INCORPORATION OF COMPANY

26

sec: 3 to 22

6 to 10 Mark

concept 1
Incorporation

→ In General meaning of Incorporation is "Registration".

Promotor ⇒ Any person who conceives (Generation) of Idea — either Individual OR Body corporate/firm

↓

As per layman's language

⇒ Idea → Develop

⇒ Influence other person to join his idea.

⇒ Arrangement of capital

⇒ Find out Brokers, legal Advisor, chartered Accounts, Bankers or other professional which help in incorporating company.

⇒ A person who also executes preliminary contracts on behalf of company

Preliminary contracts = Promoter's contracts = Pre incorporation contracts

→ So, A company is a seperate legal entity But this status gained by company only after Incorporation.

→ Incorporation of company is to be carried out through the process of law.

→ So promoter is the person who brings the company in existence.

→ promoter $\xrightarrow{\text{executes}}$ MOA, AOA } ch : 1 & 2

promoter → circulate & publish } → prospectus → ch : 3

Concept 2
Promoter

→ Promoter is the person who Brings the company in existence.

→ promoter $\xrightarrow{\text{appoint}}$ First Directors

Definition sec: 2

Promoter means a person

who has been identified as promoter or named as promoter in Prospectus & Annual Return	who has control over the affairs of the company Directly Indirectly	on whose advice or instructions BOD of company Act

* special Note:-

Any person who acts in professional capacity to incorporate company on the behalf of promoter is not to be consider as promoter.

* ICAI special Note :-

promoter — only at time of incorporation
— after the incorporation

JKSC pvt. ltd. —Agreement→ Prasad sir
has control over the Affairs of JKSC pvt. ltd. (Indirect)
↓
Promoter

concept 3 :
preliminary contract / promoter's contract / Preincorporation contract
↓
Those contracts which are executed before before the incorporation of company by the promotors on the behalf of intending company (i.e. proposed)
↓
Now these contracts are Binding on company after corporation ?

YES

If company Adopts these preliminary contracts then company is liabile.

NO (General Rule)

Because at time of conclusion of contract company is not in excistance.

promoters are liable personally

Concept 4: Section: 7

procedure of incorporation

1. professional — CA, CS, CMA, Advocate } help to Incorporate company

2. Determine the type of Company.

3. www.mca.gov.in → SPICE

check Name avalibility
& Name Reserve

4. Draft MOA & AOA of company.

5. submit MOA & AOA to ROC

6. consent from the person who are appointed as first Directors of company.

7. submit Declaration
- Subscribers of MOA
- Directors of company
- professional who engage in incorporation of company.

8. Pay Fees with other particular Documents.

9. obtain COI (certificatio of Incorporation) from ROC

Promoters — for Incorporation of co. — ROC

Application | Documents & other Information as required | Fees

Application → INC-32 → SPICE

Documents & Information Required by ROC :-

(1) MOA, AOA → Electronic → E-MOA / E-AOA → INC-33 / INC-34

Duly signed by All subscribers → Digital signature

⇒ (i) Name
(ii) Address
(iii) occupation
(iv) Nationality

subscriber can be National or Foreign subscriber

National → Indian

FORMAT

Name of subscriber	No. of shares	Signature of subscriber	Signature of witness
Rohan	At least	R	common
vibhuti	on	vibhuti*	witness or
Aman	share	A	at least
	↓		one
	Association		witness to
	clause		verify
			signature

(2)

Subscriber

↓

Body corporate

↓

Sign

Director | Officer | Employee

On the behalf of co.

But such Director, officer or employee should not already subscriber of MOA.

For example,

→ XYZ pvt. Ltd
→ Name of shareholder

Name of shareholder	shares	sign
• Rohan	1000	R
• Reliance Ind. ltd	1000	R
• Vibhuti	1000	V

For example, Aman is Director of company, therefore, he can eligible to sign.

Director of company should not as Rohan or Vibhuti because they are already a subscriber.

(3) subscriber

↓

Partnership

↓

sign → But such partner should not be already subscriber of MOA.

↓

Any partner But after approval of all other partners

For example,

→ XYZ Pvt. Ltd.

Name of shareholders	shares	sign
• Rohan	1000	R
• Reliance Ind. Ltd	1000	R
• Vinay	1000	V
• Ank & Associates	1000	S

Roham, Vinay can't eligible to sign for firm. because already subscriber.

* subscriber → illiterate → thumb Impression

* subscriber → Foreign National → • Signature • Name • Address • Occupation — verify → Notary public

* suppose a person visit in India to incorporate co. → such person can incorporate co. only if he has valid business VISA

Declaration

Declaration 1 (INC-8)

A person who is engaged in the Incorporation of company as a professional (CA/CS/CMA/Advocate)

Any person who named as Director, Secretary, Manager. (AOA)

All the Rules & compliance Related to Inc. of co. has been duly complied.

Declaration 2 (INC-9)

All the subscribers of MOA

The person named as Director in AOA

1. All the Document & Information given are true & correct as per Best of all Knowledge.
2. They have not convicted in the any offence related to company incorporate, Promoters & Management at any time

3. They have not guilty of any offence in Co. Act 2013 or any previous Act (Co. Act 1956) duly the last 5 years.

* Reg. office Address :- either any time of Incorporation OR After (within 30 Days) of Inc. of company

↓

Address of correspondence

Concept 5 : Particulars of person named as Directors in AOA

↓

DIR - 12

↓

1. Name
2. Surname / Middle / family name
3. Address
4. Nationality
5. Occupation
6. DIN - Director identification Number
7. Interest in other Body corporate / firm

8. consent to become Director → DIR-2

Concept 6 : Particulars of subscribers mentioned in MOA

1. Name
2. Surname / Middle / family
3. Address (Residential)
4. Nationality
5. occupation
6. Education Qualifications
7. PAN
8. Email id

Proof of Residence
- electricity Bill
- Gas Bill
- Telephone Bill
- Property Receipt
- water connection Bill

Not older than 2 Month

Proof of Identity

Aadhar voter ID Driving Licence

foreign → passport

* subscriber → Interested in other Body corporate

company Name | CIN | Promoter OR Director

CIN → corporate Identification Number

* subscribe → Body corporate

company Name | CIN | ~~Promoter OR Director~~ Regi. office Address

GLN → Global location NO.

Body corporate → company | LLP

company → Board Resolution to subscribe MOA copy → Authorisation

LLP → Aggrement by all partner to authorise LLP to become subscriber

* Now, ROC if satisfied that all documents & information given by company are true & correct, then he will issue certificate of Incorporation

↓

INC - 11

↓

This certificate contains / includes

PAN of CO. | Name of CO. | CIN | DATE of Incorporation

this COI signed & stamped by ROC

& from such date which is mentioned COI, company is now a seperate legal identity.

Concept 7 : CIN

21 Digit Alphanumeric

Listed / Unlisted	State of Incorporation	5 Digit No.	year of Inc.	Reg. No.
L U	2 Digit		4 Digit	ROC

→ This No. is mentioned on COI.

Concept 8 : section : 9
Effects of Registration

* From the Date of Incorporation → Date which is mentioned in COI
* The subscriber of MOA Become member of Co.
* The company will be treated as Body corporate by the name mentioned in COI

Now company can DO All such Acts which a Body corporate can DO.	Having perpetual succession	company can be sued or sue by / from its own name
		can enter into any contract, can acquire property from its own name

concept 9 : section 10 A
commencement of Business

Application on :- Every public or Private company having share capital

shall not commence Business Activity or can incur any liability unless -

Declaration By subscriber has paid the value of share taken by them with in 180 DAYS

Verification of Reg. office
INC-22

This Declaration shall be

verified by practicisialy

CA CS CMA

Penalty for contravention in section 10 A

- company :- 50,000/-
- officer :- 1000 per Da Max. to 1,00,000

→ If no such Declaration is submitted by company with ROC within 180 Days from Date of Incorporation, then ROC can Remove the name of company from its Register.

False or Incorrect Information furnish or conceal of material fact at the time of Incorporation.

↓

So, All person who has furnished such Information & those who provide

False or Incorrect Information furnish or conceal of material fact after Incorporation

↳ promoter
↳ professionals
↳ Directors
↳ subscribers

↳ company

↓

order of Tribunal

Declaration which is false is liable for penalty u/s 447

Highest penalty section

who furnish false or Incorrect Information or submit false Declarations are liable for penalty u/s 447

NCLT (National company law Tribunal)

When Appl^n is given to Tribunal

↳ change in Magt. of co.
↳ change in MOA/AOA
↳ liability of Member shall be Unlimited
↳ Remove the name of co. from ROC
↳ Winding up
↳ Any other order such NCLT.

Before Passing order consider All the transac

Audi Aultrum

opportunity of which are pending
Being heard or
not completed

MOA → sec : 4 → 7 clauses
→ change (Alteration)

MOA :- sec : 4 AOA :- sec : 5

Alteration :- sec : 13 Alteration :- sec : 14

concept 10 : MOA

Memorandom of Association

→ MOA is the charter of company.

→ MOA defines the constitution of company.

→ MOA defines the scope of the company.

What Acts can company DO

what Acts that company is unable to Do

→ MOA defines Power of the company

→ MOA is the foundation of company

→ MOA Defines the objectives of company

→ so, MOA contains the scope of Actions which can be performed by company & tells the scope of ~~compan~~ Acts that company can not perform.

→ so, If Act which is not in scope of power of company

↓

Beyond the power of company

such Action has no legal impact

Now such Act is called "Ultra vires"

→ MOA enables the shareholders, creditors and all those person deals with company to know powers of company.

concept : Doctrine of constructive Notice

→ MOA & AOA are public Document u/s 399 of co. Act, 2013.

→ Anyone can inspect or ask for MOA / AOA of the company By paying prescribed fees to ROC (including COI)

→ so, company Act Always Assume any person who is Dealing with company have the Knowledge of MOA & AOA of the company.

→ so, it is always Assume that such person has Read the MOA & AOA, NOT even READ have Understood MOA & AOA

→ so, if transaction which is Beyond the object clause of MOA, the company is not liable; the third party is himself liable for such transaction because co. ACT, 2013 assumes that third party has read the provisions of MOA & AOA

→ It is the duty of every person to Read MOA, AOA of company when he is Dealing with the com

→ Doctrine of constructive Notice Protects the company of all set outsiders.

→ Because such transaction is ultra vires which has no legal Impact

→ Through MOA, the shareholder can Know the purpose or objective for which company is going use their money & how much is the Rise in Investing that Money

Concept 10 : MOA ⇒ Format

Schedule - I

TABLE A	TABLE B	TABLE C	TABLE D	TABLE E
company Limited By shares	company Limited By Guarantee not having share capital	company Limited By Guarantee having share capital	company Unlimited But Not having share capital	Company Unlimited But having share capital

concept 13 : MOA clauses or conditions

↓

which are mandatory in Nature

↓

7 CLAUSES

↓

- Name clauses
- situation or registred office clause
- Object clause
- capital clause
- liability clause
- subscription clause or Association clause
- Nominee clause → This clause is only applicable on OPC

concept 14 : some Imp points for MOA

→ MOA must be printed, Divided into paragraph & consectively numbered.

→ No. of subscribers (sec : 3)
- PVT. → At least 2
- Pub. → At least 7
- OPC → 1

→ At least " one witness " to verify their identity.

→ CAN a Minor Become the subscriber of MOA or Member of company?

↳ NO, Minor is incompetent to contract in India.

↳ Minor can not be signatory or subscriber of MOA.

↳ The guardian of Minor can be subscriber only if their personal capacity not on Behalf of minor.

→ MOA is the foundation of company, But MOA can not contain any provision which is not complying the companies Act.

CO. Act, 2013 > MOA

CO. Act overrides the MOA

Section : 6

Concept 15 : Doctrine of Ultravires

→ Beyond the power of the company.

→ Beyond the object clause of company.

→ Power which are outside the company.

↓

such An Act is called ultravires the MOA or company

↓

such Act can not be ratified by shareholder even after passing Unanimous Resolution (100% Majority)

→ such transaction has no obligation on the company & will not give any Right on the 3rd party.

↓

such transaction has no default impact & to be treated as Null & void.

↓

3rd party can not sue to company & company can not sue the 3rd party.

↓

But if any Act is Beyond the AOA
But with in the MOA

(Ultravires the AOA But intravires the MOA can be ratified by passing special Resolution in the meeting)

CASE LAW :- ASNBURRY RAILWAY CARRIAGE & IRON COMPANY VS RICHE

$\underbrace{\text{COMPANY}}$ → object clause

$\underbrace{\text{RICHE}}$ → 3rd party

concept 16 : Doctrine of Indoor Management

→ The person who are Dealing with company must have the knowledge of company's MOA & AOA.

→ It is presumption the outsiders have read MOA & AOA & Not only Read, they have understood the MOA & AOA as well.

→ But outsiders can assume that provisions of AOA are followed by the officer or Directors of company.

→ outsiders has no duty or obligation to see how company carry its own Rules and Regulations or its Management.

→ outsider can assume that everything is done regularly & in consistent manner.

→ Doctrine of Indoor Management is an exception of Doctrine of constructive Notice.

↓

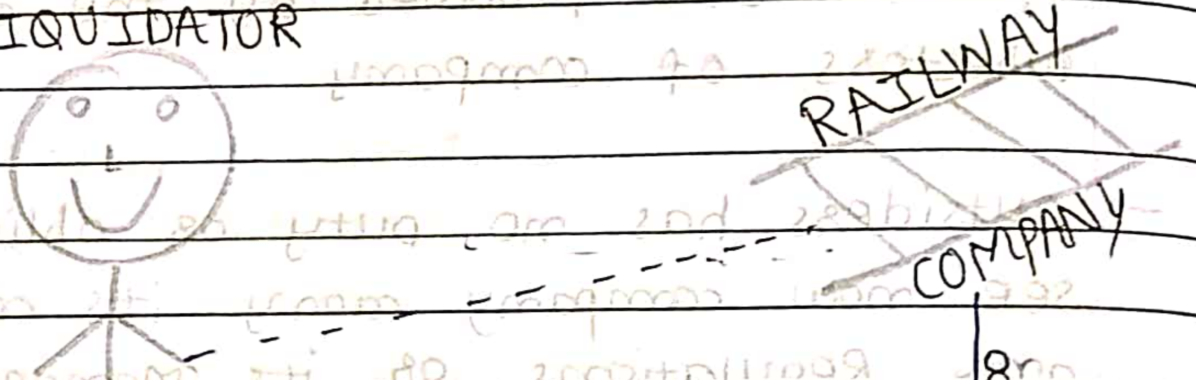
This doctrine protects the outsiders; the third party of all ~~the~~ set of company.

↓

This doctrine is also known as TURQUAND RULE

Due to Bench Mark case law — ROYAL BRITISH VS TURQUAND

LIQUIDATOR



TURNQUAND

The Director could not Amount more than specified in ordinary Resolution passed By member to get loan

AOA

ordinary Resolution has been passed But No Amount mentioned on it.

AOA is the Registrable Document with ROC.

2000 ₹

BOND

with A BANK

ROYAL BRITISH BANK

Ordinary Resolution → Not Register with ROC

This is not a public

Document, Royal

It is presumed that Bank has read this document.

↓

Doctrine of constructive Notice

British Bank is not presume to look into company's own Rule & Regulation.

↓

Bank is assumed that everything which is mentioned in AOA has been done regularly.

↓

Doctrine of Indoor Management

court :- The management or Internal affairs of company is problem of co not of outsiders

↓

Royal British Bank will the suit.

concept 17 : Exceptions of Indoor Management

These exceptions protects the company Not the outsiders

(1) Actual or constructive Knowledge of irregularity

→ It is not the Duty of outsiders to look into company's Internal Regulations.

→ But if the outsider has Already knows that company's way of conduct is not proper & the management is not Doing in consistent way.

→ so this exception protect the company not the outsider who has already the knowledge of irregularity.

(2) Suspicion of Irregularity :

→ When the person who is Dealing with the company is having suspicion of irregularity means he is in suspicion that transaction is not conducted in usual manner.

→ so, As per law it is duty of that outsider to make an inquiry.

→ so, In such case it is suggested to outsider not to Deal with company & if it Deals law is not supposed to protect the outsiders.

(3) Forgery :

→ Rule of Indoor management is not applicable on the Transactions which is ~~per~~ forged in nature.

→ Such transaction is always null & void

→ such transaction Does not give any Right either to company or outsiders.

concept 18 : clauses → 7

NAME CLAUSE

(sec: 4 + sec: 13 + sec: 16 + sec: 18)

→ First clause of MOA

This clause contains the Name of company

- should not be identical with existing company
- should not resembles with existing company
- should not Undesirable in opinion of CG
- It should not be any offence under any law
- should not be such a name which can mislead the public

previous Approval of CG is Required ← Name should not be such that which can suggest the connection with SG/CG ← should Not be prohibited under "emblems & names Act, 1950"

If such name is used.

Ex :- Board, Comission, Authority, federal, rashtrapati, Bharat, central, state, President etc.

→ If such word used in Name of company → Regulator's conditions has been complied

- Insurance → IRDA
- Bank → RBI
- Stock exchange →, Venture capital →, Assets Mangt → } SEBI
- NIDHI → MCA
- Mutual fund → SEBI

→ PVT CO. → used word PVT. LTD as suffix

→ Pub. CO. → used word LTD. as suffix

→ NPO CO. → No word either PVT. LTD or LTD as suffix

→ IFSC → used word IFSC as suffix
→ International financial service company

→ As we already Discussed (New co.) } Applⁿ → SPICE+ → INC-32 → Reservation of Name (20 Days)

→ Existing co. → Name change → Reservation of Name → 60 Days → RUN Based used

→ If any Defect, then Resubmission allowed within 15 Days

Cancellation of Name :-

→ Name Reserved for proposed company

By furnishing wrong or incorrect Information

company has not incorporated → Reserve name will be cancelled

→ penalty → 1 lakh (Maximum)

company has been incorporated → ROC $\xrightarrow{\text{order}}$ change of Name of co. within 3 Months

→ Strike off name from Register

→ winding up of co.

after giving opportunity of Being heard

Sec: 13 → Alteration of MOA → Name clause

(i) Pass Special Resolution (SR)

(ii) Approval needed from CG $\xrightarrow{\text{Declared to}}$ ROC

(iii) If word PVT. ← ADD / Delete in Name, NO approval Required from CG

(iv) MGT-14 + CG Approval } shall be filed within 30 Days of passing SR → ROC

(v) Registrar $\xrightarrow{\text{Enters}}$ New Name

shall issue new COI with new name

In place of old name

↳ shall not be undesirable in opinion of CG

↳ shall not be offence in any law

↳ Same Rules & Regulation for reservation of name at time of incorporation of company.

Reserve the Name By RUN

ROC → Reserve for 60 days from Date of approval

Sec : 16 → Rectification of Name

CG can suo-moto gives order to co.

↓

If CG has opinion that name of co. is indentical or ressembles with another co.

↓

To change the name of co. within 3 Months from the date of issue of such direction by Registrar.

By passing OR

If any properitor of Registred trade Mark makes Application to CG

↓

But such Application can be made only within 3 years of Inc. of co.

↓

If Name of co. is identical or ressemble with trademark

↓

Now order CG → company to change name of co. within 3 Months By passing OR.

↓

Now, within 15 Days from Date of Name change

↓

Notice to ROC About change

Now ROC shall Record new name in place of old & carry change in COI.

↓

But company give CG order to ROC

→ After Reg. of Name u/s 16, company can still change Name u/s 13.

→ Default's → penalty
- co. → 1000 per Day
- officer
  - Min : 5000
  - max : 1000

→ Name change of company Does not meaning of Dissolved company & New company Does not come into existence.

→ All Rights & obligations or legal proceedings Does not affected from chang of name.

→ upto 2 years of Name change
- former (old)
- New

every where paint, affix or print

Some special points :-

Name Reservation :- SPICE+ → INC 32

validity → 20 Days

↓

New company

RUN → 60 Days

↓

Existing company

SITUATION OR REGISTRED OFFICE CLAUSE

→ 2nd clause of MOA

→ This clause contains the name of state in which Reg office of co. is situated.

→ Exact ADDRESS of co's reg. office is not required by this clause.

→ Address should be physical location, It means there should be someone who can Recieved communication for Business hours. (P.O. - X)

→ The places where No. of company is located, the Reg office of co. is required to affix, paint, engraved either on Business letterheads, Advertisement, PAN, Hundis, BOE, Bill Book etc.

→ Nationality OR Domicile ~~co~~ company Decided → Registred office on the Basis of address.

→ So, If any point of time Reg. office is change from one state to another, then it is called as Alteration of MOA u/s 13 of co. Act, 2013. But if Reg. Office changed But state is same, then this is not to be called as Alteration of MOA.

1) change within town, village, city

2) change from city to another ~~BW~~ city BUT within same state & with same ROC

3) Change from city to another city BUT within same state & Different ROC

4) change from one state to another state

* In All these ~~above~~ above 3 cases (1, 2, 3) ⇒ sec: 13 → Alteration of MOA IS NOT APPLICABLE

SO, SEC: 12 IS APPLICABLE

* But, in case 4, SEC: 13 → Alteration of MOA IS APPLICABLE

1) change of Reg. office within same city, town & village :-

→ Pass Board Resolution & also communicate with ROC within 30 Days.

→ This is NOT called as Alteration of MOA

2) change of Reg. office from one city to another city within same state & same ROC

→ Pass SR.

→ MGT-14 to be filed with ROC within 30 Days from passing of SR

→ This is ~~not be~~ called as Alteration of MOA.

3) change of Reg. office from one city to another city with in same state but Different ROC

→ This case is only applicable in two states. Because these 2 states have 2 ROC each.

Maharastra — Tamilnadu

Mumbai — Pune — chennai — coimbatore

→ pass SR.

→ MGT 14 needs to be filed with ROC within 30 Days of passing SR.

→ Permission from RD.

→ RD gives Approval / Rejection on such Application within 30 Days.

→ company communicate the confirmation from ROC within 60 Days from confirmation

→ ROC Register the New Address & communicate the company within 30 Days.

* This is NOT be called as Alteration of MOA u/s 13

47 change of Reg. office from one state to another state :-

→ This is to be considered as Alteration of MOA u/s 13

→ Pass SR.

→ MGT-14 needs to be filed with ROC within 30 Days from passing SR.

→ Application to CG → RD (INC-23)

- → fees
- → Documents
  - → AOA/MOA along with proposed changes
  - → copy of Resolution passed
    - votes in favour
    - votes in against
  - → copy of Alteration along with MOA/AOA has already sent to ~~sent~~ state govt & their Acknowledgement

↳ list of creditors & deb. holders

→ RD/CG gives confirmation on such Application within 60 Days from Date of Application

→ CG Before giving Approval ←
- consent of credi/Deb.holder
- prov. made to Discharge the deb
- company has Adequate security to Discharge deb

→ Company →
- New ROC
- MOA along with alteration ⊕ copy of CG/RD Approval
- OLD ROC

→ New ROC Register change & issue new certificate of Incorporation.

SG can not denies the change of Reg. | CG Before passing Order has to

office from one state to another state on the ground of loss of revenue to state. | consider the Representation from employee opinion.

→ Co. Before Application to CG/RD

↓

for change of Reg. office from one state to another

↓

Not more than 30 Days

→ company has to publish Advertisement for change of Reg. office from one state to another
- vernacular language News paper
- English New Paper

OBJECT CLAUSE

→ 3rd clause of MOA

→ One of the most Important clause of MOA

→ This clause contains the Power or scope of the company

→ It defines the main objectives of the company or any other incidental objectives.

→ Now, every subscriber of MOA is free to choose their objectives. They can choose any objective But the objective must not be illegal & should not beyond the provision of company Act, 2013.

→ This clause Defines the Actual capability of company

→ This clause need to be drafted with the experts opinion & with being cautious & careful. Because Any Act which is beyond the object clause can be ultra vires.

(Refer Ashbury Railways & iron vs Riche)

Question: CAN company change its objectives?

YES ⇒ Alteration of MOA u/s 13 of Co. Act, 2013

* How to Alter the MOA under Object clause

→ Pass SR By member in meeting

→ MGT-14 needs to be filled with ROC with in 30 days from passing SR

→ ROC shall Register the same & communicate to co. with in next 30 days along with New COI.

→ New objectives are effective from the Date of New COI.

→ If company is changing its objectives but company has raised money through prospectus & company still has unutilised Amt, then co. change objectives only when :-

(i) PASS SR

(ii) file MGT-14 → 30 Days

(iii) Exit option given to listed shareholder as per SEBI

(iv) Publish Advertisment

vernacular language Newspaper	English Newspaper	company Website

→ Notice to members by SR

(i) Total Money Raised
(ii) Utilised on objectives (current)
(iii) Unutilised
(iv) New features / factors
(v) Justification
(vi) Impact on cash flow due to change
(vii) Any other Detail which member required

LIABILITY CLAUSE

Limited liability

- Limited by shares ↓ Limited upto the value of unpaid value shares ↓ Going OR Liquidation concern
- Limited by Guarantee ↓ Limited upto the value of Guarantee ↓ only at time of liquidation, to contribute in Assets of company

Unlimited liability ↓

- Personal Assets of members can be used to pay Debt of co.
- Members are not directly liable towards creditors, they are liable towards company

→ liability clause can not be Altered (sec: 13 is not Applicable)

→ sec: 18 (conversion of company) is Applicable

CAPITAL CLAUSE

Refer :- ch: 4

LIABILITY CLAUSE

ASSOCIATION CLAUSE

Name	No. of	signature	witness sign
Address	shares		↓
occupation	↓		Name
Nationality	(At least one)		occupication
↓			Nationality
subscriber			↓
			varify the sign of subscriber

→ This clause can not be Altered.

NOMINEE CLAUSE

→ only on OPC

→ this clause contains the name of person who will become member in case of Death / Incapacity of subscriber.

→ Nominee can be changed for 'x' no. of times.

→ This clause is not to be called as Alteration of MOA (sec: 13)

concept 19 : AOA Alteration

Alteration of AOA (section : 14)

→ Articales of Association of co. can be Altered by passing SR by the members in the meeting.

→ But AOA Alteration must not contain

Beyond the MOA & Co. Act	illegal or opposed to pub. policy	must be in ~~interests~~ of the company	Bonafide intention of the members	Explusion

→ If due to Alteration of AOA & it effect the conversion of public into PVT or vice versa.

So, in case pub. co. is converted into PVT.

Approval of CG is required (sec : 18)

It must be informed to ROC within 15 days from Application of CG, Articles has been Altered.

New AOA — Altered AOA → file → ROC

concept 20 : Sec : 15

→ Alteration must be Noted in every copy of AOA & MOA

If Articles or MOA has been Altered as per Sec : 14 & Sec : 13 respectively

If Not complied → penalty → ₹ 1000 per copy

Concept : Section 10

Effects

Members are liable towards co.	co. is liable towards Member	Members are not liable towards each other	MOA & AOA Binds the member & co But doesn't Binds the outsider

concept 22 :

on the Request of Members	copy of MOA copy of AOA Resolution & Agreement copy	must be sent by co within in 7 Days from Date of Request on Payment of prescribed fees
Default	1000 per Day Maxi : 1,00,000	

concept 23 : Authentication

Section : 21 sign

Document proceedure contract

on the behalf of co.

KMP → Key Managerial person — CEO / MD, CFO, WTD, CS, one Rank Below post of director, agreed by BOD.

Any officer / employee of co. authorised by BOD.

concept 24 : Articles of Association

→ AOA are the Rules & Regulation of the company

→ They are formed for the Management or BOD of the company Internally

→ So, AOA are Known as Internal Regulations of the company

→ They are the subsidiary of MOA

→ MOA > AOA

→ These AOA should / Defines the Relationship of Rights & Duties between the members of company & company.

→ They are called Bye-Laws of the co.

→ AOA are performed to set some Rules & Regulations for the working of the directors, officers of the co.

→ Model AOA are listed in schedule 1 of the co. Act which has bifurcated into Table F, G, H, I, J.

→ Any other matter which is necessary to Regulate the functioning of the company. (Additional matters can also be included in AOA.)

Table F :- co. limited by share

Table G :- co. limited by Gurantee having share capital

Table H :- co. limited by Gurantee not having share capital

Table I :- co. unlimited by Gurantee having share capital

Table J :- co. unlimited by Gurantee not having share capital.

concept 25 : Entrenchment Provision

→ New provision in co. Act, 2013

→ AOA of the co. can be Altered by special Resolution (General Rule)

pass by members of co.	Ordinary Resolution	Special Resolution	Unanimous Resolution
	Majority more than 50%.	Majority more than 75%	Majority 100%.
	1/2	3/4	

→ But AOA of a co. contains entrenchment provision then situation will be Difficult.

This is an Additional Restriction to Alter AOA.

so, here AOA of co. will not be Altered only by passing SR.

Entrenchment provisions can be incorporated in AOA → At time of the incorp. of the company
→ AT any point of time

PVT CO.
↓
Unanimous Resolution

Pub CO.
↓
Special Resolution

→ section 20 service of document

→ section 22 Execution of Bills of Exchange, hundi etc.
↓
Refer for the both the above section 20 & 22
↓
ICSI Pg no: 43 & 44