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CORPORATE & OTHER LAWS

PAPER - 2

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PREFACE

Hello Friends,

Team Ednovate at the very outset extends its warm Welcome to You ALL in the Magical world of Chartered Accountancy.

This Enriching journey will be sometimes Tiring, sometimes Lengthy, sometimes Complex but it's our promise to you that it will Certainly be Enjoyable and Worthy of your time and eff orts.

Through this book and lectures we intend to provide you with:

1. Exam oriented Exhaustive, Amended and Easy to understand Content.
2. Questions are selected from ICAI material and past examination.
3. Seamless Conceptual Understanding of the subject with Real Life Practical Examples.

As per a Famous Saying,

"A journey of a Thousand miles begins with a Single Step"

So let's take our First step towards unwinding CA INTER and come out of it as a PRO.

Wish you all the Best

Team Ednovate

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01 PRELIMINARY

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BACKGROUND AND AIM OF THE ACT

It came into existence at once from the date of notification in the Official Gazette i.e., from 30th August, 2013, however, the remaining provisions of the Act shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

It extends to the whole of India.

Structure of the Act: The Companies Act, 2013 has 470 Sections (covered in 29 Chapters) and 7 Schedules as against 658 Sections (covered in 13 Parts) and 15 Schedules of the Companies Act, 1956.

a. To promote the development of the economy by encouraging entrepreneurship and enterprise efficiency and creating flexibility and simplicity in the formation and maintenance of companies;

b. To encourage transparency, accountability and high standards of corporate governance;

c. To recognize various new concepts and procedures facilitating convenience of doing business while protecting interests of all the stakeholders;

d. To enforce stricter action against fraud and gross non-compliance with company law provisions;

Purpose/ Objective of the Act :

e. To set up institutional structure in the form of various authorities, bodies and panels as well as by including recognition of various roles for professionals and other experts; and

f. To cater to the need for more effective and time bound approvals and compliance requirements relevant in the present context.

MEANING OF COMPANY

The word 'company' is derived from the Latin words (com= with or together; and panis = bread or meal); and originally referred to an association of persons who took their meals together.

DEFINITION OF COMPANY

The term 'company' has been defined under Section 2(20) of the Companies Act, 2013. As per this, 'company' means a company incorporated under Companies Act, 2013 or under any of the previous laws relating to companies.

It may be noted the term 'Company' shall be used in the sense as defined above for the entire Companies Act, 2013, unless the context otherwise requires.

ACT APPLICABLE TO:

Short title, extent, commencement and application Section 1

(1) This Act may be called the Companies Act, 2013.

(2) It extends to the whole of India.

(3) The provisions of this Act shall apply to-

(a) companies incorporated under this Act or under any previous company law;

(b) insurance companies, except in so far as the said provisions are inconsistent with the provisions of the Insurance Act, 1938 or the Insurance Regulatory and Development Authority Act, 1999;

(c) banking companies, except in so far as the said provisions are inconsistent with the provisions of the Banking Regulation Act, 1949;

(d) companies engaged in the generation or supply of electricity, except in so far as the said provisions are inconsistent with the provisions of the Electricity Act, 2003;

(e) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act; and

(f) such body corporate, incorporated by any Act for the time being in force, as the Central Government may, by notification, specify in this behalf, subject to such exceptions, modifications or adaptation, as may be specified in the notification.

CHARACTERISTICS/FEATURES OF COMPANY

Following are the characteristics of a company:

1. Separate legal entity: A company is an artificial person having a personality which is distinct from the members constituting it. Thus, a company has got an entity which is separate from its members. And since this separate entity concept is conferred by law, it is said that a company has got a separate legal entity.

1. Salomon v. Salomon & Co. Ltd. Salomon had, for some years, carried on a prosperous business as a leather merchant and boot manufacturer. He formed a limited company consisting of himself, his wife and a daughter, and his 4 sons as the shareholders, all of whom subscribed for one share of 1 pound each. Salomon was the managing director and two of his sons were other directors. Salomon sold his business (which was perfectly solvent at that time) to the Company for the sum of 38,782 £. He got the following consideration:- 10,000 Secured Debentures of 1£ each 20,000 Fully - paid Shares of 1 £ each 8,782 Cash
The company soon ran into difficulties and the debenture holders appointed a receiver and the company went into liquidation. The total assets of the company amounted to 6,050£, its liabilities were 10,000£ secured debentures and 8,000£ owing to unsecured trade creditors. The unsecured trade creditors claimed the whole of the company's assets, viz. 6,050 £ on the ground that as the company was a mere agent for Salomon and thus they were entitled to payment of their debts in priority to debentures. The House of Lords rejected these contentions and held that a company, on registration, has its own existence or personality separate and distinct from its members and, as a result, a shareholder cannot be equated with a company, even if he holds virtually the entire share capital of the company.

2. Limited liability: A company limited by shares is a registered company having the liability of its members limited to the amount, if any, unpaid on the shares respectively held by them. If his shares are fully paid - up, he has nothing more to pay.

3. Perpetual Succession: An incorporated company never dies. Perpetual succession, therefore, means that the membership of a company may keep changing from time to time but does not affect its continuity. Members may come and go but the company will continue forever.

4. Separate Property: No member can claim himself to be the owner of the company's properties either during its existence or in its winding up. A member does not even have an insurable interest in the property of the company.

5. Transferability of Shares: The capital of a company is divided into parts called shares. The shares are said to be movable property and subject to certain conditions, freely transferable for that. No shareholder is permanently or necessarily wedded to a company. It may be noted that this right of shareholder is restricted in the case of a private company.

6. Common Seal: Since a company has no physical existence, it must act through its agents. All the important documents of a company must be under the seal of the company. The common seal, thus, acts as the official signature of a company. The Companies (Amendment) Act, 2015 has made the common seal optional by omitting the words "and a common seal" from Section 9 so as to provide an alternative mode of authorization for companies who opt not to have a common seal. Reason for this amendment is that common seal is considered as an old concept now.

7. Capacity to sue and be sued: A company, being a body corporate, can sue and be sued in its own name.

8. Separate Management: The members of a company may derive profits without being burdened with the management of the company. The company is administered and managed by its own managerial personnel.

9. Voluntary Association for Profit: A company is a voluntary association for profit. It is formed for the accomplishment of some public goals and whatsoever profit is gained is divided among its shareholders.

IMPORTANT CONCEPTS

IS COMPANY A CITIZEN?

Although, a company is regarded as a legal person (though artificial), it is not a citizen either under the Constitution of India or the Citizenship Act, 1955.

HAS COMPANY A NATIONALITY AND RESIDENCE?

It is established through judicial decisions that a company cannot be a citizen, yet it has nationality, domicile and residence.

LIFTING OR PIERCING THE CORPORATE VEIL

Corporate veil: It refers to a separate legal existence enjoyed by the company which is distinct from people who own & manage it.
It is an artificial curtain created by law which separates the company from the people who own and manage it.

Effect of corporate veil: Only Company is liable for the acts/ defaults done in name of company, even though directors/employees acted on behalf of company.

Lifting of corporate veil: It means looking behind the company as a legal person, i.e., disregarding the corporate entity and paying regard, instead, to the realities behind the legal facade. Where the Courts ignore the company and concern themselves directly with the members or managers, the corporate veil may be said to have been lifted. Only in appropriate circumstances, the Courts shall lift the corporate veil.

CLASSIFICATION OF COMPANY

A. BASED ON LIABILTY

1. Company limited by shares Section 2(22) :

As per Section 2(22),A company limited by shares is a registered company having the liability of its members limited to the amount, if any, unpaid on the shares respectively held by them. The unpaid amount can be called anytime. If his shares are fully paid - up, he has nothing more to pay.

2. Company limited by guarantee Section 2(21):

1. As per Section 2(21), a company limited by guarantee or a "guarantee company" is a company having the liability of its members limited to such an amount as the members may respectively thereby undertake, by the memorandum of association of the company, to contribute to the assets of the company.
2. A special feature of this type of company is that the liability of members to pay their guaranteed amounts arises only when the company has gone into liquidation and not when it is a going concern.
3. Clubs, trade associations and societies for promoting different objects are examples of companies limited by guarantee.
4. A guarantee company without share capital does not obtain its initial and working funds, from its members, but from some other source or sources e.g. grants, endowments, fees, subscriptions and the like.
5. But a guarantee company having a share capital raises its initial capital from its members, while the normal working funds would be provided from other sources, such as fees, charges, subscriptions.

   If a guarantee company has share capital, the shareholders have two-fold liability; to pay the amount which remains unpaid on their share whenever called upon to pay, and secondly, to pay the amount payable under the guarantee when the company goes into liquidation.
6. The voting power of a guarantee company having a share capital is determined by the shareholding and not by the guarantee.

3. Unlimited Company Section 2(92) :

1. As per Section 2(92), unlimited company is a company not having any limit on the liability of its members. In such a company the liability of a member ceases when he ceases to be a member.
2. Thus, the maximum liability of the members of such a company could extend to their entire personal property to meet the debts and obligations of the company.
3. The members of an unlimited company are not liable directly to the creditors of the company, unlike in the case of partners of a firm. The liability of the members is only towards the company, so long it is a going concern; and in the event of its being wound up, only the Liquidator can ask the members to contribute to the assets of the company.

B. BASED ON MEMBERS

4. Private Company Section 2(68) :

As per Section 2(68), private company is a company which by its articles,—

(i) restricts the right to transfer its shares;

(ii) limits the number of its members to two hundred (except in case of One Person Company):

The clause provides that where two or more persons hold one or more shares in a company jointly, they shall be treated as a single member:

However following shall not be included in the number of members:

1. persons who are in the employment of the company; and
2. persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased.

(iii) prohibits any invitation to the public to subscribe for any securities of the company.

There should be at least two persons to form a private company i.e., the minimum no. of members in a private company is two. A private company should have at least two directors. The name of a private limited company must end with the words “Private Limited”.

5. Public Company Section 2(71) :

As per Section 2(71),public company is a company which-

1. is not a private company and
2. Seven or more members are required to form the company.
3. a private company which is a subsidiary of a public company shall also be deemed to

be a public company for the purposes of this Act, even where such subsidiary company continues to be a private company in its articles (three restrictions).

There should be at least seven persons to form a public company i.e., the minimum no. of members in a public company is seven. A public company should have at least three directors. The name of a public limited company must end with the word "Limited".

SEVERALLY LIABLE IN CERTAIN CASES - SECTION 3A

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

6. One Person Company Section 2(62):

Definition: As per Section 2(62),one person company is a company which- One Person Company' means a company which has only one person as a member.
It is basically a private company with some unique features.

As regards the name of a One Person Company, the Act provides that the words "One Person Company" or 'OPC' shall be mentioned in brackets below the name of such Company, wherever its name is printed, affixed or engraved.

Relaxation for OPC:

a) An OPC is primarily a private company. However, certain provisions which are applicable to a private company will not apply to an OPC. For instance, only one director is sufficient (as against two in the case of private company).
b) OPC is not required to hold annual general meeting.
c) Information to be provided in the directors' report has been significantly reduced (as compared to a private company).
d) Annual return in other companies shall be signed by director and company secretary and in case of no company secretary by a practicing company secretary whereas in the case of OPC annual return shall be signed by company secretary and in case of his absence it will be signed by director of the company.

e) The requirement of a minimum number of Board meetings to be convened shall not apply to an OPC having one director. However, in case of OPC having more than one director, the OPC shall hold at least one meeting of the Board of directors in each half of calendar year and the gap between two meetings is not less than ninety days.

f) One Person Company need not have a Cash Flow Statement.

Law with respect to formation of OPC provides that—

1. The memorandum of OPC shall indicate the name of the other person, who shall, in the event of the subscriber's death or his incapacity to contract, become the member of the company.
2. The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.
3. Such other person may be given the right to withdraw his consent.
4. The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.
5. Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.
6. Only a natural person who is an Indian citizen and resident in India or even a Non-resident (person who has stayed in India for a period of not less than 120 days during the immediately preceding one financial year)-
   a) Shall be eligible to incorporate a OPC;
   b) Shall be a nominee for the sole member of a OPC.

   Amendment by Finance Act, 2021
7. A natural person shall not be a member of more than a OPC at any point of time and the said person shall not be a nominee of more than a OPC.
8. No minor shall become member or nominee of the OPC or can hold share with beneficial interest.
9. Such Company cannot be incorporated or converted into a company under section 8 of the Act. Though it may be converted to private or public companies in certain cases.
10. Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate.
11. An OPC can voluntarily convert itself into any kind of company at any time without meeting any of the criteria's as to paid up share capital and average annual turnover.

    Amendment by Finance Act, 2021
12. The requirement of compulsory conversion on exceeding the specified turnover or paid-up capital is done away with and now the One Person Company can grow without any restriction. Amendment by Finance Act, 2021

7. Small Company Section 2(85):

Definition: As per Section 2(85),small company means a company, other than a public company,-

(i) Paid-up share capital of which does not exceed 2 crores rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees;

and

(ii) Turnover of which as per as per profit and loss account for the immediately preceding financial year does not exceed 20 crores rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.

Amendment by Finance Act, 2021

Provided that nothing in this clause shall apply to--

(i) a holding company or a subsidiary company;

(ii) a company registered under section 8; or

(iii) a company or body corporate governed by any special Act. It is basically a private company meeting prescribed threshold.

Following are some of the important relaxations provided to a small company:

(i) Financial statements of small company may not include the cash flow statement.

(ii) Small company shall be deemed to have complied with the provisions relating to Board meeting if at least one meeting of the Board of directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days.

(iii) Merger or amalgamations between two or more small companies have been simplified without the requirement of court process.

C. BASED ON CONTROL

Holding & Subsidiary Company

8. SUBSIDIARY COMPANY SECTION 2(87)

1. As per Section 2(87) provides that a company shall be a subsidiary of another, if any of the following conditions are satisfied :-
   (a) that other controls the composition of its Board of Directors;
   (b) that other exercises or-controls more than one-half of the total voting power either on its own or together with one or more of its subsidiary companies; or
   (c) the first-mentioned company is a subsidiary of any company which is that other's subsidiary.
   Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

2. For the purpose of clause (a) above, the control of the composition of the Board of directors of a company means that the holding company has power, at its discretion, to appoint or remove all or majority of the directors of the subsidiary company without the consent of the other persons.

3. It should be noted that holding and subsidiary companies are incorporated companies and each is a separate legal entity.

4. For the purpose of this clause, the term 'company' includes any body corporate. Thus, holding and subsidiary relationship can be established between an Indian Company and a Foreign Company.

9. HOLDING COMPANY SECTION 2(46)

As per Section 2(46), 'Holding Company', in relation to one or more other companies, means a company of which such companies are subsidiary companies.

Subsidiary company not to hold shares in its holding company Section 19 :

Section 19 deals with the restrictions on the subsidiary company with respect to holding of shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiaries companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Following are the exceptions -

(a) where the subsidiary company holds such shares as the legal representative of a deceased

member of the holding company; or

(b) where the subsidiary company holds such shares as a trustee; or

(c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

The subsidiary company referred to in the above exceptions shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee, as referred to in clause (a) or clause (b) of the said exceptions.

10. Associate company Section 2(6)

1. As per Section 2(6), In relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

2. The expression "significant influence" means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement;

3. The expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;

D. BASED ON CAPITAL

11. Listed company section 2(52):

As per the definition given in the section 2(52), it is a company which has any of its securities listed on any recognised stock exchange.

Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies

Companies Amendment Act, 2020

Unlisted company: Means a company other than listed company.

E. OTHER COMPANIES

12. Government Company Section 2(45)

As per Section 2(45), government company means any company in which not less than fifty-one per cent. of the paid-up share capital is held by-

(i) the Central Government, or

(ii) by any State Government or Governments, or

(iii) partly by the Central Government and partly by one or more State Governments,

And the section includes a company which is a subsidiary company of such a Government company;

13. Foreign Company Section 2(42)

As per Section 2(42), foreign company means any company or body corporate incorporated outside India which-

(i) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(ii) conducts any business activity in India in any other manner

14. Company not for profit/Non-Profit companies Section 8

1. Object of formation of Section 8 Company : Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed to promote the charitable objects of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment etc.

2. Restrictions on such company:
   (i) Such company is prohibited from declaring any dividend to its members
   (ii) Such company has to apply its surplus only in promoting its objects

3. Power of Central government to issue the license :

(i) This section allows the Central Government to register such person or association of persons as a company with limited liability without the addition of words 'Limited' or 'Private limited' to its name, by issuing licence on such conditions as it deems fit. The registrar shall on application register such person or association of persons as a company under this section.

(ii) Central Government has delegated its powers to the ROC. The Central Government may revoke such delegation of powers or may itself exercise the powers & functions, if in its

opinion, such course of action is necessary in the public interest.

4. Privileges of Limited Company: On registration the company shall enjoy same privileges and obligations as of a limited company.

5. A firm may be a member of the company registered under section 8.

6. Alteration of Memorandum and Articles: A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.

7. Conversion into any other kind of Company: A company registered under this section may convert itself into company of any other kind only after complying with such conditions as may be prescribed. A company registered under section 8 which intends to convert itself into a company of any other kind shall pass a special resolution at a general meeting for approving such conversion.

8. A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.

Revocation of license:

(i) The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register.

(ii) But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.

(iii) The Central Govt. has delegate to the Regional Directors, subject to the condition that the Central Govt. may revoke such delegation of powers or may itself exercise the powers & functions under this section if in its opinion, such course of action is necessary in the public interest.

(iv) Such order shall be made only after the company is given a reasonable opportunity of eing heard.

(v) Where a licence is revoked, the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that:

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The company has to converts its status and change its name
The company be wound up under this Act

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If on the winding up or dissolution of a company registered under this section, after the satisfaction of its debts and liabilities if any asset remains, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to the Insolvency and Bankruptcy Fund formed under section 224 of the Insolvency and Bankruptcy Code, 2016

The company be amalgamated with another company registered under this section

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

Penalty/ punishment in contravention:

If a company makes any default in complying with any of the requirements laid down in this section, the company shall, be punishable with fine varying from ten lakh rupees to one crore rupees and the directors and every officer of the company who is in default shall be punishable or with fine of twenty- five lakh rupees. And where it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447. Companies Amendment Act, 2020

Exceptions :

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

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

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

15. Dormant company Section 455:

1. Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant company.

2. "Significant accounting transaction" means any transaction other than—
   (i) payment of fees by a company to the Registrar;
   (ii) payments made by it to fulfil the requirements of this Act or any other law;
   (iii) allotment of shares to fulfil the requirements of this Act; and
   (iv) payments for maintenance of its office and records.

16. Nidhi company Section 406 :

As per Section 406, a company which has been incorporated as a nidhi with the object of cultivating the habit of thrift (cost cutting) and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefits and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.

17. Pubic financial institutions Section 2(72)

As per Section 2(72), following institutions are to be regarded as public financial institutions.

(i) The Life Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956;

(ii) The Infrastructure Development Finance Company Limited,

(iii) Specified company referred to in the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002;

(iv) Institutions notified by the Central Government under section 4A(2) of the Companies Act, 1956 so repealed under section 465 of this Act;

(v) Such other institution as may be notified by the Central Government in consultation with the Reserve Bank of India:

Provided that no institution shall be so notified unless—

(A) it has been established or constituted by or under any Central or State Act other than this Act or the previous company law; or

(B) not less than fifty-one per cent of the paid-up share capital is held or controlled by the Central Government or by any State Government or Governments or partly by the Central Government and partly by one or more State Governments

CONVERSIONS OF PRIVATE COMPANY INTO PUBLIC COMPANY AND VICE VERSA (Section 18)

1. Conversion of a Private Company into a Public Company:

1. Pass special resolution for alteration of its articles thereby deleting the three restrictions of a private company
2. Pass special resolution for alteration of its memorandum for changing its name thereby deleting the word 'private' from its name
3. File following documents with ROC within 15 days:
   (i) Copy of altered Articles
   (ii) Copy of altered Memorandum
4. File copy of the special resolution with the Registrar of Companies within thirty days from the date of passing such resolution in Form No. MGT. 14.
5. The Registrar of Companies shall register and issue fresh certificate of incorporation
6. Further, if the number of members is below 7, steps should be taken to increase the number of members to atleast 7 and that the number of directors should be increased to atleast 3, if they are only 2 directors.

2. Conversion of a Public Company into a Private Company:

1. Pass special resolution for alteration of its articles thereby adding the three restrictions of a private company + **Obtain Central Government Approval**
2. Pass special resolution for alteration of its memorandum for changing its name thereby adding the word 'private' from its name
3. File following documents with ROC within 15 days:
   (i) Copy of altered Articles
   (ii) Copy of altered Memorandum
   (iii) **Copy of CG Approval**
4. File copy of the special resolution with the Registrar of Companies within thirty days from the date of passing such resolution in Form No. MGT. 14.
5. Registrar of Companies shall register and issue fresh certificate of incorporation
6. Further, if the number of members exceeds 200 then steps should be taken to reduce the number of members to 200.

3. CONVERSION OF OPC TO PRIVATE/ PUBLIC COMPANY (Section 18)

Voluntary conversion

1. OPC can get itself converted into a Private or Public company after increasing the minimum number of members to 2/7 and directors to 2/3 as the case may be.
2. Pass resolutions for alteration of memorandum and articles
3. File an application to the Registrar
4. 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 and issue fresh certificate of incorporation

4. CONVERSION OF PRIVATE COMPANY TO OPC (Section 18)

1. A private company other than a company registered under section 8 (non-profit company) of the Act by passing a special resolution in the general meeting.
2. Obtain No objection in writing from members and creditors.
3. File copy of the special resolution with the Registrar of Companies within thirty days from the date of passing such resolution in Form No. MGT. 14.
4. The company shall file an application in Form No. INC.6 for its conversion into One Person Company along with fees as provided in the Companies (Registration offices and fees) Rules, 2014, by attaching the following documents, namely:-
   (i) The directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and Creditors of the company have given their consent for conversion,
   (ii) The list of members and list of creditors;
   (iii) The latest Audited Balance Sheet and the Profit and Loss Account; and
5. On being satisfied and complied with requirements stated herein the Registrar shall issue the Revised Certificate of Incorporation, mentioning that now it has become a One Person Company.

Question 1: (May. 2007)

The paid-up Share Capital of AVS Private Limited is ₹ 1 crore, consisting of 8 lacs Equity Shares of ₹ 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of ₹ 10 each, fully paid-up. XYZ Private Limited and BCL Private Limited are holding 3 lacs Equity Shares and 1,50,000 Equity Shares respectively in AVS Private Limited.

XYZ Private Limited and BCL Private Limited are the subsidiaries of TSR Private Limited. With reference to the provisions of the Companies Act, 2013 examines whether AVS Private Limited is a subsidiary of TSR Private Limited? Would your answer be different if TSR Private Limited has 8 out of total 10 directors on the Board of Directors of AVS Private Limited?

Solution:

Total ESC of AVS Pvt. Ltd.

→ is ₹ 80,00,000

ESC held by XYZ Pvt. Ltd. in AVS Pvt. Ltd.

→ is ₹ 30,00,000

ESC held by BCL Pvt. Ltd. in AVS Pvt. Ltd.

→ is ₹ 15,00,000

ESC held by TSR Pvt. Ltd. in AVS Pvt. Ltd.

→ is ₹ 45,00,000, since for the purpose of determining holding-subsidiary relationship, ESC held in AVS Ltd. by its Subsidiaries XYZ Pvt. Ltd. (viz. ₹ 30,00,000) and BCL Pvt. Ltd. (viz. ₹15,00,000) shall be considered.

AVS Pvt. Ltd. is a subsidiary of TSR Pvt. Ltd.

→ since TSR Pvt. Ltd. holds more than one-half of ESC of AVS Pvt. Ltd.

Answer would remain same

→ even if TSR Pvt. Ltd. has 8 out of 10 directors on the Board of Directors of AVS Pvt. Ltd. since in such a case TSR Pvt. Ltd. controls the composition of Board of Directors of AVS Pvt. Ltd.

Question 2.

ABC Pvt. Ltd had two members P and Q. However on account of death of Mr. Q there was only One member left in the Company. For how long can such one member continue the company and what is the effect of not complying with minimum number of members under companies Act, 2013?

Solution:

Section 3A

Question 3.

XYZ Ltd. Has a subsidiary company LMN Ltd. The Directors of LMN Ltd want to purchase shares of its Holding Company XYZ Ltd. In light of the provisions contained in companies Act, 2013 you are required to advice the Directors of LMN Ltd on the said issue.

Solution:

Section 19

Question 4.

CVV Pvt. Ltd (OPC) has had an average Annual of turnover of 2.5 crores in the preceding 3 financial years. In light of the provisions contained in the companies Act, 2013 what is the legal implication of the above situation.

Solution:

CVV Pvt. Ltd. May voluntarily convert into Private or Public company but There is NO need for any compulsory conversion

Question 5.

Fgh Ltd. Is a newly incorporated Company however this company has NO Common Seal of its own. In light of the provisions contained in the companies Act, 2013. Is common seal compulsory for a company?

Solution:

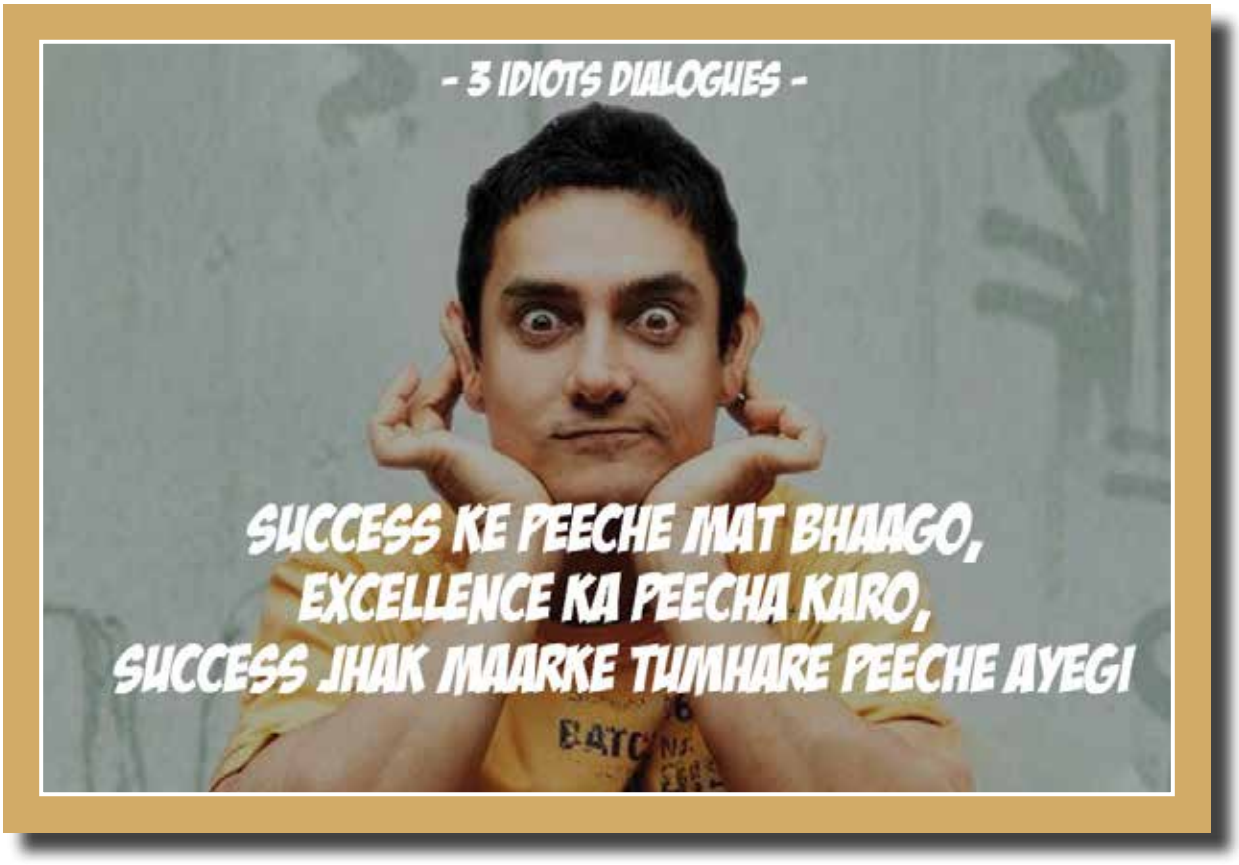
Common Seal is optional

Question 6.

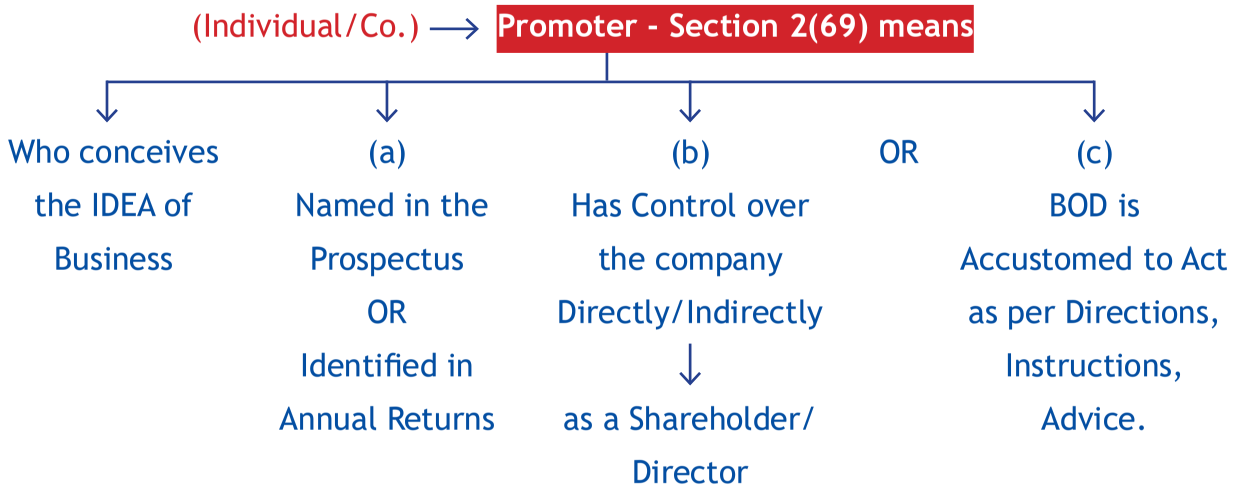
Asd Bank Ltd. Is a banking Company set up under the Banking regulations Act, 1949. The promotors of the said bank seek your advice whether they are supposed to follow the provisions of the companies Act, 2013 also?

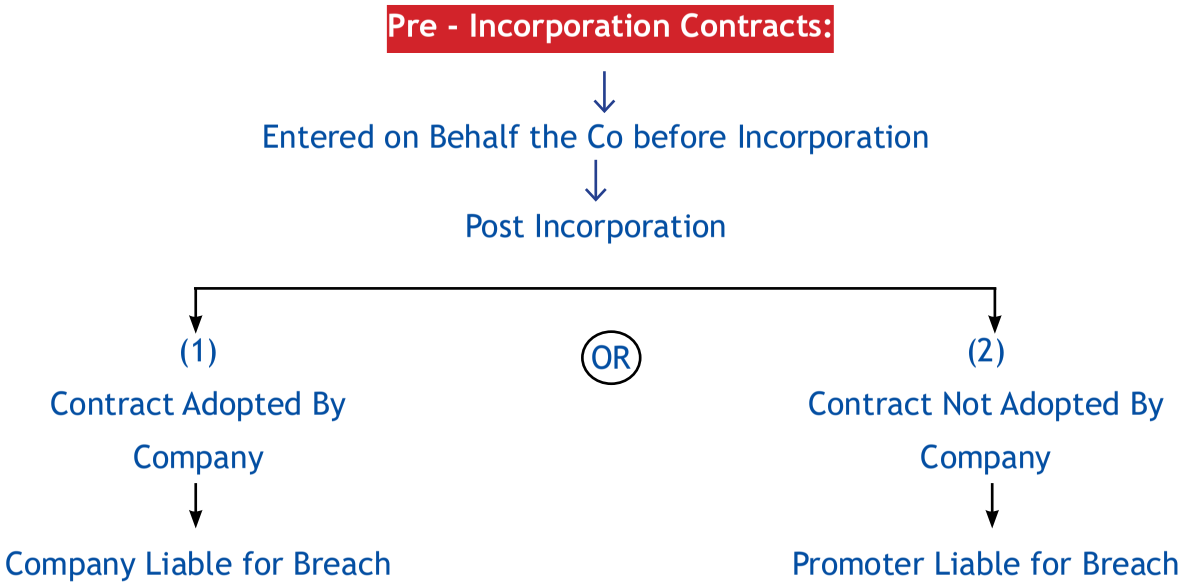
Solution:

Yes as per Section 1 of companies Act, 2013.


- 3 IDIOTS DIALOGUES -
SUCCESS KE PEECHE MAT BHAAGO,
EXCELLENCE KA PEECHA KARO,
SUCCESS JHAK MAARKE TUMHARE PEECHE AYEGI

02 INCORPORATION OF COMPANY AND MATTERS INCIDENTAL THERETO


(Individual/Co.)
Promoter - Section 2(69) means
Who conceives the IDEA of Business
(a) Named in the Prospectus OR Identified in Annual Returns
(b) Has Control over the company Directly/Indirectly
as a Shareholder/ Director
OR
(c) BOD is Accustomed to Act as per Directions, Instructions, Advice.


Pre - Incorporation Contracts:
Entered on Behalf the Co before Incorporation
Post Incorporation
(1)
Contract Adopted By Company
Company Liable for Breach
OR
(2)
Contract Not Adopted By Company
Promoter Liable for Breach

Incorporation of company Section 7

"Procedure of incorporation" → 8 steps
"Procedure of incorporation" → 7 submission of documents

1st Selection of type of company

1. Pub. Co. OR
2. Pvt. Co. OR
3. OPC OR
4. Sec 8 Co. OR
5. Nidhi Co.

All other type of company are only status and cannot be incorporated.

2nd Preliminary requirement regarding 1st director

- Every director to have a DIN.
- Atleast 1 director to have DSC.

3rd Reservation of name

File e-form RUN (reserve unique name) + Rs. 1000/- fees

Maximum 6 names.

Registrar to reserve the name for 20 days.

After 20 days documents not filed, name shall lapse.

1. Registered agreement of purchase. OR
2. Notarized rent agreement. OR
3. Authorization letter from owner. AND
4. Latest 2 months utility bills.
5. There shall be attached to Form INC-22 the list of all other companies with their CIN, if any, having the same unit/ tenement/premises as their registered office address.

4th Preparation of MOOA/AOA

Printing of MOA/AOA from Schedule I

TABLE A - MOA
TABLE F - AOA

1. MOA+AOA duly signed by all subscribers to MOA (1st shareholders)
2. Declaration in INC-9: subscriber + All directors -No conviction in 5 years.
3. Declaration in INC-8: by Advocate/ CA/CS/CWA

+

Director/Manager/Secretary That all requirement of incorporation is complied with.

4. DIR-12: All subscriber + All 1st Director - PAN + Passport (DIN)
5. DIR-12 : First director consent + interest in other firm/body corporate.
6. Address for correspondence.
7. INC-22: Verification of registered office.

5th Filing of document with ROC

OPC - INC -2
Other Co. - INC -7

Within 20 days of name reservation.

6th COI + CIN

ROC to grant INC-11 within 7 days.

1. COI does not legalize any illegal object clause.
2. Date on COI & not date of signing by registrar to be considered for incorporation.

7th Effect of registration

SECTION 9

On registration subscribers become members an all features of Co. become applicable.

8th Commencement of business

SECTION 10A

A co. with share capital shall not commence business unless:

1. Shares purchase by subscribers are fully paid.(within 180 days)

AND

2. Verification by filing INC -22 As per section 12 within 30 days

If not complied then

1. Co. to pay penalty - 50,000/-
2. Every Officer - 1000 per day, Maximum - 1,00,000.
3. ROC to strike off name.

Effect of Furnishing False/ Incorrect Information - Section 7

Furnishing false/ Incorrect Information OR Suppression of Material facts:

During Incorporation

Any person Found Liable

Penalty u/s 447

After Incorporation

Promoter, Director, Person who has Filed Documents with ROC

Penalty u\s 447

AND

On Application to NCLT following order:

i. Regulation of management of co, Alter MOA/AOA

OR

ii. Direct Liability of members to be Unlimited

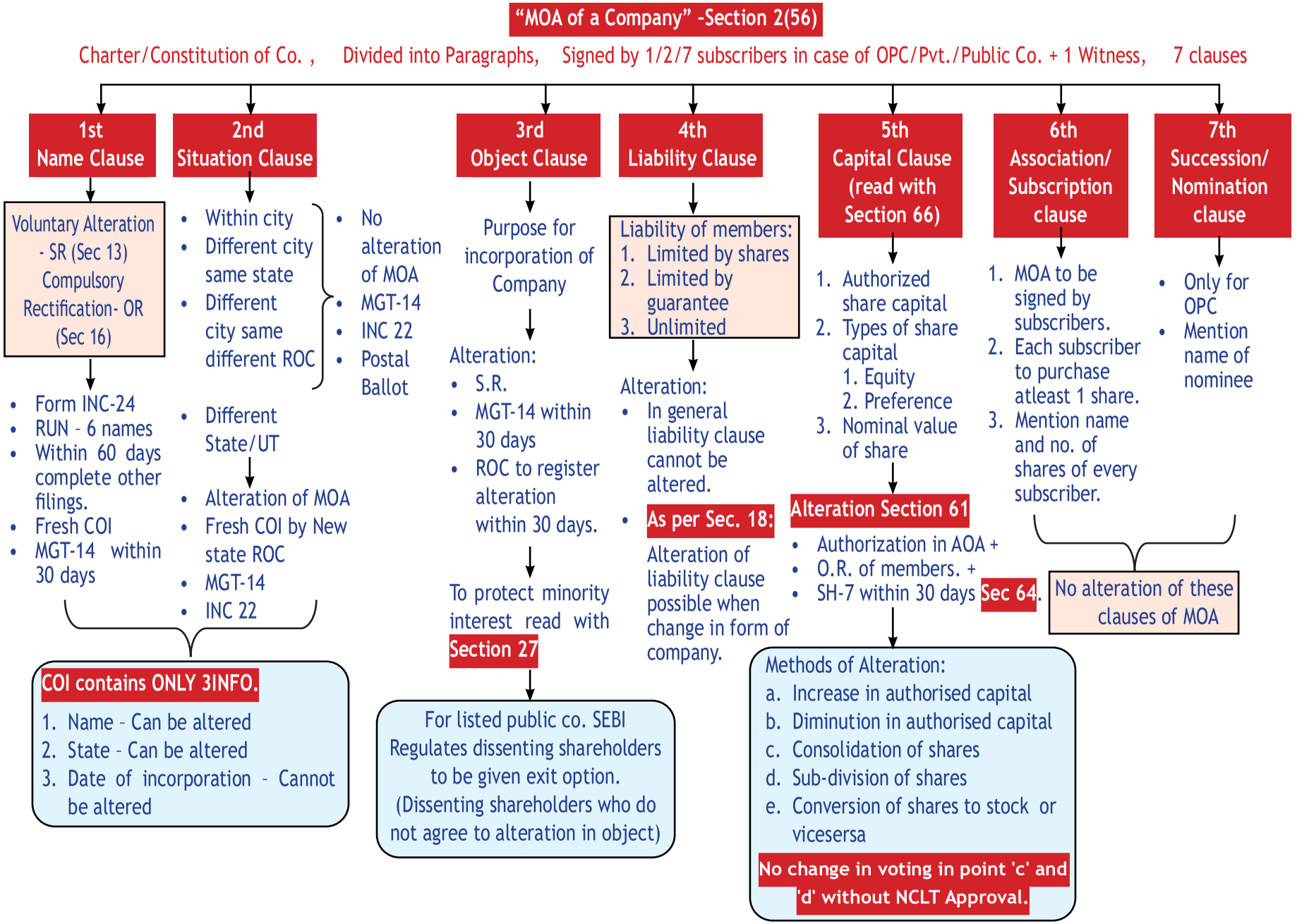
OR

iii. Removal of Name of Co from ROC.

OR

iv. Winding up of Co.

Subject to OOBH by NCLT


"MOA of a Company" -Section 2(56)
Charter/Constitution of Co. , Divided into Paragraphs, Signed by 1/2/7 subscribers in case of OPC/Pvt./Public Co. + 1 Witness, 7 clauses
1st Name Clause
Voluntary Alteration - SR (Sec 13) Compulsory Rectification- OR (Sec 16)
Form INC-24
RUN - 6 names
Within 60 days complete other filings.
Fresh COI
MGT-14 within 30 days
2nd Situation Clause
Within city
Different city same state
Different city same different ROC
No alteration of MOA
MGT-14
INC 22
Postal Ballot
Different State/UT
Alteration of MOA
Fresh COI by New state ROC
MGT-14
INC 22
COI contains ONLY 3INFO.
1. Name - Can be altered
2. State - Can be altered
3. Date of incorporation - Cannot be altered
3rd Object Clause
Purpose for incorporation of Company
Alteration:
S.R.
MGT-14 within 30 days
ROC to register alteration within 30 days.
To protect minority interest read with Section 27
For listed public co. SEBI Regulates dissenting shareholders to be given exit option. (Dissenting shareholders who do not agree to alteration in object)
4th Liability Clause
Liability of members:
1. Limited by shares
2. Limited by guarantee
3. Unlimited
Alteration:
In general liability clause cannot be altered.
As per Sec. 18:
Alteration of liability clause possible when change in form of company.
5th Capital Clause (read with Section 66)
1. Authorized share capital
2. Types of share capital
1. Equity
2. Preference
3. Nominal value of share
Alteration Section 61
Authorization in AOA +
O.R. of members. +
SH-7 within 30 days Sec 64.
Methods of Alteration:
a. Increase in authorised capital
b. Diminution in authorised capital
c. Consolidation of shares
d. Sub-division of shares
e. Conversion of shares to stock or vicesersa
No change in voting in point 'c' and 'd' without NCLT Approval.
6th Association/ Subscription clause
1. MOA to be signed by subscribers.
2. Each subscriber to purchase atleast 1 share.
3. Mention name and no. of shares of every subscriber.
No alteration of these clauses of MOA
7th Succession/ Nomination clause
Only for OPC
Mention name of nominee

Reduction of share capital - Section 66
"AND REDUCED" written in B/s

Face value = Rs. 10 Paid-up value = Rs. 7 Unpaid value = Rs. 3 Reduced FV = Rs. 6 *(partly paid-up)*	Face value = Rs. 10 Paid-up value = Rs. 10 Sacrifice value = Rs. 3 Reduced FV = Rs. 7 *(Fully paid-up)*	Face value = Rs. 10 Paid-up value = Rs. 10 Loss of Asset = Rs. 1 Reduced FV = Rs. 9 *(Fully paid-up)*
Extinguish/ reduce liability on unpaid capital (Sec 66(1)(a))	Pay-off capital which is in excess of wants of co. Sec 66(1)(b)(ii)	Cancel paid-up share capital lost by available asset Sec 66(1)(b)(i)

Approvals:

1. S.R. of members + MGT-14 within 30 days.
2. NCLT Approval. **Sec 66(3)**
3. NCLT shall give notice to: **Sec 66(2)**
   a. CG
   b. Registrar (ROC)
   c. SEBI (in case of listed company)
   d. Creditors

To give representation to NCLT within 3 months

If no reply assumed, no objection

- Approval of NCLT to publish in newspaper. **Sec 66(4)**
- Approval of reduction to be delivered to ROC within 30 days. **Sec 66(5)**
- ROC to Register the reduction & Issue a Certificate.

Effect:

1. Nothing in this section shall apply to buy-back of its own securities by a company under section 68. **Sec 66(6)**
2. Member liable to the extent of reduced face value **Sec 66(7)**.
3. Where the name of any creditor entitled to object to the reduction of capital is, not entered on the list of creditors, and after such reduction, the company commits a default in respect of the amount of his debt or claim:
   (a) every member of the company, shall be liable to contribute to the payment of that debt or claim, an amount not exceeding the amount which he would have been liable to contribute if the company had commenced winding up; and
   (b) if the company is wound up, the Tribunal may settle a list of persons so liable to contribute, and make and enforce calls and orders **Sec 66(8)**
4. If any officer of the company-
   (a) knowingly conceals the name of any creditor entitled to object to the reduction;
   (b) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or
   (c) abets or is privy to any such concealment or misrepresentation as aforesaid, he shall be liable under section 447. **Sec 66(9)**

Difference between diminution of share capital and reduction of share capital:

Diminution of share capital(Sec 61)	Reduction of share capital (Sec 66)
1. Affects Authorised share capital	1. Affects Paid up share capital
2. Ordinary Resolution	2. Special Resolution
3. No NCLT Approval required	3. NCLT Approval required
4. Balance Sheet is not affected	4. Balance Sheet is affected
5. Interest of creditors is not affected	5. Interest of creditors is affected
6. The words “And reduced” are not be used	6. The words “And reduced” are to be used

Articles of Association (AOA):

Defined u/s 2(5)- AOA means AOA as originally formed & Altered from time to time as per Co. Act

① It is Bye - Laws/ rules/regulations

↓

Which Govern Internal Affairs & Conduct of Business

↓

Made for Insiders:

1. BOD
2. Employees
3. Existing Shareholders

② as per Schedule I

↓

Table F Co-Limited by Shares

③ Section 5

↓

Entrenchment Provision

↓

To make the Existing Provisions of Co. Law more Strict for your Co.

↓

1. On Incorporation OR
2. Subsequently by Alteration of AOA:-
   Pub Co. 75% votes
   Pvt. Co. 100% votes

④ Section 6

↓

Co. Act to override MOA

↓

MOA to override AOA

⑤ Section 10

↓

Effect of Registration of MOA & AOA

↓

On Registration MOA & AOA are Like contract which Bind Co. & members

↓

However, Nothing written in MOA/AOA can bind a Co against outsiders

↓

For that outsider needs to have separate contract with the Co.
eg:- Law Officer.

⑥ Section 14

↓

Alteration of AOA

↓

By Special resolution AND MGT-14 within 30 days

↓

Altered copy of AOA to by filed with ROC in 15 days

⑦ Section 14

↓

Limitation on Alternation of AOA:

↓

1. AOA must Not Conflict with MOA
2. It must Not be inconsistent with provisions of Co. Act / other Law.
3. It must be Bonafide for Benefit of Co. as a whole.
4. Must Not be illegal/ Against Public Policy.
5. If cannot provide for Expulsion of members

⑧ Alteration to be Noted in every Copy - Section 15

↓

Every Alteration in MOA & AOA shall be Noted in every MOA/ AOA

↓

Default: Co & Every officer penalty of 1000/- for every copy

Doctrines

Ultra Virus

Beyond the power of:

Already done transaction	Future transaction
• Transaction void. • Co. (members) can't ratify. • Directors/ officers personally liable	• Transaction valid if MOA/ AOA altered. • Company can ratify. • Company liable for transaction.

Ashbury Railway Co. Ltd. V/s Riche

- Directors entered into a ultra virus contract.
- Company cannot ratify.
- Directors personally liable.

Constructive Notice

Outsider supposed to know

MOA AOA

- Protect Co. against outsider.
- Dark cloud for outsider.

Indoor Management

Outsider entering into contract with Co. supposed to know

MOA AOA

- Outsiders to assume compliance by AOA by Co.
- Protects outsiders against company
- Silver lining for outsider.

Royal British Bank v/s Turquand

Turquand gave money & purchased bonds without checking AOA compliance but won the case & landmark doctrine established.

Exceptions:

1. Knowledge of irregularity.
2. Negligence.
3. Forgery.

PROMOTER

Meaning: A promoter is a one (i.e. individual firm, company etc.) who performs the preliminary duties necessary to bring the company into being and float it, i.e. who brings the company into existence. He conceives the idea, develops it and induces others to join the enterprise. The promoter originates the scheme for the formation of a company, gets together the subscribers to the memorandum, gets the memorandum and articles prepared, executed and registered; finds the bankers, brokers and legal advisers, finds the first directors, settles the terms of preliminary contracts with vendors and makes arrangement for preparation, advertisement and circulation of the prospectus and placement of the capital.

Definition: The term "Promoter" under section 2(69) means a person

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.

A person who merely acts in a professional capacity on behalf of the promoter, such as a solicitor or an accountant and who is paid by him is not a promoter.

PRE — INCORPORATION / PRELIMINARY / PROMOTERS' CONTRACT

- 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.

- 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. The promoters alone, therefore, remain personally liable for any contract they purport to make on behalf of the company unless company adopts the contract after its incorporation.

INCORPORATION OF COMPANIES
[SECTION 7 READ WITH COMPANIES (INCORPORATION) RULES, 2014]

Following is the procedure, in brief, for the incorporation of a company:-

I. Selection of the type of company: The promoters of a company may however select the type of a company as they wish to form themselves into viz, One person company, private company, public company, non-profit company, etc.

II. Preliminary Requirements:

All the directors of the proposed company must ensure that they are having Director's Identification Number (DIN). Out of all the directors of the proposed company, atleast one director should have digital signature to digitally sign the incorporation and other related documents.

III. Reservation of Name:

Any of the promoters should apply to the Registrar of Companies (ROC) regarding the reservation of name. While applying, the following points should be kept in mind:-

1. He should apply in e-Form No. RUN(Reserve Unique Name) along with the fees of ₹ 1,000/-, as prescribed in the Companies (Registration Offices and Fees) Rules, 2014.

2. Maximum of six proposed names can be given in order of preference.
   - Upon receipt of an application, the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of 20 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 60 days from the date of approval.
   - After 20/60 days, if documents for incorporation are not filed with the Registrar, the reservation made by the Registrar shall lapse automatically.

IV. Preparation of the Memorandum of Association and Articles of Association:

Drafting of the MOA and AOA is generally a step subsequent to the reservation of name made by the Registrar. MOA and AOA shall be in the respective forms as specified in Schedule -1. These two documents are basically the charter and internal rules and regulations of the company. Therefore, it must be drafted with utmost care and with the advice of the experts and the ancillary clause for attainment of the main object clause should be drafted in a very broader sense.

V. Filing of the documents with the Registrar of Companies:

An application shall be filed, with the Registrar of Companies within whose jurisdiction the registered office of the company is proposed to be situated, in Form No. INC.2 (for One Person Company) and Form no. INC.7 (other than One Person Company) along with the following documents, along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 for registration of a company, within 20 days from the date of intimation regarding the reservation of name :-

(a) The memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as prescribed under the Companies (Incorporation) Rules, 2014;

(b) a declaration in the prescribed Form INC.8 by an advocate or chartered accountant or cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made there under in respect of registration and matters precedent or incidental thereto have been complied with;

(c) a declaration in Form INC-9 by each of the subscribers to the memorandum and by all the persons named as the first directors, if any, in the articles that they are not convicted of any offence in connection with the promotion, formation or management of any company, or that they has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of their knowledge and belief;

(d) Certain prescribed particulars of every subscriber to the memorandum along with proof of identity; the particulars of the persons mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity in the prescribed Form DIR-12;

(e) The particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company in the Form DIR-12 along with the fee as per Companies (Registration Offices and Fees) Rules, 2014;

(f) The address for correspondence till its registered office is established;

(g) e-Form INC-22 for verification of the location of the registered office, along with the following documents:

(i) Registered document of the title of the premises of the registered office in the name of the company; or

(ii) Notarized copy of lease/rent agreement in the name of the company along with a copy of rent paid receipt not older than one month; or

(iii) 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; and

(iv) 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/document as the case may be which is not older than 2 months.

There shall be attached to Form INC-22 the list of all other companies with their CIN, if any, having the same unit/tenement/premises as their registered office address.

It may be noted that as per Section 12, a company must have its registered office within 30 days of its incorporation and hence Form INC-22 can also be filed at a later stage rather than at the time of incorporation.

VI. Certificate of Incorporation and allotment of Corporate Identity Number:

- If the Registrar of Companies is satisfied that everything has been complied with in regard to incorporation of companies, he shall issue a certificate of incorporation in Form No. INC.11, normally within 7 days of the receipt of documents, to the company signed & dated under his hand. The date of registration of a company is the date mentioned in the certificate and not that date on which the signature of the Registrar was written.
- The validity of the registration cannot be challenged after the issue of certificate of incorporation. But that does not mean that COI legalizes the illegal object mentioned in the memorandum. In fact, it is for the incorporation only that the certificate is made conclusive evidence by the legislature.
- On and from the date mentioned in the certificate of incorporation, the Registrar shall allot to the company a Corporate Identity Number, which shall be a distinct identity for the company and which shall also be included in the certificates.

VII. Effect of Registration [Sec. 9]:

From the date of incorporation mentioned in the certificate of incorporation, such subscribers to the memorandum and all other persons, as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable of exercising all the functions of an incorporated company under this Act and having perpetual succession [*] with power to acquire, hold and dispose of property, both movable and immovable, tangible and intangible, to contract and to sue and be sued, by the said name.

VIII. Commencement of Business [Sec. 10A]:

(1) A Company incorporated after the commencement of Companies (Amendment) Act, 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 company in such form and verified in such manner as maybe prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration

(b) The company has filed with registrar a verification of its registered office as provided in section 12

(2) If any default is made in complying with the requirements of this section the company shall be liable to a penalty of 50,000 and every officer who is in default shall be liable to a penalty of 1000 for each day during which such default continues but not exceeding an amount of 1,00,000

(3) Where no declaration has been filed with the registrar under clause (a) of sub-section (1) within a period of 180 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, without prejudice to the provisions of sub-section (2), initiate action for the removal of the name of the company from the registrar of companies under Chapter XVIII

SIMPLIFIED PROFORMA FOR INCORPORATING COMPANY ELECTRONICALLY (SPICe)

The Ministry of Corporate Affairs has taken various initiatives for ease of business. MCA has simplified the process of filing of forms of incorporation of company through Simplified Proforma for Incorporating Company ELECTRONICALLY (SPICe)

EFFECT OF FURNISHING OF FALSE OR INCORRECT INFORMATION OR SUPPRESSION OF MATERIAL FACT [Section 7]

Furnishing of false or incorrect information or suppression of material fact at the time of incorporation (i.e. during incorporation process)

↓

If any person furnishes any false or incorrect particulars of any information or suppresses any material information, of which he is aware in any of the documents filed with the Registrar in relation to the registration of a company, he shall be liable for action for fraud under section 447.

Furnishing of false or incorrect information or suppression of material fact or representation or by suppressing any material fact (i.e. post incorporation)

↓

1. The promoters, the persons named as the first directors of the company and the persons making declaration under this section shall each be liable for action for fraud under section 447.

2. Order of the Tribunal:

The Tribunal may, on an application made to it, on being satisfied that the situation so warrants—

(i) Pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or

(ii) Direct that liability of the members shall be unlimited; or

(iii) Direct removal of the name of the company from the register of companies; or

(iv) Pass an order for the winding up of the company; or

(v) Pass such other orders as it may deem fit:

Provided that before making any order,—

(i) The company shall be given a reasonable opportunity of being heard in the matter; and

(ii) The Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

MEMORANDUM OF ASSOCIATION

Definition and Meaning of Memorandum: Section 2(56) of the Companies Act, 2013.	"Memorandum" means memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous companies' law or of this Act.

➢ The memorandum of association is a document, which contains the fundamental provisions of the company's constitution. It defines as well as confines the powers of the company. It not only shows the objects of formation but also determines the utmost possible scope of its operations beyond which its action cannot go.

Purpose of Memorandum:	The purpose of memorandum is two-fold. 1. The Prospective shareholder who contemplates the investment of his savings, should know the field in, or the purpose for which it is going to be used and what risk he is taking in making the investment. 2. Outsiders or Creditors dealing with the company will know without reasonable doubt whether the contractual relation into which he contemplates entering with the company is one relating to a matter within its corporate objects.

Form of Memorandum [Section 4]:	• **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.

Printing and Signing of Memorandum [Section 4]: The memorandum of association must be

a. Printed,

b. Divided into paragraphs, numbered consecutively and Signed by each subscriber (7 in the case of a public company; 2 in the case of a private company and 1 in the case of OPC) in the presence of at least one witness who shall attest the signatures of the subscribers.

Both artificial and natural persons can subscribe to memorandum.

Contents of Memorandum: Section 4 of the Companies Act provides that the memorandum of association of every company must contain the following clauses:-

1. Name Clause
2. Situation or Registered Office Clause
3. Objects Clause
4. Liability Clause
5. Capital Clause (only in the case of a company having a share capital)
6. Association Clause/Subscription Clause
7. Succession Clause (only in the case of OPC)

NAME CLAUSE

1. The first clause in the memorandum must state the name by which a company is known.
2. It may be noted that the name of a company shall not be identical with or too nearly resembles the name of an existing company.
3. It further provides that no company shall have a name which, in the opinion of the Central Government, is undesirable.
4. The name should not be such that its use by the company will constitute an offence under any law.
5. The object is to prevent the use of name likely to mislead the public. For example, a company will not be allowed to use a name, which is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950.
6. Unless the previous approval of the Central Government is obtained, a company shall not be registered with a name which contains any word or expression which suggest of any connection with Government or of State patronage or which contain such word or expression, as may be prescribed.

Change of Name [Section 13] :

- The name of the company can be changed by a special resolution and with the written approval of the Central Government.
- The powers of the Central Government for approving change in the name have been delegated to the Registrar of Companies.
- Approval of the Central Government is not necessary if the change relates to the addition/ deletion of the word 'private' to the name.
- Form MGT.14 shall be filed to the Registrar of Companies within 30 days of passing the special resolution. Further, a copy of the approval of the Central Government shall also be filed with ROC.
- Because of the aforesaid reasons, for adopting the new name, the company shall have to follow the same procedure as is applicable for reservation of name at the time of incorporation of a company.
- 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 60 days from the date of approval

Rectification of Name (Sec. 16)

16(1)(a) Central Government gives directions to the company suomoto to rectify its name if in its opinion, the name registered is identical with or too nearly resembles the name, by which a company in existence has been previously registered.

↓

The company- shall change its name within a period of 3 months from the issue of such directions after passing an ordinary resolution.

16(1)(b) The registered proprietor of a trade mark that the name is identical with or too nearly resembles to an existing trade mark makes an application to Central Government.

↓

Central Government gives directions to company to rectify the name on the basis of application received

↓

The company- shall change its name within a period of 3 months from the issue of such directions after passing an ordinary resolution.

Companies Amendment Act, 2020

A registered trade mark owner has to file an application to the Central Government for rectification of name which is similar to name of its trade mark within 3 years of incorporation of company or change of name.

16(2) Where a company changes its name or obtains a new name, 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.

16(3) If a company is in default in complying with any direction given under sub-section (1), the Central Government shall allot a new name to the company in such manner as may be prescribed and 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, which the company shall use thereafter: Provided that nothing in this sub-section shall prevent a company from subsequently changing its name in accordance with the provisions of section 13."

Companies Amendment Act, 2020

It may be noted that whenever there is a change in the name of accompany because of any reason whatsoever, the new name becomes effective, only after the issue of revised or fresh certificate of incorporation by the ROC.

SITUATION OR REGISTERED OFFICE CLAUSE

The name of the State in which the registered office of the company is to be situated must be given in the memorandum. But the exact address of the registered office is not required to be stated therein.

As per Section 12, a company shall, on and from the 30th day of its incorporation, shall have a registered office.

The company shall furnish to the Registrar verification of its registered office within a period of 30 days of its incorporation.

Methods of shifting of Registered Office within same state:

Change within the local limits of same town [Sec. 12]:

A company can change its registered office from one place to another within the local limits of the city, town or village, where it is situated by passing a Board Resolution.

Form No. MGT.14 shall be filed to the Registrar of Companies within 30 days of passing the BOARD resolution.

↓

A notice of the change is to be given to the Registrar of Companies in Form INC.22 within 30 days of such change.

This change of registered office does not involve alteration of memorandum.

Change from one city to another within the same State and which does not involve the change of jurisdiction of Registrar of Companies, [Sec. 12]:

↓

A special resolution has to be passed in the general meeting of the company. The special Resolution shall be passed by Postal Ballot in case of public company.

↓

Form No. MGT.14 shall be filed to the Registrar of Companies within 30 days of passing the special resolution.

Also within 30 days of the change of the registered office, a notice to the Registrar should be given of the new location of the office in Form No. INC.22.

This change of registered office also does not involve alteration of memorandum.

Change from one city to another within the same State involving change of jurisdiction of Registrar of Companies [Sec. 12]:

A special resolution has to be passed in the general meeting of the company.

↓

Apply to Regional Director for approval

↓

Regional Director shall communicate within a period of 30 days from the date of receipt of application

↓

The company shall file the confirmation with the Registrar within a period of 60 days of the date of confirmation

↓

ROC shall register the same and certify the registration within a period of 30 days from the date of filing of such confirmation.

↓

Form No. MGT.14 shall be filed to the Registrar of Companies within 30 days of passing the special resolution.

↓

Also within 30 days of the change of the registered office, a notice to the Registrar should be given of the new location of the office in Form No. INC.22.

This change of registered office also does not involve alteration of memorandum.

Change from one State to another State [Sec.13]

Step 1. A special resolution has to be passed in the general meeting of the company.

↓

Step 2. Apply to Central Government for approval

↓

Step 3. Central Government shall communicate within a period of 60 days from the date of receipt of application

The Central Government, 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 the sufficient provision has been made by the company either for the due discharge of all its debt and obligations or that adequate security has been provided for such discharge.

↓

Step 4. File following documents with Registrar of both states:

a) A certified copy of the order of the Central Government approving the alteration for change.

b) Altered copy of MOA

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Step 5. The ROC of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indication the alteration.

↓

Step 6. Also Form No. MGT.14 shall be filed to the Registrar of Companies within 30 days of passing the special resolution. Also within 30 days of the change of the registered office, a notice to the Registrar should be given of the new location of the office in Form No. INC.22.

Step 7. This change of registered office INVOLVES alteration of memorandum.

Important Judgments

A State Government cannot oppose shifting of the registered office of a company from one state to another on the ground that by this change the State would be deprived of its revenue. The question of loss of revenue to one state would have to be considered in the context of total revenue of the Republic of India and in the interest of the country as a whole.

It was held that employees' union, which is a registered body and which represents quite a

number of the employees employed at a registered office of the company, has the right to appear and to oppose the application made to the Central Government u/s 13 on the ground that their interests would be likely to be prejudicially affected if such special resolution would be confirmed by the Central Government

Alteration noted in every copy [Section 15]

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.

OBJECT CLAUSE

It determines the purpose and the capacity of the company. It indicates the purpose for which the company has been set up and its actual capability, besides its sphere of activities.

The object clause of memorandum shall state "the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof".

The subscribers to the memorandum of association enjoy almost unrestricted freedom to choose the objects. The only restriction is that objects should not be illegal and against the provisions of the Companies Act, 2013.

Alteration of Object Clause (Section 13)

A special resolution has to be passed in the general meeting of the company. The special Resolution shall be passed by Postal Ballot in case of public company.

↓

Form No. MGT.14 shall be filed to the Registrar of Companies within 30 days of passing the special resolution + Altered Memorandum

↓

The ROC shall register the same and certify the registration under his hand within 30 days from the date of filing of such documents. The effective date of alteration of object clause is the date when the Registrar of Companies registers the alteration.

Read with Section 27 (Listed Public Company Only)

To protect the minority interest, restriction has been imposed on the change of object clause. Now 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 object for which it raised the money through prospectus unless:

(i) a special resolution is passed by the company,

(ii) An exit option is given to the dissenting shareholders in terms of the regulations prescribed by SEBI and

(iii) Prescribed details are published in one English and one vernacular language newspapers which is in circulation at a place where registered office of the company is situated and also placed on company's website indicating justification for such change.

LIABILTY CLAUSE

The fourth clause of memorandum of every company must state whether the liability of its members is limited by shares or limited by guarantee or is unlimited.

In a company limited by shares, no member can be called upon to pay more than what remains unpaid. If his shares are fully paid-up, his liability is nil.

In a company limited by guarantee, the liability clause will state the amount, which each member should undertake to contribute to the assets of the company in the event of liquidation of the company. He cannot be called upon to pay anything before the company goes into liquidation.

In an unlimited company, the clause shall specify that the liability of members is unlimited and can extend to personal assets of the members.

Alteration of Liability Clause

In general, liability clause of a company cannot be altered.

However, Section 18 permits a company of any class registered under this Act to convert itself in some other class of company by altering its memorandum and articles of association.

By using these provisions, if an unlimited company gets converted into a limited company or vice-versa, the liability of the members will be changed and thereby leading to alteration of liability Clause of memorandum.

CAPITAL CLAUSE(ONLY IN THE CASE OF A COMPANY HAVING A SHARE CAPITAL):

This clause must state the amount of the capital with which the company is registered.

The shares into which the capital is divided must be of fixed value, which is commonly known as the nominal value of the share.

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

Power of Limited Company to alter its share capital (Section 61)

(1) A limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to-

(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.

(2) The cancellation of shares under sub-section (1) shall not be deemed to be a reduction of share capital.

Noice to be given to Registrar for Alteration of share capital (Section 64)

(1) Where-

(a) A company has power to Alter its Capital Clause as per Section 61

(b) As per order of CG under Section 62 to Convert Debentures/Loans into Shares of a Company

(c) Redemption of Preference Shares as per section 55

Company Shall file with ROC form SH -7 within 30 days Along with Altered MOA

(2) Where any company fails to comply with the provisions of sub-section (1), such company and every officer who is in default shall be liable to a penalty of 500 rs for each day during which such default continues subject to a maximum of five lakh rupees in case of a company and one lakh rupees in case of an officer who is in default.

Companies Amendment Act, 2020

Reduction of share capital (Section 66)

(1) Subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by a special resolution, reduce the share capital in any manner and in particular, may-

(a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or

(b) either with or without extinguishing or reducing liability on any of its shares,-

(i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or

(ii) pay off any paid-up share capital which is in excess of the wants of the company, alter its memorandum by reducing the amount of its share capital and of its shares accordingly:

(2) The Tribunal shall give notice of every application made to it under sub-section (1) to the Central Government(Regional Director), Registrar and to the Securities and Exchange Board, in the case of listed companies, and the creditors of the company and shall take into consideration the representations, if any, made to it by that Government, Registrar, the Securities and Exchange Board and the creditors within a period of three months from the date of receipt of the notice:

(3) The Tribunal may, if it is satisfied that the debt or claim of every creditor of the company has been discharged or determined or has been secured or his consent is obtained, make an order confirming the reduction of share capital on such terms and conditions as it deems fit:

(4) The order of confirmation of the reduction of share capital by the Tribunal under sub-section (3) shall be published by the company in such manner as the Tribunal may direct.

(5) The company shall deliver a certified copy of the order of the Tribunal under sub- section (3) and of a minute approved by the Tribunal showing-

(a) the amount of share capital;

(b) the number of shares into which it is to be divided;

(c) the amount of each share; and

(d) the amount, if any, at the date of registration deemed to be paid-up on each share, to the Registrar within thirty days of the receipt of the copy of the order, who shall register the same and issue a certificate to that effect.

(6) Nothing in this section shall apply to buy-back of its own securities by a company under section 68.

(7) A member of the company, past or present, shall not be liable to any call or contribution in respect of any share held by him exceeding the amount of difference, if any, between the amount paid on the share, or reduced amount, if any, which is to be deemed to have been paid thereon, as the case may be, and the amount of the share as fixed by the order of reduction.

(8) Where the name of any creditor entitled to object to the reduction of share capital under this section is, by reason of his ignorance of the proceedings for reduction or of their nature and effect with respect to his debt or claim, not entered on the list of creditors, and after such reduction, the company commits a default, in respect of the amount of his debt or claim,-

every person, who was a member of the company on the date of the registration of the order for reduction by the Registrar, shall be liable to contribute to the payment of that debt or claim, an amount not exceeding the amount which he would have been liable to contribute if the company had commenced winding up on the day immediately before the said date;

(9) If any officer of the company-

(a) knowingly conceals the name of any creditor entitled to object to the reduction;

(b) knowingly misrepresents the nature or amount of the debt or claim of any creditor; or

(c) abets or is privy to any such concealment or misrepresentation as aforesaid, he shall be liable under section 447.

ASSOCIATION CLAUSE AND SUBSCRIPTION CLAUSE

In this clause, the persons (includes a body corporate) subscribing to the memorandum declare their desire to be formed into a company and agree to take the shares indicated opposite their respective names.

Following are the statutory requirements regarding subscription of memorandum:-

(i) The memorandum must be signed by each subscriber in the presence of at least one witness who must attest the signatures;

(ii) Each subscriber must take at least one share; if any and

(iii) Each subscriber must write opposite his name the number of shares (if any) which he agrees to take.

SUCCESSION CLAUSE (ONLY IN THE CASE OF OPC):

This clause shall state the name of the person who, in the event of the death of the subscriber, shall become the member of the company.

Any such change in the name of the person shall not be deemed to be an alteration of the memorandum as the whole process of alteration of memorandum is not required to be followed.

The above clauses are compulsory and are designated by the Companies Act as "conditions", on the basis of which alone a company is incorporated

ARTICLES OF ASSOCIATION

The articles 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 of a company are sub–ordinate to and are controlled by the memorandum of association. 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.

Definition and Meaning of Articles 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 in pursuance of any previous companies law or of this Act.

Form and Contents of Articles [Section 5]:	Schedule I **Table F = companies limited by shares;** Table G= is applicable to companies limited by guarantee and having a share capital; Table H = companies limited by guarantee and not having a share capital; Table I= unlimited companies and having a share capital; Table J = unlimited companies and not having a share capital.

Entrenchment Provision (New Provision in the Articles) [Section 5]

A new provision on entrenchment has been provided under the Companies Act, 2013 which provides that articles may contain provision for entrenchment to the effect that the specified provisions of articles can be altered only if the more restrictive conditions or procedures as compared to those applicable in case of special resolution are met or complied with.

Such provision for entrenchment in the articles shall only be made either at the time of formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company. It is further provided that the company shall give notice to the ROC of entrenchment provisions in the prescribed form.

Act to override Memorandum, Articles, etc. [Section 6]:

Section 6 provides that the provisions of the sections of Companies Act, 2013 shall have overriding effect over the provisions contained in memorandum and articles of the company, unless a particular section expressly provides otherwise. Any provision, contained in the memorandum or articles, which is contrary to the provisions of the Act, shall be void.

It may, however, be noted that the provisions of the articles will prevail over the provisions of the Act, provided they are more stringent or more strict than what is specified in the Act and that there is no inconsistency with the provisions of the Act.

For example, where the Act specifies that for a particular act an ordinary resolution is to be passed, but the articles specify for a special resolution, in such a case, provision of the articles will prevail.

Alteration of articles of association (Section 14)

Provisions for Alteration of Articles:

Section 14 of the Companies Act, 2013 provides that a company may, by passing a special resolution in the general meeting, alter its articles of association.

However, where articles are altered in such a way that it has the effect of converting a public company into a private company (i.e., the three restrictions of a private company are being added in the articles of a public company), then approval of the Central Government is also required, in addition to special resolution.

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 15 days.

Limitation on Alteration of Articles : Following are some of the limitation on power to alter articles of association :-

1. The articles must not exceed the powers given by the memorandum or conflict with its provisions.
2. It must not be inconsistent with any of the provisions of the Companies Act, 2013 or any other Statue/ Law.
3. The alteration must be bona fide for the benefit of the company as a whole.
4. The altered articles must not contain anything illegal or against public policy.
5. The articles cannot be altered in a way providing for expulsion of a member.

EFFECT OF MEMORANDUM AND ARTICLES OF ASSOCIATION (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.

But the memorandum and articles do not bind the company to the outsiders.

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

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 documents 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 or 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.

DOCTRINE

1. DOCTRINE OF ULTRA VIRES

- The meaning of the term 'ultra vires' is 'beyond the powers of. Anything which is outside the specified objects and powers or not reasonably incidental to or necessary for the attainment of objects of the company is ultra vires the company and therefore is void.
- An act, which is ultra vires the company, does not bind the company and neither the company nor the other contracting party can sue on it.
- An act which is ultra vires the company being void, cannot be ratified by the shareholders of the company.
- Sometimes, act which is ultra vires can be regularised by ratifying it subsequently. For instance, if the act is ultra vires the power of the directors, the shareholders can ratify it; if it is ultra vires the articles of the company, the company can alter the articles; if the act is within the power of the company but is done irregularly, shareholder can validate it.

Ashbury Railway Company Ltd. vs. Riche

Ashbury Railway Carriage and Iron Company Ltd's memorandum, clause 3, said its objects were "to make and sell, or lend on hire, railway-carriages " The directors entered into a contract with Riche to finance the construction of railway line. The shareholders later rejected the contract as ultravires.
The court held that the contract was ultravires and therefore null and void.

2. DOCTRINE OF CONSTRUCTIVE NOTICE

- When the memorandum and articles of association of a company are registered, they become public documents and are open to inspection by anyone on payment of nominal fee. Hence, every person dealing with the company is under an obligation to know the contents of these documents.
- Doctrine of "constructive notice" protects the company against the outsiders
- This Doctrine operates as dark cloud for the outsiders

3. DOCTRINE OF INDOOR MANAGEMENT

- While persons dealing with a company are presumed to have read the public documents and understood their contents and ascertain that the transaction is not inconsistent therewith, they are entitled to assume that the provisions of the articles have been observed by the officers of the company.

- It is no part of the duty of an outsider to see how the company carries out its own internal proceedings or indoor management. He can assume that all is being done regularly.
- The doctrine of indoor management, thus, imposes an important restrictions on the scope of doctrine of constructive "notice. While the doctrine of “constructive notice” seeks to protect the company against the outsiders, the principle of indoor management operates to protect the outsiders against the company.
- This doctrine is silver lining to doctrine of constructive notice

Royal British Bank v. Turquand

the directors of a banking company were authorized by the articles to borrow on bonds such sums of money as should from time to time by resolution of the company in general meeting, be authorized to borrow. The directors gave a bond to Turquand without the authority of any such resolution. The shareholders claimed that there had been no such resolution authorizing the loan and therefore it was taken without their authority. Once it was found that the directors could borrow subject to a resolution, Turquand had the right to conclude that the necessary resolution must have been passed.

It was held that Turquand could sue the company on the bond as he was entitled to assume that the necessary resolution has been passed.

- **Exceptions**: The doctrine of indoor management is subject to the following exceptions or limitations:-

1. Knowledge of irregularity: In case this ‘outsider’ has actual knowledge of irregularity within the company, the benefit under the rule of indoor management would no longer be available. In fact, he/she may well be considered part of the irregularity.
2. Negligence: If, with a minimum of effort, the irregularities within a company could be discovered, the benefit of the rule of indoor management would not apply. The protection of the rule is also not available where the circumstances company does not make proper inquiry.
3. Forgery: The rule does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery. A company can never be held bound for forgeries committed by its officers.

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.

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

(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-

- registered post, or
- speed post, or
- courier service, or
- leaving it at its registered office, or
- 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.

(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—

- Post, or
- registered post, or
- speed post, or
- courier, or
- by delivering at his office or address, or
- by such electronic or other mode as may be prescribed:

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

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.]

AUTHENTICATION OF DOCUMENTS, PROCEEDINGS AND CONTRACTS [SECTION 21]

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;

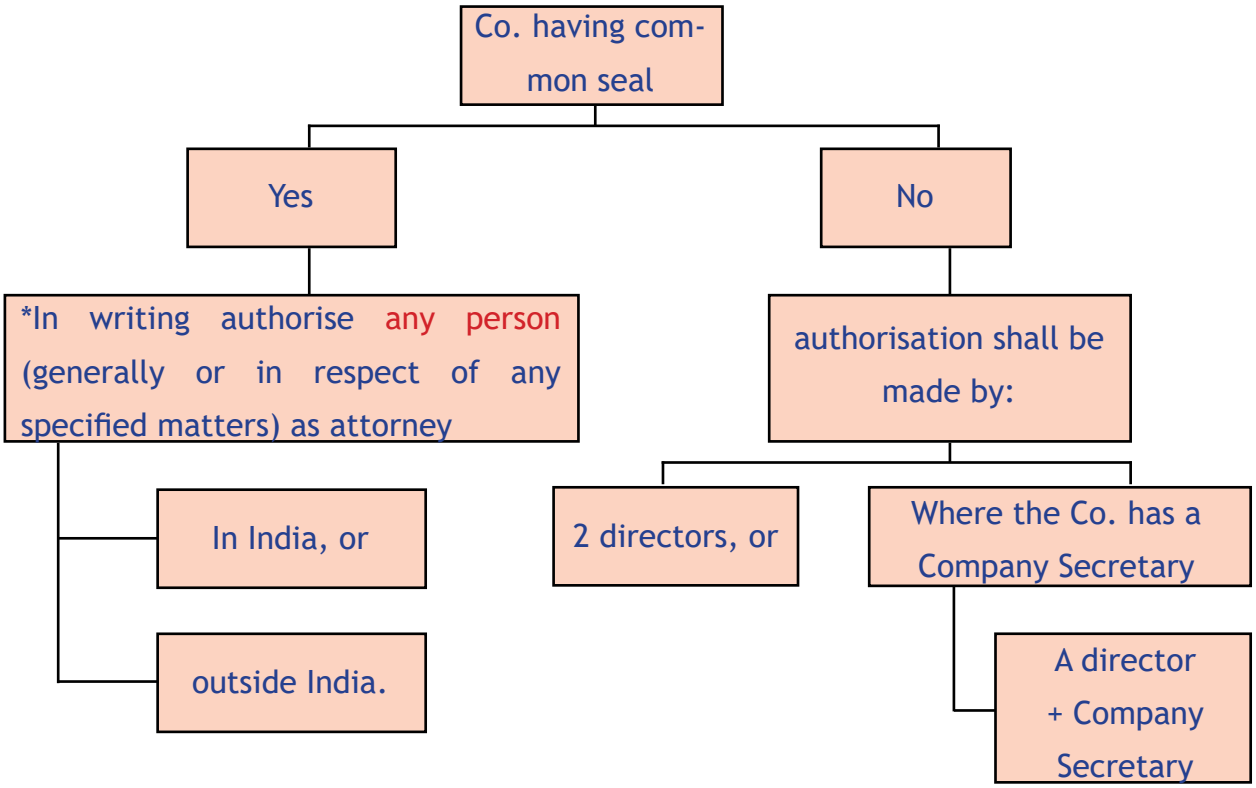
EXECUTION OF BILLS OF EXCHANGE, ETC. [SECTION 22]

(1) 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.

(2) A company may, by writing under its common seal, if any, authorise any person, either generally or in respect of any specified matters, as its attorney to execute other deeds on its behalf in any place either in or outside India.

However, in case a company does not have a common seal, the above authorisation shall be made by 2 directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary.

(3) A deed signed by such an attorney on behalf of the company and under his seal shall bind the company.



Question 1: (Nov. 2007)

Sunrise Limited submitted the documents for incorporation on 5th October, 2018. It was incorporated and certificate of incorporation of the company was issued by the Registrar on 20th October, 2018. The company on 14th October, 2018 entered into a contract which created its contractual liabilities. The company denies the said liability on the ground that company is not bound by the contract entered into prior to issuing of certificate of incorporation. Decide under the provisions of the Companies Act,
2013 whether the company can be exempted from the said contractual liability:

Solution:

The company is not bound by the contract entered into on 20.10.2018

- Since a pre-incorporation contract is not binding on the company, as the company was not in existence when such contract was entered into.
- Thus, the company is exempted from the said liability.

However, the company shall be bound by the contract entered into on 20.10.2018, if

- The company, after incorporation, has adopted the pre-incorporation contract in accordance with the provisions of Sec. 15 and 19 of Specific Relief Act, 1963.

Question 2: Nov. 2001, May, 2013

K Ltd. was in the process of incorporation. Promoters of the company signed an agreement for the purchase of certain furniture for the company and payment was to be made to the suppliers of furniture by the company after incorporation. The company was incorporated and the furniture was received and used by it. Shortly after incorporation, the company went into liquidation and the debt could not be paid by the company for the purchase of the above furniture. As a result supplier sued the promoters of the company for the recovery of money. Examine whether promotes can be held liable for the payment under the following situation:

1. When the company has already adopted the contract after incorporation?
2. When the company makes a fresh contract with the suppliers in substitution of pre-incorporation contract?

Solution:

1. If the company adopts the contract after incorporation

- The company shall be liable for the payment of furniture used by it;

2. If the company makes a fresh contract

- The answer shall remain same as in (i) above.

Question 3: May 2008, Nov 2003

Before the incorporation of the company, the promoters of the company entered into an agreement with Mr. Jainson to buy an immovable property on behalf of the company. After incorporation, the company refused to buy the said property. Advise Mr. Jainson whether he has any remedy under the provisions of the Companies Act?

Solution:

Mr. Jainson has no remedy against the company

- Since a pre-incorporation contract is not binding on the company, as the company was not in existence when such contract was entered into;
- Unless the company, after incorporation, has adopted the pre-incorporation contract in accordance with the provisions of Sec. 15 and 19 of Specific Relief Act, 1963.

Mr. Jainson may hold the promoters liable

- For any loss incurred by him, since if a pre-incorporation contract is not adopted by the company after incorporation, the promoters are personally liable.

Question 4: May 2013

The articles of association of a limited company provided that 'X' shall be the law officer of the company and he shall not be removed except on the ground of proved misconduct. The company removed him even though he was not guilty of misconduct. Decide, whether company's action is valid?

Solution:

Company's action is valid, and 'X' has no remedy against the company

- Since the memorandum and articles do not bind a company to the outsiders (Sec. 10);
- Since, unless 'X' proves a contract independent of the articles, he cannot enforce any right against the company as he has no right to rely on the articles
  (Eley v Positive Govt. Security Life Assurance Co.)

Question 5: Nov. 1997

The objects clause of the Memorandum of Association of the XYZ (Pvt.) Ltd. New Delhi, authorized to do trading in mangoes. The company, however, entered into partnership with Mr. A and traded in mangoes and incurred liabilities to Mr A. The company, subsequently , refused to admit the liability to 'A' on the ground of 'ultra vires' the Company'.

Advice whether stand of the company is legally valid and if so, gives reasons in support of your answer.

Solution:

The company is not liable to A

- since the partnership agreement for trading in mangoes is an ultra vires contract, and an ultra vires contract is void ab initio, and is not binding on the company or the other party;
- since the power to enter into partnership is not an ancillary or incidental power;
- since such power can be legally exercised by the company only if the object clause of memorandum expressly authorizes the company to enter into partnership.

Question 6: Nov. 2006

The principal business of XYZ Company Ltd. was the acquisition of vacant plots of land and to erect the houses. In the course of transacting the business, the Chairman of the Company acquired the knowledge of arranging finance for the development of land. The XYZ Company introduced a financier to another company ABC Ltd. and received an agreed fee of Rs. 2 lakhs for arranging the finance. The Memorandum of Association of the company authorizes the company to carry on any other trade or business which can in the opinion of the board of directors, be advantageously carried on by the company in connection with the company's general business. Referring to the provisions of the Companies Act, examine the validity of the contract carried out by XYZ Company Ltd. with ABC Ltd.

Solution:

Arranging finance or financer is an ultra vires act.

- since it falls outside the object clause of memorandum;
- since an object contained in the object clause is not valid if authorizes the company to carry on any other trade or business which can be advantageously carried on by the company.

The contract entered into by the company is ultra vires

- since the company has no power to arrange finance or financer;
- since the board cannot take the defence that the memorandum authorizes the company to carry on any business which can be advantageously carried on in connection with company's present business (since, it is a 'specified purpose' given u/s 17 for alteration of object clause, but it cannot be the ground or basis for carrying on a business which is outside the object clause);
- Unless the memorandum is first altered by complying with the requirements of Sec. 17, and afterwards the business of arranging finance is carried on.

Question 7: May. 2010

The object clause of the Memorandum of Association of RST Limited authorizes it to publish and sell text-books for students. The company, however entered into an agreement with Q to

supply 100 laptops of worth Rs. 5 lac for resale purposes. Subsequently, the company refused to make payment on the ground that the transaction was ultra vires the company. Examine the validity of the company's refusal for payment to Q under the provisions of the Companies Act.

Solution:

The contract to purchase laptops

- is an ultra vires contract, and is therefore, void ab initio.

Q canot enforce the contract against RST Limited

- since the contract is ultra vires;
- since no party to an ultra vires contract has a right to sue.

The Court may order RST Limited to deliver back the laptops to Q

- if the laptops are still in the possession of the company;
- if the Court, applying the principle of equity, deems it fit considering the circumstances of the case.

Question 8: May. 2008

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

Solution:

The company is not liable for Rs. 35,000

- since, the benefit of doctrine of indoor management can be availed of only by an outsider who has no knowledge of any irregularity in the internal management of the company.

The liability of the company is limited to Rs. 10,000

- since the directors, having knowledge of the fact that the limit of borrowings specified under the articles would be exceeded, themselves lent Rs. 35,000 without the consent of the general meeting;
- since on the similar facts as in the given case, same decision was given in Howard v. Patent Ivory Manufacturing Company.

Question 9: Nov. 2016

The Articles of Association of XYZ Ltd. provides the Board of Directors has authority to issue bonds provided such issue is authorized by the shareholders by a necessary resolution in the general meeting of the company. The company was in dire need of funds and therefore,

it issued the bonds to Mr. X without passing any such resolution in general meeting. Can Mr. X recover the money from the company? Decide referring the relevant provisions of the Companies Act, 2013.

Solution:

The company is bound to Mr. X

- since the lender, Mr. X, had lent the money to the company assuming that the company was authorized to borrow money after obtaining authorization from the members in GM;
- since, on the same facts, the Court held in Royal British Bank v Turquand that the outsiders dealing with the company were not required to inquire into the internal management of the company, and the outsiders were entitled to assume that as far as internal proceedings of the company were concerned, everything had been done regularly (termed as doctorine of indoor management).

Question 10.

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

(ICAI Module, Nov'19 Mock Test)

Solution:

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

However, under Section 12, following procedure is to be followed:

1. A special resolution has to be passed in the general meeting of the company.
2. Apply to Regional Director for approval.
3. Regional Director shall communicate within a period of 30 days from the date of receipt of application.
4. The company shall file the confirmation with the Registrar within a period of 60 days of the date of confirmation.
5. ROC shall register the same and certify the registration within a period of 30 days from the date of filing of such confirmation.
6. Form No. MGT.14 shall be filed to the Registrar of Companies within 30 days of passing the special resolution.

7. Also within 30 days of the change of the registered office, a notice to the Registrar should be given of the new location of the office in Form No. INC.22.

Question 11.

The persons (not being members) dealing with the company are always protected by the doctrine of indoor management. Explain. Also, explain when doctrine of Constructive Notice will apply. (ICAI Module, Nov'18- 6 Marks)

Solution: Doctrine of Indoor Management

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

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

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

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

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

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

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

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

Question 12.

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

(ICAI Module, May'20 RTP)

Solution:

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

The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

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

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

Question 13.

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

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

(ICAI Module, Nov'19 RTP)

Solution:

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

(i) the details in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change;

(ii) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with SEBI regulations.

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

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

Question 14.

The Board of Directors of Sindhu Limited wants to make some changes and to alter some Clauses of the Articles of Association which are to be urgently carried out, which include the increase in Authorized Capital of the company, issue of shares, increase in borrowing limits and increase in the number of directors.

Discuss about the provisions of the Companies Act, 2013 to be followed for alteration of Articles of Association. (Nov'18 RTP)

Solution: Alteration in Articles of Association:

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

(1) Alteration by special resolution: 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.

(2) Filing of alteration with the registrar: Every alteration of the articles and a copy of the order of the Tribunal 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.

(3) Any alteration made shall be valid: Any alteration of the articles registered as above shall, subject to the provisions of this Act, be valid as if it were originally contained in

the articles.

(4) 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].

Question 15.

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

(May'19 Mock Test)

Solution:

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

However, under section 12 (5) of the Act which deals with the registered office of company, the change in registered office from one town or city to another in the same state, must be approved by a special resolution of the company. Further, presuming that the Registrar will remain the same in the above case, there will be no need for the company to seek the confirmation to such change from the Regional Director.

Homework

Question 16.

The Directors of Mars India Ltd. desire to alter capital clause of Memorandum of Association of their company. Advise them, under the provisions of the Companies Act, 2013 about the ways in which the said clause may be altered.

(Nov'19 Mock Test)

Solution:

Z Alteration of Capital: Under section 61(1) of the Companies Act, 2013, a limited company having a share capital may, if authorized by its Articles, alter its Memorandum in its general meeting to:

(i) increase its authorized share capital by such amount as it thinks expedient;

(ii) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares

However, 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.

(iii) convert all or any of its paid- up shares into stock and reconvert that stock into fully paid shares of any denomination

(iv) sub-divide the whole or any part of its shares into shares of smaller amount than is fixed by the Memorandum

(v) 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.

Further, under section 64, where a company alters its share capital in any of the above mentioned ways, the company shall file a notice in the prescribed form with the Registrar within a period of thirty days of such alteration or increase or redemption, as the case may be, along with an altered memorandum.

Question 17.

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

(May'20 Mock Test)

Solution: Doctrine of Indoor Management:

According to this doctrine, persons dealing with the company need not enquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association. Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner.

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

Thus,

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.

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

Question 18.

Mahima Ltd. was incorporated by furnishing false information. As per the Companies Act, 2013, state the powers of the Tribunal (NCLT) in this regard. (Nov'19- 5 Marks)

Solution:

Order of the Tribunal:

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

(a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or

(b) direct that liability of the members shall be unlimited; or

(c) direct removal of the name of the company from the register of companies; or

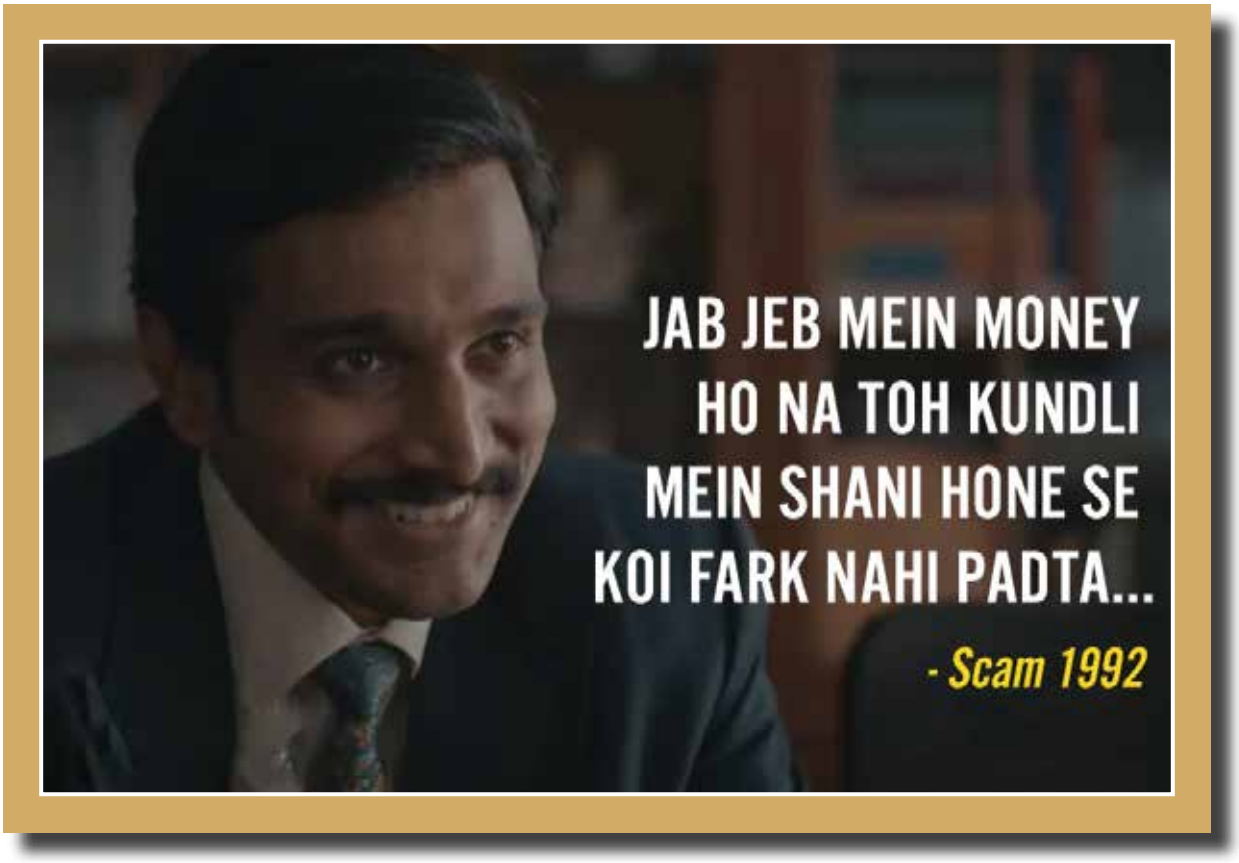
(d) pass an order for the winding up of the company; or

(e) pass such other orders as it may deem fit.

However before making any order-

(i) the company shall be given a reasonable opportunity of being heard in the matter; and

(ii) the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.



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