRIDE MEMORANDUM, ARTICLES ETC.

And provision shall be treated as void if it is contrary not only to express / specific matter found in any section of the Act but also if it is contrary to matter provided in section of the Act by necessary implication, as held in Cricket Club of India and Others v. Madhav L. Apte and Others (1975) Comp Cas 574 (Bom).

However, **this does not affect position where the Act itself gives freedom to companies to include or decide any matter**, be it by way of including matter in its Memorandum or Articles or by any agreement or by passing any resolution to that effect, either at general or Board meeting.

# SECTION 6: AN ACT TO OVERRIDE MEMORANDUM, ARTICLES ETC.

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

When any matter contrary to the Act is found in Memorandum or Articles of a company or in any agreement or in any resolution as aforesaid, the effect of law is that only that part of Memorandum or Articles or agreement or resolution, as the case may be, which is contrary to the Act becomes void and not the entire Memorandum or Articles or agreement or resolution.

# EFFECT OF MOA AND AOA [ SECTION 10]

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

It means that, on the basis of MOA and AOA:

- a) Company is liable to members
- b) Members are liable to company
- c) But normally members are not liable to each other

All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company. [For example a company can recover call in arrear from a member as forcefully as it is recovering loan due.]

# COPIES OF MEMORANDUM, ARTICLES, ETC., TO BE GIVEN TO MEMBERS [SECTION 17]

According to section 17 every company on being so requested by a member, shall send copies of the following document**s within seven days of the request** on the payment of fees—

- (a) the memorandum;
- (b) the articles; and
- (c) every agreement and every resolution referred in section 117 (Resolutions and agreements to be filed), if and in so far as they have not been embodied in the memorandum and articles.

**In case of default**, the **company and every officer** who is in default shall be liable for each default, to a **penalty of one thousand rupees for each day** during which such default continues or **one lakh rupees, whichever is less**.

# REGISTERED OFFICE OF COMPANY [Section 12]

A company is considered to be a separate legal entity from the members. Once a company gets incorporated, it is required to maintain a registered office.

This is a physical office where the corporation will receive service of legal documents from ROC or in case of a lawsuit, etc.

It's address cannot be a P.O. box but must be a physical location where someone is present, to receive service of legal documents during normal business hours.

It could be different from a Head Office or Corporate office.

# SECTION 12 REGISTERED OFFICE

SECTION 12 reads as follows:

(*1*) A company shall, **within 30 days of its incorporation** and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

(*2*) The company shall furnish to the Registrar **verification of its registered office within a period of thirty days of its incorporation in such manner as may be prescribed.**

# SECTION 12

(3) Every 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

# SECTION 12

- (d) have its name printed on hundies, promissory notes, bills of exchange and such other documents as may be prescribed:

**Provided** that **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** as required under clauses (*a*) and (*c*):

**Provided further** that the words "One Person Company" shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

# SECTION 12

(4) **Notice of every change of the situation of the registered office,** verified in the manner prescribed, after the date of incorporation of the company, shall be given to the Registrar within thirty days of the change, who shall record the same.

(5) **Except on the authority of a special resolution passed by a company,** the registered office of the company shall not be changed,—

- (a) 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
- (b) 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:

# SECTION 12

Provided that **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** on an application made in this behalf by the company in the prescribed manner.

(6) The confirmation referred to in sub-section (5) shall be communicated within a **period of thirty days from the date of receipt of application by the Regional Director to the company** and the **company shall file the confirmation with the Registrar within a period of sixty days of the date of confirmation** who shall register the same and certify the registration within a period of thirty days from the date of filing of such confirmation.

# SECTION 12

(7) The certificate referred to in sub-section (6) shall be conclusive evidence that all the requirements of this Act with respect to change of registered office in pursuance of sub-section (5) have been complied with and the change shall take effect from the date of the certificate.

(8) **If any default is made in complying with the requirements of this section, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every day during which the default continues but not exceeding one lakh rupees.**

# SECTION 12

(9) If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations, he may cause a physical verification of the registered office of the company in such manner as may be prescribed and if any default is found to be made in complying with the requirements of sub-section (1), he may without prejudice to the provisions of sub-section (8), initiate action for the removal of the name of the company from the register of companies under Chapter XVIII.

# CHANGE OF REGISTERED OFFICE

| Within City/ Town / Village | Board resolution | Notice to Roc within 30 days of passing of resolution | No alteration of MoA |
|---|---|---|---|
| Outside city/ Town/ Village , within same state | Special resolution | Notice to Roc within 30 days of passing of resolution | No alteration of MoA |
| Within Same state, but change in RoC [MH & TN] | Special Resolution + Approval of RD[ RD to communicate the approval to the company within 30 days of the receipt of application] to be filed with RoC within 60 days of receipt of order. | Roc to certify the registration within a period of 30 days from the date of filling of such confirmation by the company | No alteration of Moa |
| From one State to Another | Special Resolution + Certified copy of Order of CG [ CG to dispose application within 60 days] filed with ROC of both states within 3o days . | Fresh certificate of Incorporation by RoC | Alteration of MoA- |

# CONVERSION OF COMPANIES ALREADY REGISTERED [SECTION 18]

According to Section 18 of the Companies Act, 2013, a company may convert itself in some other class of company by altering its memorandum and articles of association.

Following is the law with respect to the conversion of the companies already registered

**1. By alteration of memorandum and articles**: A company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of this Chapter.

# CONVERSION OF COMPANIES ALREADY REGISTERED [SECTION 18]

**2. File an application to the Registrar**: Wherever such conversion of companies is required to be done, the company shall file an application to the Registrar, who shall after satisfying himself that the provisions applicable for registration of companies have been complied with, close the former registration of the company.

**3. Issue a certificate of incorporation**: After registering the required documents, issue a certificate of incorporation in the same manner as its first registration.

**4. No effect on the debts, liabilities etc. incurred before conversion:** The registration of a company under this section shall not affect any debts, liabilities, obligations or contracts incurred or entered into, by or on behalf of the company before conversion and such debts, liabilities, obligations and contracts may be enforced in the manner as if such registration had not been done.

# SUBSIDIARY COMPANY NOT TO HOLD SHARES IN ITS HOLDING COMPANY [SECTION 19]

According to S.19 a subsidiary company cannot hold shares of its Holding Co, & if it does, it will be void.

Exceptions:

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

RIGHT TO VOTE at a meeting of the holding company

# SERVICE OF DOCUMENTS [SECTION 20]

Section 20 of the Companies Act, 2013, provides the mode in which documents may be served on the company, on the members and also on the registrars

**(1) Serving of document to company:** A document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by-

a. registered post, or b. speed post, or c. courier service, or

d. leaving it at its registered office, or

e.means of such electronic or other mode as may be prescribed

However, where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

# SERVICE OF DOCUMENTS [SECTION 20]

**(2) Serving of document to registrar or member:** Save as provided in this Act or the rules made there under for filing of documents with the Registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by—

A. Post, or B. registered post, or C. speed post, or

D. courier, or E.by delivering at his office or address, or

F. by such electronic or other mode as may be prescribed:

However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

# SERVICE OF DOCUMENTS [SECTION 20]

**Explanation**—For the purposes of this section, the term "courier" means a person or agency which delivers the document and provides proof of its delivery

**Exemption**-Section 20(2) shall apply to a Nidhi Company, subject to the modification that in the case of a Nidhi, the document may be served only on members who hold shares of more than ` 1,000 in face value or more than 1%, of the total paid-up share capital of the Nidhis whichever is less.

For other shareholders, document may be served by a public notice in newspaper circulated in the district where the Registered Office of the Nidhi is situated; and publication of the same on the notice board of the Nidhi. [Notification dated 5th June, 2015.]

# SERVICE OF DOCUMENTS [SECTION 20]

As per the Companies (Incorporation) Rules, 2014,

1. The term, "**electronic transmission"** means a communication that creates a record that is capable of retention, retrieval (recovery) and review, and which may thereafter be rendered into clearly legible tangible form. It may be made by—

- facsimile telecommunication (fax) or electronic mail (email), which the company or the officer has provided from time to time for sending communications,
- posting of an electronic message board or network that the Registrar or the member has designated for those communications, and which transmission shall be validly delivered upon the posting , or
- other means of electronic communication, in respect of which the company or the officer has put in place reasonable systems to verify that the sender is the person purporting to send the transmission.

# SERVICE OF DOCUMENTS [SECTION 20]

In case of **delivery by post, such service shall be deemed to have been effected**—

- (i) in the case of a notice of a meeting, at the expiration of 48 hours after the letter containing the same is posted; and
- (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.

# AUTHENTICATION OF DOCUMENTS, PROCEEDINGS AND CONTRACTS [SECTION 21]

**Authentication of documents, proceedings and contracts**

As per Sec.21 these may be signed by any "key managerial personnel" or an officer or employee of the company duly authorised by the Board in this behalf.

As per **Sec.2(51) —Key managerial personnel**, in relation to a company, means—

(i) the CEO or the MD or the manager;

(ii) the company secretary;

(iii) the whole-time director;

(iv) the CFO;

(v) such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and

(vi) such other officer as may be prescribed;

As per section 21 of the Act, a document or proceeding requiring authentication by a company or contracts made by or on behalf of a company may be signed by– (i) **any key managerial personnel**, or (ii) **an officer or employee of the company duly authorized by the Board in this behalf**

# EXECUTION OF BILLS OF EXCHANGE, ETC. [SECTION 22]

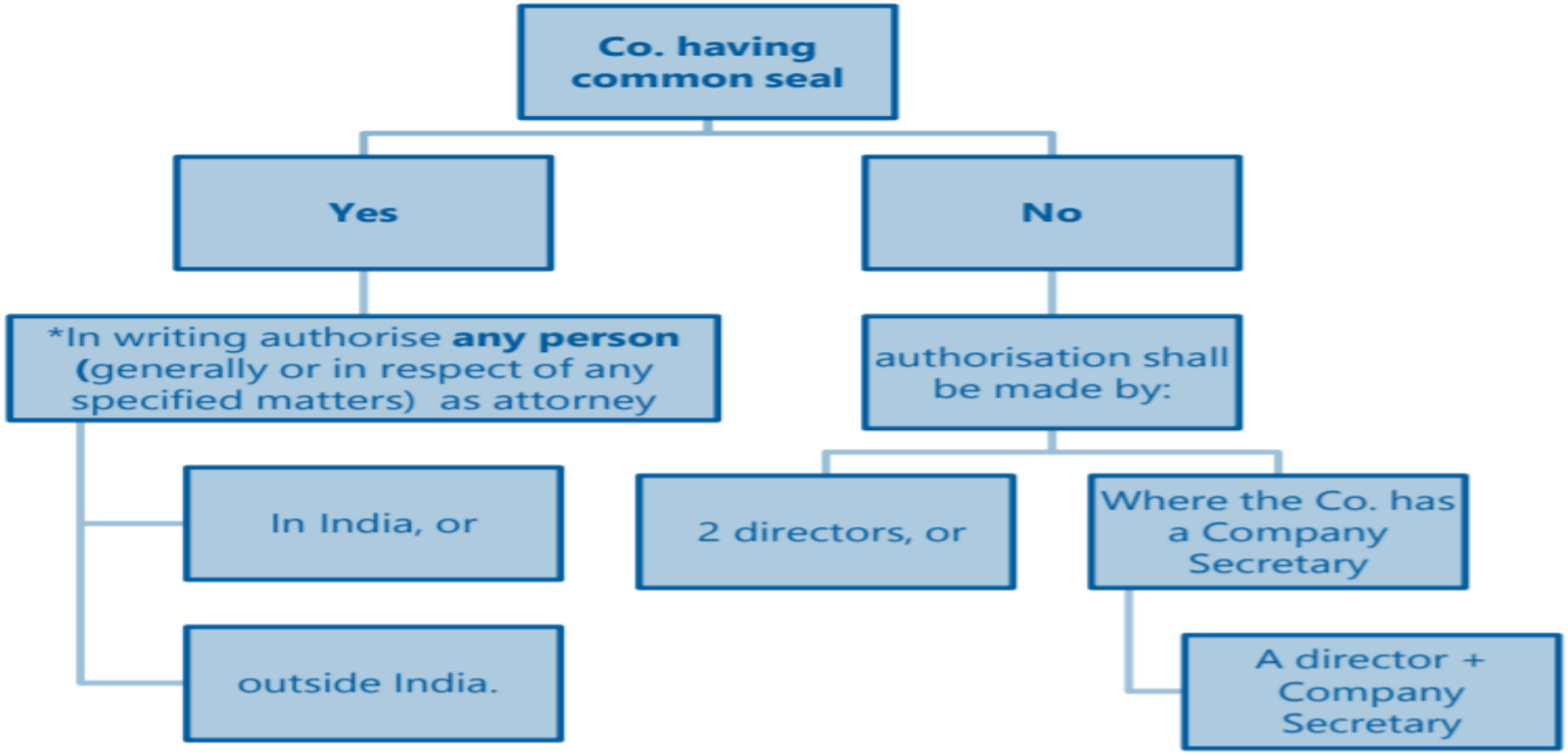
- A bill of exchange, hundi or promissory note shall be deemed to have been made, accepted, drawn or endorsed on behalf of a company if made, accepted, drawn, or endorsed in the name of, or on behalf of or on account of, the company by any person acting under its authority, express or implied.

# EXECUTION OF BILLS OF EXCHANGE, ETC. [SECTION 22]

- A company may authorise any person as its attorney to execute deeds on its behalf in any place either in or outside India. Such authorisation may be made by:
  - A. by writing under the common seal of the company, if the company has a common seal.
  - By a Director and CS, if the Co. does not have a common seal, but it has appointed a CS.
  - By 2 Directors, if the company does not have a common seal and it has not appointed a CS.

A deed signed by such an attorney on behalf of the company and under his seal shall be binding on the company.

# EXECUTION OF BILLS OF EXCHANGE, ETC. [SECTION 22]



# THANK YOU