

**SYLLABUS****Class - B.Com. II Year****Subject – Corporate Law**

Unit	Syllabus
Unit – I	Preliminary to Companies Act 2013 Company definition, characteristics, types of company, formation of company, promotion, incorporation & commencement of business. Memorandum of association. Articles of association & prospectus.
Unit – II	Board of Directors, Types of Directors: Their qualifications, powers, duties, liabilities. Company Meeting: Company Meetings: Types. Quorum, Voting, Resolution and Minutes.
Unit – III	Dividends Accounts and Audit Declaration and payment of dividend, maintenance and authentication of financial statements, Corporate Social Responsibility (CSR), Auditor; Appointment, Qualification, Duties, Responsibilities, Audit report.
Unit – IV	Oppression & Mismanagement; Restructuring and Winding up Prevention of Oppression & Mismanagement Provisions related to Compromises & Amalgamation. Concept and modes of winding up.
Unit – V	National Company Law Tribunal Definitions, Constitution of NCLT, Constitution of Appellate tribunal, Provisions regarding appeal and punishment. Emerging issues in company law.



UNIT — I

Companies Act 2013



Company

The word 'company' in its literary sense, conveys the idea of togetherness. In the business world, the word 'company' may be found being used loosely for any large business concern. In the legal sense the word 'company' point towards a very specific form of business set-up, floated and run by more than one person. This is the body corporate form of business organization.

CAPTION	OLD COMPANIES ACT 1956	NEW COMPANIES ACT 2013.
E-governance	No such provision existed.	Inspection of documents in electronic form is made.
Women director	No such provision existed.	In prescribed companies classes or class women can be a director.
Maximum no. of Directors	Max. no of directors are 12 not beyond them with approval of central govt.	Number increased to 15 but by passing with special resolution .
Corporate Social Responsibility (C.S.R.)	No provisions for CSR initiatives	- Constitution of corporate social responsibility (C.S.R.) Committee of the board is compulsory for companies: - Having turnover of rupees 1000 crore or more or -a net profit of rupees 5 crore during financial year. - Every financial year at least 2% of the average net profits to be spent on CSR activities,



Definition of a Company:

According to the Companies Act, 2013, “Company’ means a company incorporated under this Act or under any previous company law”. [Sec. 2 (20)]

Chief Justice Marshall of the USA defines, “A corporation is an artificial being, invisible, intangible, existing only in contemplation of the law. Being a mere creation of law, it possesses only the properties which the Charter of its creation confers upon it, either expressly or as incidental to its very existence.”

According to **Prof Haney**, “company is an artificial person created by law, having separate entity, with a perpetual succession and common seal.”



Lord Justice Lindley: “A company is an association of persons who contribute money to a common stock and employed in some trade or business and who share the profit and loss arising there from. The common stock so contributed is denoted in money in money and is the capital of the company”.

SPECIAL FEATURES OF A COMPANY

1. Incorporated body
2. Incorporated by a person or persons
3. Artificial person
4. Separate legal entity
5. Perpetual succession
6. Common seal limited liability and two
7. Limited liability
8. Transferable shares



9. Separate property
10. Capacity to contract
11. Capacity to sue and to be sued
12. Managerial team
13. Governance by majority
14. Social responsibility

LIFTING OR PIERCING CORPORATE VEIL:

Lifting of corporate veil means this regarding the separate legal entity of a company and identifying the realities which existed behind the legal facade. In applying this doctrine, the court/tribunal ignores the companies separate existence and concerns itself directly with the numbers or directors.

The various cases in which the corporate veil is lifted may be put under two categories:

I. Statutory Exceptions-

1. Incorporation on the basis of false information
2. Misleading statement in the prospectus
3. Failure to repay deposits accepted for fraudulent purposes
4. Investigation of ownership of a company
5. Investigation of the affairs of a company
6. Non-payment of income tax
7. Fraudulent conduct of business

II. Judicial Exceptions –

1. Misdescription or nondisclosure of name of the company
2. For determination of character of the company
3. For protecting government revenue
4. For prevention of fraud or improper conduct
5. For fixing liability for economic offences
6. Where companies formed for evading legal obligation
7. Where companies acting as agent or trustee of the shareholders
8. Where a company is used for illegal purpose
9. For fixing liability under welfare legislations
10. To punish for contempt of court
11. For determination of qualifications or technical competence





KINDS OF COMPANIES

The incorporated bodies or the companies may be put in various classes on the basis of following aspects:

- I. On the basis of mode of formation
- II. On the basis of liability of members
- III. On the basis of number of members
- IV. On the basis of control
- V. On the basis of ownership
- VI. On the basis of access to capital market
- VII. Other companies

I. ON THE BASIS OF MODE OF FORMATION:

On the basis of mode of formation or incorporation, the companies may be classified into two categories:

- A. Unregistered or Unincorporated Companies-** Any entity or organisation formed but not registered under the companies act 2013 or under any previous company law may be called an unincorporated or unregistered company.

According to the companies act 2013, the expression 'unregistered company' includes the following entities:

1. Any partnership formed
2. Any limited liability partnership
3. Any co-operative Society
4. Any society
5. Any other business entity

- B. Incorporated companies-** The incorporated companies a company formed by registered under any statute or law. Such companies may be following kinds:

1. Companies incorporated by Royal Charter
2. Companies formed under statute/statutory companies
3. Companies incorporated under the companies act



II. On the basis of liability of members:



III. On the basis of number of members:

1. **Public company:** A public company means a company [Sec.2(71)], which:
 - a. is not a private company, and
 - b. has a minimum paid-up capital as may be prescribed
2. **Private company:** A private company means a company having a minimum paid-up share capital as may be prescribed, and which by its articles provides for the following [Sec.2(68)]:
 - a. Restricts the right to transfer its shares.
 - b. Except in case of OPC, limits the number of its members to 200 excluding the present or former employees who are members of the company.
 - c. Prohibits any invitation to the public to subscribe for any securities of the company.
3. **One-person company:** "One-person company means a company which has only one person is a member." [Sec.2(62)]

IV. On the basis of control:

1. **Holding company:** "Holding company in relation to one or more companies means a company of with such companies are subsidiary companies." [Sec.2(46)]
2. **Subsidiary companies:** The companies act states that a subsidiary company means a company in which the holding company has controll in any of the following ways:
 - i. Control the composition of the Board of Directors.
 - ii. Exercises control on more than one half of its total share capital either at its own or together with one or more of its subsidiary companies.
3. **Associate company:** Associate company, in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary of the company having such influence, it includes a joint- venture company.



V. On the basis of ownership:

- A. Government companies:** [Sec.2(45)] A government company means any company in which not less than 51% of the paid-up share capital is held by the following-
- 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.
- B. Non-government company:** A company in which 51% or more of the paid-up capital is held by one or more private entrepreneurs or by public or a group of persons other than government is said to be a non-government company.
- C. Joint companies:** The companies in which the share capital is held in parts by the private persons and the Government, are known as joint companies. However, the Government's part in the paid – up share capital is always less than 51%.

VI. On the basis of access to capital market:

- A. Listed company:** listed company means a company which has any of its securities listed on any recognised stock exchange.
- B. Unlisted company:** Unlisted companies are those companies which do not have any of its securities listed on any recognised stock exchange.

VII. Other companies: In addition to the above discussed companies, there are certain other companies, they are as under:

- Charitable companies
- Small companies
- Dormant companies
- Nidhis or mutual benefit societies
- Foreign companies

PRIVILEGES AND EXEMPTIONS AVAILABLE TO PRIVATE COMPANIES:

- Every private company except OPC may be formed with two members whereas a public company must have at least seven members. [Sec.3(1)]
- A private company need not and cannot issue prospectors for issue of its security, but a public company is required to issue. [Sec.23(1)]
- A private company can allot securities even before receiving minimum subscription. [Sec. 39]
- Except a OPC, every private companies are required to have at least two directors there is a public company must have at least three. In case of OPC, minimum one director is required. [Sec.165]
- The provisions as to rotational retirement directors do not apply to any independent private company. [Sec. 152(6)]
- A private company made by its articles provide any additional disqualification



for appointment as directors in addition to those specified in the act, but a public company can't do so. [Sec.164(3)]

7. An independent private companies exempted from the overall limit of managerial remuneration of 11% of the net profit. [Sec.197]

8. Unless the article provide for a larger number, only two persons personally present shall be the quorum for a meeting in case of a private company.

9. A private company need not to prepare the report on each annual general meeting and file it with the registrar. [Sec. 121]

Distinction between Private and Public Company

1. **Paid-up capital.** A private company must have a minimum paid-up capital of Rs. 1 lakh whereas the public company should have at least Rs. 5 lakhs.
2. **Minimum number of members.** In the case of a private company, minimum number of persons to form a company is two while it is seven in the case of a public company.
3. **Maximum number of members.** In case of private company the membership must not exceed 50 whereas there is no such restriction on the maximum number of members for a public company.
4. **Transferability of shares.** In a private company, the right to transfer shares is restricted, whereas in the case of public company the shares are freely transferable.
5. **Prospectus.** A private company cannot issue a prospectus; while a public company may issue a prospectus to invite the general public to subscribe for its shares or debentures.
6. **Statement in lieu of prospectus.** A public company, if it does not issue a prospectus, is required to file a Statement in lieu of prospectus with the Registrar of Companies at least 3 days before allotment. A private company is not required to do this.
7. **Minimum number of directors.** A private company must have at least two directors, whereas a public company must have at least three directors.
8. **Increase in number of directors.** The number of directors in a private company may be increased to any extent but in case of a public company if the maximum number of directors is more than twelve, then the approval of the Central Government is necessary for any increase in the number of directors.
9. **Appointment of directors.** Directors of a private company may be appointed by a single resolution, but it is not so in case of a public company where each director is to be appointed by a separate resolution.
10. **Retirement of directors.** Directors of a private company are not required to retire by rotation, but in case of a public company at least 2/3rds of the directors must retire by rotation at each annual general meeting.
11. **Quorum for general meetings.** Two members personally present form the quorum in a private company but in a public company the number is five members.

One-person company:

“One-person company means a company which has only one percent as a member.” [Sec. 2(62)]

It may be stated that a OPC is an artificial person incorporated under companies act 2013 with only one person as its member, having separate legal existence from the member forming eight, with a perpetual succession.



Benefits of one-person company:

1. One-person needed to form company
2. Separate existence
3. Perpetual succession
4. Limited liability
5. Secrecy
6. Low operation cost
7. Services of professional directors
8. Easy financial and banking services
9. Low regularity cost
10. Growth of entrepreneurs

Limitations of OPC:

- 1 Many formalities
2. High cost of formation
3. High managerial cost
4. High rate of taxation
5. Limited financial resources
6. Limited scope of activities

Comparison of One Person company, private company and public company

One Person company

- Min. and Max member is one.
- Not transfer of share as only one member
- Shares can not be offered to public

Private company

- Min 2 and Max 200 (excluding present and past employee members)
- AOA restricts the transfer of share
- Share can not be offered to public

Public company

- Min. 7 and Max no limit
- Transfer of share is usually without restriction
- Share can be offered to public



Difference among one person company, private company and public company

One Person company

- Min. one director
- Max directors 15
- Can not invite and accept deposit from public
- The word "OPC" is used as part of name

Private company

- Min 2 Directors
- Max. 15 Directors
- Can not invite and accept public deposit
- The word "Private Limited" are used as part of the name

Public company

- Min. 3 Directors
- Max. 15 directors
- Can invite and accept deposit from public
- The Word "Limited" is used as part of name

Procedure for Conversion of a public company into a private company or a private company into a public company: (Sec 18)

Decision about conversion

Alterstion of Memorandum

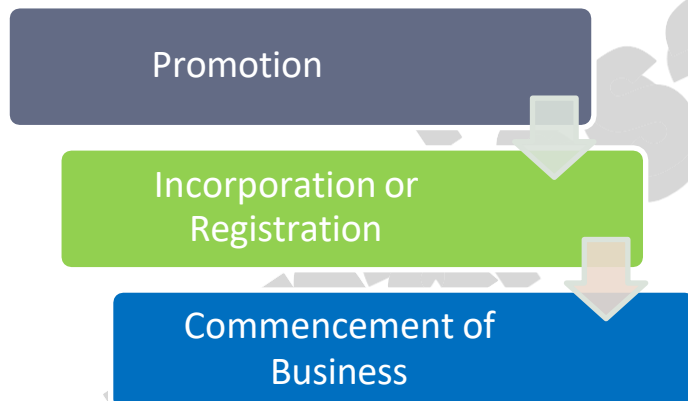
Alteration of Articles

Application to the Registrar



FORMATION OF A COMPANY

The process of formation of a company can be divided and discuss under the following three stages:



- A. Promotion stage
- B. Registration and incorporation stage
- C. Commencement of business stage

Promotion

A. Promotion of company: Promotion is the process of discovery and investigation of business opportunities, planning and organisation of physical, financial and human resources with a view to forming a company.

Promoter: Promoter means a person who fulfills any of the following conditions:

- a. Who has been named as promoter in a prospectors.
- b. Who is identified as promoter by the company in its annual return.
- c. Who has control over the affairs of the company directly or indirectly whether as a shareholder, director or otherwise.
- d. In accordance with whose advice, directions or instructions the Board of director of the company is accustomed to act.

Functions/Role of a Promoter:

1. Conceiving the idea of the company



2. Investigation and verification of the idea
3. Assembling the requirements
4. Making preliminary contracts
5. Financial planning
6. Compliance of legal formalities
7. Getting the company incorporated
8. Ensuring subscription to the initial capital
9. Ensuring verification of registered office
10. Controlling affairs of the company
11. Advising and giving directions
12. Appointing directors of all directors resign

Duties of Promoters:

1. To disclose all material facts
2. Not to make secret profit
3. To disclose the interest in the transaction
4. Not to sell own property without informing
5. To make full disclosure of the property bought
6. Not to make unfair use of his position
7. Not to accept appointment as independent director
8. To provide opportunity to exit from securities if objects are changed
9. To attend before the Tribunal

Liability of Promoters:-

1. Selection liability for furnishing false information for incorporation
2. liability for misleading prospectus
3. liability for contravention of provisions as to issue of securities in private placement mode
4. liability for failure to make disclosure of a non-disclosure items of a special business
5. liability for failure to repay money or restore property
6. liability for non-cooperation to company liquidator
7. liability for preliminary contracts

Registration and Incorporation of Company

Second stage of formation of company is known as the registration or incorporation stage. A company comes into existence only after its registration and issue of certificate



of incorporation to it. The registration and incorporation of a company usually involves the following steps:

I. Preliminary steps:

1. Deciding the kind of company
2. Deciding the place of registered office
3. Obtaining DIN by the prospect of directors
4. Obtaining digital signature by promoters/prospected directors
5. Selecting and reserving name of the company
6. Drafting memorandum and articles
7. Printing the documents
8. Obtaining signature subscribers
9. Obtaining declaration as to compliance with legal requirements
10. Obtaining affidavit from subscribers and persons named as first directors
11. Obtaining particulars of subscribers and first directors
12. Obtaining consent of directors
13. Drafting other contracts

II. Application for incorporation and delivery of documents:

The application shall be accompanied by the following documents and information:

1. Notice of address for communication
2. Memorandum of the company
3. Approval of sectoral regulators
4. Articles of the company
5. Declaration as to compliance with legal requirement
6. Affidavit from subscribers and persons named as first directors
7. Particulars of every subscriber
8. Particulars of first directors
9. Consent to act as directors
10. Power of attorney by subscriber
11. Power of attorney to make corrections
12. Payment of fees



- III. **Scrutiny and registration of documents:** After receiving application and delivery of documents were incorporation, the registrar shall scrutinise the documents. When all documents are found in order, the register on the basis of documents and information filed to him shall register all these documents and information in the register of companies. [Sec. 7 (2)]
- IV. **Issue certificate of incorporation and see I and CIN:** On registration of all the documents and information, the registrar shall issue a certificate of incorporation. On and from the date mentioned in the certificate of incorporation, the registrar shall allot to the company a corporate identity number or CIN.

Commencement of Business

According to the latest provisions of companies act, every company is entitled to commence its business as soon as it obtains its certificate of incorporation. No other formality is required to be complied with four commencement of business by any company after its incorporation.

If a company fails to commence its business within one year of its incorporation, the Registrar may initiate action for removing its name from the register of companies. [Sec. 248]



Integrated process of incorporation

With effect from 1 May 2015, MCA has introduced a new process of incorporation of companies which is called as the integrated process of incorporation of companies. It is an alternative process of incorporation by which a company may be registered within 24 hours of the application.

The integrated process of incorporation is applicable for the registration of the following kinds of companies:

- i. OPCs
- ii. Private companies
- iii. Public companies
- iv. Producer companies

Non-trading companies on not-for-profit companies or charitable companies cannot be registered by following this procedure.

Steps in the process:

1. Application
2. One name for the proposed company
3. Memorandum
4. Articles
5. Non applicability from certain provisions



6. Verification of registered office
7. Processing of application and calling further information by the Registrar
8. Defective or incomplete resubmitted documents
9. Rejection of the form
10. Registration
11. Certificate of incorporation

Definition

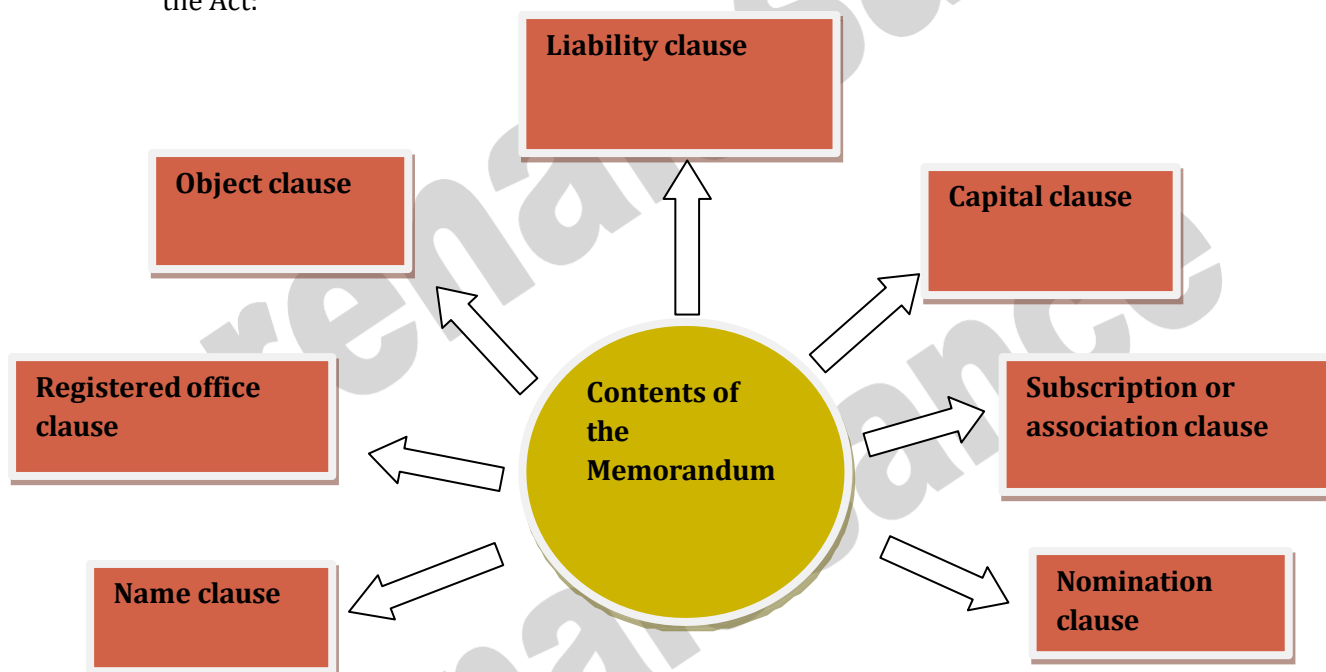
Memorandum means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous companies' law or of this Act. {Sec. 2 (56)} Palmer... It contains the objects for which the company is formed and therefore, identifies the possible scope of its operations beyond which its actions cannot go. It defines as well as confines the powers of the company.

Significance

1. It determines some basic features of the company being formed, such as its name, registered office, capital etc.
2. It determines the area of activity for the company.
3. It lays down the basic parameters to guide the relationship between the company and the outsiders who deal with the company.

Contents of the Memorandum:-

Contents of a memorandum depend on the kind of company. The contents of memorandum of a company limited by shares shall contain the following clauses as per Table A of the Schedule I to the Act:



1. Name clause :

Every company has to adopt its corporate name carefully. This name has to be stated in the Memorandum. The name of the company as approved by the Registrar would need to be given sufficient display as per the rules, such as outside every office, on the letters, notices etc. In the



case of a limited liability company, the word Limited Private limited must be there as the last words of the name.

In case of a **OPC**, words 'One Person Company' shall be mentioned in brackets below the name of such company, wherever its name is printed affixed or engraved.

2. Registered office clause :

This clause requires the mention of the state in which the registered office of the company is to be statute. A company must have a registered office as a stable place for its location and as its domicile.

3. Object clause :

The memorandum must state the objects for which the company is being formed. This clause defines the area of activities for which the company is being formed. Any activity outside the limits defined by this clause would be ultra vires (beyond the powers) for the company and the company can neither do it nor ratify it if it is done by any agent without its sanction.

4. Liability clause :

The nature of liability of the members of the company being formed must be indicated by the memorandum. The memorandum of a company limited by shares or by guarantee shall also state that the liability of its members is limited.

5. Capital clause :

The capital clause lays down the maximum limit of the capital beyond which the company cannot issue shares. This amount is described as registered capital or authorized capital or nominal capital.

6. Subscription or association clause

This clause contains the declaration by the signatories to the Memorandum about their desire to be formed into a company, about their commitment to acquire the qualification shares, if any, and the personal details about the subscribers with their signatures attested by a witness.

In case of a OPC, this clause contains the name of the only subscriber and his other particulars and his undertaking to take all the shares of the company.

7. Nomination clause:

This clause is application only in case of OPC. This clause contains the name of a some other person with his written consent. He shall become member of the company in the event of subscriber's/member's death or incapacity to contact.

ALTERATION OF MEMORANDUM (Section 13):

(A) Alteration of name clause:

A company may, be special resolution and with the approval of the Central Government signified in writing change its name: If a company makes default in complying with any direction given by the government.

(B) Alteration of registered office clause:

- (i) Change of office within the same city. A company can make a change in the registered office within the local limits of the same city, town or village through a resolution of the Board of directors. Such a change must be brought to the notice of the Registrar within 30 days of the change.
- (ii) Change from one city to another within the same state. A change in the registered office from one city to another within the same state would require the passing of a special resolution in the general meeting of the company and filing its copy with the Registrar within 30 days.



- (iii) Change of registered office from one state to another. {Sec 13(4)}
The office is shifted to the new state and the address notified to the new Registrar within 30 days of shifting to the new office

(C) Alteration of object clause:

A company can alter its objects clause also, but, since it is a very vital clause in the Memorandum.

- a) passing a special resolution in the general meeting [Sec. 13(8)]
- b) Filing the resolution with the Registrar with 1 month together with the printed copy of the altered Memorandum.

(D) Alternation of liability clause:

Liability of members of a company can be altered (increased or decreased) only if the company is converted from one class of company to another class. A company of any class registered under this Act by alteration of memorandum and articles of the company.

If a company intends to convert itself from one class of company to another class of company to another class it shall pass a special resolution and make an application to the Registrar. The company shall be required to comply with all the provision application for registration of companies. The Registrar after satisfying himself shall close the former registration of the company. Then the Registrar shall register all the documents filed for re-registration and issue a certificate of incorporation in the same manner as its first registration. [sec.18]

(E) Alteration of capital clause:

If the articles authorize, a company limited by shares can alter capital clause of its memorandum. An alteration may result in increase, reduction or reorganization of the capital. Sometimes it involves the conversion of shares into stock or vice-versa. [Sec. 61] For details on alteration of capital clause, refer Chapter entitled 'Share Capital'.

DOCTRINE OF ULTRA VIRES

The doctrine of ultra vires is one of the most important principles of company law.

The word ultra means beyond, and the word vires means powers. So, the doctrine of ultra vires means that it is beyond a company's powers to do those activities which have been kept outside the scope of the objects clause in the Memorandum. If any such act is undertaken by the company or any of its agents on its behalf, the act shall not be deemed to be done by the company. Even the entire Board or the body of the shareholders cannot approve or ratify it.

Effects of ultra vires Transactions :

- (i) Contract are void ab initial. A contract which is ultra vires the company is void ab initial. Under such a contract, the company cannot sue or be sued upon.
- (ii) Personal liability of directors to the company. If the directors of the company utilize funds of the company in ultra vires transactions, they would be personally liable to compensate the company for any loss suffered by the company.
- (iii) Personal liability of directors to third parties. As the agent of the company, the directors are expected to act within the authority available to them. If they act outside the scope of this authority by presenting themselves to the possessing the authority, this will be a breach of warranty of their authority.
- (iv) Property acquired ultra vires. The funds of the company may be spent in acquiring a property ultra vires. The company's right over the acquired property shall be secure and intact.



- (v) Injection. In case a company has done is about to do an act ultra vires its Memorandum, any shareholder may seek an order of injunction from the court restraining the company from doing so.

Where the Doctrine does not Apply under some circumstances as mentioned below:

- (i) Where the act is ultra vires only the directors, it may be ratified by the company.
- (ii) Where the act is ultra vires only the Articles of Association, the Articles may be altered to make the action intra vires the articles.
- (iii) Where the act is intra vires but has been done in violation of some bye-laws of the company, the Board or the general meeting may condone it.

ARTICLES OF ASSOCIATION

The Articles of Association is the second important document to be prepared by the promoter and then submitted at the time of registration. The Articles contain the rules and regulations and the bye-laws of the company to govern its internal affairs and functioning.

Definition: According Sec. 2(5) of the Act

“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, including, so far as they apply the company the regulations contained in Table A in Schedule I annexed to this Act”.

A public company limited by shares may either frame its own Articles and get them registered or may adopt Table A of Schedule I as its Articles.

Form:

Articles shall be printed, be divided into paragraphs numbered consecutively, and be signed by each subscriber of the memorandum of association.

Contents:

- 1) Various classes of shares the company shall issue and their rights.
- 2) Procedure for issue of shares and their allotment.
- 3) Procedure for issuing share certificates and share warrants.
- 4) Forfeiture of shares and the procedure for their re-issue.
- 5) Procedure for transfer and transmission of shares.
- 6) Calls on shares.
- 7) Conversion of shares into stock.
- 8) Payment of commission on shares and debentures to underwriters.
- 9) Borrowing powers of directors.
- 10) Rules for adoption for preliminary contracts, if any,
- 11) Re-organization and consolidation of share capital.
- 12) Alteration of shares capital.
- 13) Payment of dividends and creation of reserves.
- 14) General meetings, proxies and polls.
- 15) Voting rights of members.
- 16) Keeping of books of account and their audit.
- 17) Rules regarding use of the Common Seal of the company.
- 18) Appointment, powers, duties, qualifications and remuneration of directors.
- 19) Appointment, powers, duties remuneration, etc of auditors.



- 20) Appointment, powers, duties, qualifications, remuneration etc of the managing director, manager and secretary, if any.
- 21) Lien on shares.
- 22) Capitalization of profits.
- 23) Board meeting and their proceedings
- 24) Rules as t resolutions.
- 25) Winding up of the company.

ALTERATION OF ARTICLES

The expression 'alter' or 'alteration' shall include the making of additions, omissions and substitutions. [Sec. 2(3)]

Every company has a statutory power to alter its articles by a special resolution. But this power is subject to the provision of the companies Act and conditions of the memorandum of the company. [Sec 14]

It is pertinent to note that no provision in the articles can prevent a company from including any additional matter in its articles that the company considers necessary for its management. [Proviso to Sec. 5]

The power of alteration of articles is almost absolute and irrevocable. Any clause of the articles or any contract which takes away the company's power to alter its articles is void as being contrary to the provisions of the Companies Act. [State of Karnataka v. Mysore Coffee Curing Works, Ltd. (1984) 55 Comp Cases 70 Karnataka] However, a company's power to alter its articles is subject to certain statutory and judicial restrictions.

Procedure of Alteration:

The procedure of alteration of articles may be discussed under the following three heads:

- I. Where the nature of company remains unchanged.
 - II. Where a public company is converted into a private company.
- I. Where the nature of company remains unchanged:**
1. Approval of the Board of directors.
 2. Special resolution.
 3. Complying with entrenchment provisions.
 4. Filling resolution with the Registrar.
- II. Where a public company is converted into a private company:**
1. Board shall approve the draft resolution.
 2. Special resolution.
 3. Approval of the tribunal.

Limitations of freedom to alter the Articles:

- (i) Alteration must not exceed the scope of or conflict with the Memorandum.
- (ii) The alteration must not be inconsistent with the provisions of the Companies Act or any other law.
- (iii) The Articles cannot be made to include anything which is in itself unlawful or opposed to public policy.
- (iv) The alteration must not seek to undo the alteration made by the CLB or Tribunal in the documents of the company.
- (v) The alteration must be bona fide and for the benefit of the company as a whole.
- (vi) The alteration must not amount to a fraud by majority on the minority.
- (vii) The alteration cannot be done to break a contract with a third party.
- (viii) An alteration would not be complete unless it is followed by the approval of the Central Government wherever necessary.



Distinction between Memorandum and Articles:

The memorandum and articles are two important documents for incorporation and governance of a company. The two may, however, be distinguished on the basis of the following points :

- (i) The memorandum contains the basic conditions associated with the incorporation of the company. This includes the name, the maximum capital and the total area of activity of the company etc. The articles however, are the rules governing the internal functioning of the company.
- (ii) The memorandum is a supreme document sub-ordinate to the Companies Act only. The articles is the document sub-ordinate to the memorandum and cannot override it.
- (iii) A memorandum has to be compulsorily registered. The articles may not be registered.
- (iv) The memorandum defines the relationship between the company and the outside world. The articles determine the relationship between the company and the members.
- (v) The alteration in memorandum requires a somewhat difficult procedure. The articles will require a simple procedure for alteration.
- (vi) The acts of the company which are ultra vires the memorandum cannot be made valid through their ratification by the company. However, the acts ultra vires the articles can be made valid through their ratification if they are intra vires the memorandum.

Constructive Notice of MOA & AOA-

The term constructive notice means the presumption of notice in certain circumstances. MOA and AOA are public documents. They are open for public inspection in registrar's office. It is duty of every person dealing with the company to inspect these documents and make sure that this cataract with the company is in accordance with the provisions of these documents. He will be presumed to have read the documents and to know their contents. This kind of presumes knowledge of these documents is called 'constructive Notice' of memorandum and articles of association. If any person enters into a contract with the company which is contract to the provisions of memorandum and articles of association, he will not get any right under such contract.

Doctrine of 'Indoor Management':

According to this doctrine, a person dealing with the company is not presumed to have the knowledge of internal proceedings of the company i.e. there is no constructive notice as to how the company's internal machinery is handled by its officers. Thus, every person dealing with the company is entitled to assume that everything has been done regularly so far as the internal proceedings of the company are concerned. This doctrine seeks to protect the outsiders against the company. If the internal formalities have not been complied with the contract will be binding on the company and it will be liable to the outsiders.

PROSPECTUS

Every company require capital for its business activities. Therefore, every company issues its securities. But the public and private companies cannot use almost the same ways or methods for issuing their securities. The ways/modes of issuing securities by both the classes of companies are briefly described in the ensuing paragraphs.



Meaning of Prospectus:

Prospectus means any document described or issued as a prospectus and includes a red herring prospectus (referred to in Section 32) or shelf prospectus (referred to in section 31) or any notice, circular, advertisement or other documents inviting offers from the public for the subscription or purchase of any securities of a body corporate. [Sec. 2 (70)]

Contents of the Prospectus:

The new companies Act. 2013 does not contain any model prospectus. It only prescribes the contents of a prospectus. It also states that a prospectus shall also contain the matters as may be prescribed. According to the provision of Companies Act and the Rules made there under, a prospectus to be issued shall contain the particulars with respect to the following matters:

1. The date
2. Signature
3. Information
 - a. Names of address
 - b. Dates of opening and closing of the issue
 - c. Declaration about the issue of allotment letters and refunds
 - d. A statement by the Board
 - e. Underwriting
 - f. Consent of the directors
 - g. The authority for the issue
 - h. Procedure and time schedule for allotment
 - i. Capital structure
 - j. Main objects of public offer
 - k. Main objects and present business of the company
 - l. Minimum subscription
 - m. Details of directors
4. Particulars of project
5. Particulars of Litigation
6. Reports
7. Declaration

Who can issue Prospectus?

Prospectus may be issued by any of the following:

1. Public company
2. Any person on behalf
3. Who has been engaged who is or interested
4. On behalf of a person who is or who has been engaged of interested

When issue of Prospectus not Need:

1. Not offered to the public
2. Offered to the existing members
3. Offered are uniform in all respects
4. A bona fide invitation is made to a person to enter into an underwriting agreement

Public Offer:

Public offer of securities means an offer of securities made to the public through a prospectus. The expression 'public offer' is quite comprehensive and it includes the following kinds of offers:

1. Initial public offer or IPO.
2. Further or follow up public offer or FPO. Both these public offers are made through prospectus



3. Offer for sale of securities to the public by an existing shareholder. Such offer is also made through issue of a prospectus. It may be both the initial public offer or IPO and further or follow up public offer or FPO.

Abridged Prospectus

Abridged prospectus means a memorandum containing such salient features of a prospectus as may be specified by the SEBI by making regulations in this behalf. [Sec. 2 (1)]

Deemed Prospectus:

It is a common practice that the securities of a company are allotted or agreed to be allotted to some intermediary known as 'Issuing House'. The issuing house in turn, is required to offer all or any of these securities to the public by means of some documents. Such a document issued by an issuing house is known as offer for sale of securities. For all purpose it shall be and deemed to be a prospectus issued by the company. The provision relating to offer for sale of securities by a issuing house are summarized as under.

Shelf Prospectus:

Definition:- 'Shelf prospectus' means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus. [Explanation to Sec. 31]

Red Herring Prospectus:

Definition:- Red herring prospectus means a prospectus which does not have complete particulars on the quantum or price of the securities offered and the quantum of securities included therein.

Offer to the Public:

Section 67(1) of the Act States that public includes "any section of the public whether elected as members or debenture holders, or as clients of the person issuing the prospectus or in any other manner." But an offer is not to be treated as made to the public where the offer can in all the circumstances be properly regarded as a domestic concern of the persons making and receiving it.

Abridged Prospectus:

It is no longer necessary to furnish a copy of the prospectus along with every application form which the company may issue while inviting the public to purchase or subscribe for its shares or debentures. In future, application form is to be accompanied only by a gist of material formation. This is referred to as 'abridged prospectuses'.

WHEN PROSPECTUS IS NOT REQUIRED TO BE ISSUED

The issue of a prospectus containing the details as required by section 23 is not necessary in the following cases:

1. Where an offer is made in connection with bonafide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures.
2. Where the shares or debentures are not offered to the public.
3. Where the shares or debentures are offered to the existing members or debenture holders of the company.
4. Where the shares or debentures offered are uniform in all respects with shares or debentures previously issued and dealt in or quoted on a recognized stock exchange.



5. Where any prospectus is published as a newspaper advertisement, it is not necessary to specify the contents of the Memorandum or the signatories thereto, or the number of shares subscribed for them.

STATEMENT IN LIEU OF PROSPECTUS

All public companies either issue a prospectus or file a statement in lieu of prospectus. A private company is prohibited from inviting monetary participation of the public. But the promoters of a public company need not necessarily go to the public for money. The promoters may be confident of obtaining the required capital, through private sources.

In such a case no prospectus need be issued to the public, but promoters must prepare a document, akin to the prospectus known as 'Statement in lieu of prospectus.' This document must be in the form set out in Schedule III of the Act and must contain practically the same information as is required in the prospectus