



DOCUMENTS RELATED TO FORMATION OF A COMPANY

4.1 Memorandum of Association

4.2 Articles of Association

4.3 Prospectus

4.4 Distinction

INTRODUCTION

At the time of Incorporation of a company, following documents have to be submitted to the Registrar of Companies :

- i) Memorandum of Association
- ii) Articles of Association

A public company, if it is collecting capital from the public must issue prospectus to invite the public to buy its shares, debentures, etc.

Let's learn in detail about these documents in this Chapter.

4.1 MEMORANDUM OF ASSOCIATION :

It is a primary document of a company as it states the purpose for which the company is formed. It describes the range of activities a company can undertake.

❑ DEFINITION :

1. Section 2 (56) of the Companies Act, 2013 defines Memorandum as “Memorandum of Association of a company as originally framed or as altered from time to time in pursuance of any provision of any previous company Law or of this Act.”

The above definition refers to Memorandum of Association as a legal document that must be prepared by every company as per the provisions of the Companies Act, 2013.

2. Lord Cairns :

“The Memorandum of Association of the company is its charter and defines the limitation of the powers of the company.”

As per this definition, Memorandum is a document which describes the constitution of the company and its rights or privileges. It states the powers of the company i.e. what it can do and what it cannot do.

❑ Features of Memorandum of Association

1. It is a primary document of a company which states its aims and objectives.
2. It describes and regulates the relationship between the company and outsiders viz. the

shareholders, creditors, suppliers, investors etc. who can make out from the Memorandum, whether a company is permitted to undertake a certain activity (or transaction) or not.

3. Every company needs to prepare its Memorandum of Association at the time of its Incorporation and submit it along with the application for Incorporation to the ROC.
4. It is prepared by the promoters and needs to be signed by minimum
7 persons - in case of a public company,
2 persons - in case of a private company and
1 person - in case of One Person Company.

Each subscriber must write against his name the number of shares he has agreed to subscribe. As per the Companies Act 2013, each subscriber must take at least one share. This will not be required for a company with guarantee without share capital.

5. It contains following clauses :
 - a) The Name Clause
 - b) The Address Clause (Registered Office Clause)
 - c) The Objects clause
 - d) The Liability Clause
 - e) The Capital clause
 - f) The Association or Subscription Clause.
6. As it defines the nature and character of the company, it is not so easy to alter the clauses. The Act has laid down specific rules and provisions to be followed to alter each clause.
7. It cannot contain anything contrary to the provisions of the Companies Act, 2013.
8. Any act done by the company which goes beyond the powers of Memorandum will be 'Ultra-Vires' i.e. it will be invalid.
9. It is a public document and any one who wants to enter into a contract with the company is supposed to have knowledge about the contents of a company's Memorandum of Association.
10. Companies Act, 2013 has prescribed the format in the form of Table A, B, C, D and E for preparing the Memorandum for different type of companies.

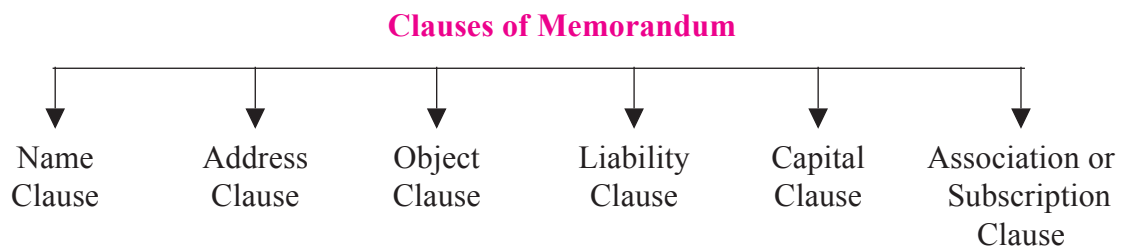
Additional information:

❑ Forms of Memorandum of Association

Companies Act, 2013 has prescribed the following format for preparing Memorandum of Association based on the type of Company :

- | | | |
|---------|---|---|
| Table A | - | Memorandum of Association of a Company Limited by shares |
| Table B | - | Memorandum of Association of a Company Limited by Guarantee and not having share capital. |
| Table C | - | Memorandum of Association of a Company Limited by Guarantee and having share capital |
| Table D | - | Memorandum of Association of an Unlimited company and not having share Capital. |
| Table E | - | Memorandum of Association of an Unlimited company and having a share capital. |

□ Clauses of Memorandum of Association and Provisions to alter it :



1) The Name Clause

This clause mentions the name of the company. As a Company is a legal entity distinct from its members, it has to have its own name to establish its separate identity. The promoters choose a name for the Company.

Following points should be kept in mind while choosing the name of the company

- i) The name should not be identical or resemble the name of an already existing company registered under this Act or any previous Company Law.
- ii) The name should not contain any words which will constitute an offence under any Law.
- iii) The name or words in the name shall not offend any section of people.
- iv) The name shall not violate the provisions of Emblems and Names (Prevention of Improper Use Act, 1950)
- v) The name shall not resemble any registered Trade Mark.
- vi) The name should not have any word that gives an impression that the company is connected with or has the support of Central or State Government or any Local authority.
- vii) In case of a Public company Limited by shares or Guarantee, the last word of the name should be 'Limited'. e.g. 'Tata Steel Ltd'

Similarly for a Private Company Limited by Shares or Guarantee, the last word of the name should be 'Private Limited' e.g. 'Posco India Pvt. Ltd'

And in case of One Person Company, the words 'One Person Company' must be mentioned in the name of the Company in bracket. e.g. 'Smart services Pvt. Ltd' (OPC)

The Companies Act states that every company shall paint or affix its name and the address of its registered office outside its place of business.

● Alteration of Name Clause :

A company may change its Name anytime -

- a) On its own
- b) On its conversion from Public company to Private or vice-versa.
- c) On the direction of the Central Government if it is of the opinion that the name is similar to the name of an already existing company or similar to a registered Trade Mark.

Name clause can be altered by passing a special resolution in the General Meeting of a Company

Special Resolution means 3/4th or 75% votes are in favour of a proposal.

2. The Address Clause (Registered office Clause)

The clause states the name of the State in which the Registered Office of the Company will be located. Every company must have its Registered office within 30 days of its Incorporation.

A Registered office is a must as

- i) It establishes the domicile (location) of a company.
- ii) It is the address to which all communications, notices, etc. will be sent.
- iii) It is also the place where all statutory books, records and documents of the company will be kept.
- iv) The address clause also indicates the jurisdiction of the court where cases can be filed by the company against others.

● Alteration of Address Clause

A company may change its Registered office from-

- a) One place to another place within the same city or town.
In this case, no alternation is made in the Memorandum
- b) One Town or city to another Town or city within the same state.
- c) One state to another state.

In both these cases (b) and (c), a special resolution is to be passed in the General Meeting to alter the Address clause. In case of (c) above, approval of Regional Director is required.

3. The Object Clause :

This clause defines the objects for which a company is formed. It indicates the range of activities a company can undertake. This clause states in detail the Main Objects for which the company is to be incorporated and also describes any other activities it may undertake if necessary, in achieving its main objects.

The Objects of the company must not be illegal, immoral, against the public policy or in contravention of the Companies Act or any other Laws.

A company cannot do anything beyond or outside the scope of its objects. It can do anything which is incidental to and consequential upon the objects specified in this clause.

Incidental : means related to the main activity.

Consequential : means resulting from the main activity.

Any act done by a company beyond the scope of its objects, will be 'Ultra-Vires' and will be void and have no legal validity.

● Doctrine of Ultra Vires

The word 'Ultra' means beyond and the word 'Vires' means the powers. Thus 'Ultra Vires' means beyond the powers of Memorandum. The Doctrine of Ultra Vires states that any activity done by a company which is beyond the powers of the company will be null and void or legally ineffective even if all the members have agreed to such act.

Thus a company cannot undertake any object or activity not stated in the object clause.

Effect of Ultra Vires Transaction

- 1) The acts which are Ultra-vires are considered null and void. The company cannot sue anybody nor can any third party file a case against the company for such acts.
- 2) Members of a company can get an injunction from the court to stop the company from doing any act which is Ultra Vires.

Injunction : Order from court to stop the act

- 3) The Directors of the company are personally liable for Ultra Vires acts of the company.

Purpose of the Doctrine of Ultra Vires:

Purpose of the Doctrine of Ultra Vires is to protect the interest of all the stakeholders like the shareholders, creditors, investors, Banks etc.

The stakeholders have a right to ensure that the company uses their money for the objects mentioned in the Memorandum.

- **Alteration of Object Clause**

A Company may change its object clause as and when it feels it is necessary to do so for its survival or growth.

A special Resolution must be passed in the General Meeting for altering the object clause.

4. The Liability Clause

This clause states the extent of liability of the members of the company.

In case of a company limited by shares, this clause states that the liability of the member is limited to the extent of the amount unpaid on the Face Value of Shares held by the member.

Similarly in case of a company limited by Guarantee, this clause states the amount which every member guarantees to pay towards the assets of the company at the time of winding up or towards the cost or expenses at the time of winding up.

In case of Unlimited liability company with or without share capital, this clause states that the liability of its members is unlimited.

- **Alteration of Liability Clause :**

The Companies Act, 2013 or any Rules made thereunder, does not contain any provision regarding alteration of liability clause. Legally speaking, the relationship between a member and the company is a contractual relationship. Hence, if any changes is to be made in the liability of a member, it has to be with the consent of the member and that too in writing.

5. The Capital Clause

This clause states the amount of capital with which the company is registered. This capital is hence called as Registered Capital. This is the maximum capital which the company is authorized to raise, hence it is also called as Authorized Capital.

In case of a company with share capital, this clause states the total amount of share capital in terms of total number of shares and the fixed value per share called as Face Value of the share.

If a company wants to issue more shares to raise more funds than the amount of Authorized Capital, then the Company has to alter the capital clause.

- **Alteration of Capital Clause**

The Articles of Association of a Company authorizes the alteration in the capital clause. Capital clause is altered for reasons like increasing the Authorized capital by issuing new shares, convert fully paid up shares into stock etc.

Capital clause is altered by passing an Ordinary Resolution in the General Meeting of the Company.

Ordinary Resolution: *Votes cast in favour are more than votes cast against a proposal.*

6. The Association or Subscription clause

This is the last clause of the Memorandum of Association and it is placed at the end. In this clause, the subscribers to the Memorandum make a declaration stating that they are desirous of forming a company as per the Memorandum and agree to take a certain number of shares in the capital of the company.

In case of a public company, the Memorandum must be signed by at least seven subscribers whereas for a Private Company - by at least two subscribers and one subscriber in case of One Person Company.

Each subscriber has to put his name, address and occupation in the presence of at least one witness who shall also put in his details.

4.2 ARTICLES OF ASSOCIATION

Articles of Association is the second most important document which needs to be filed with the ROC along with the Memorandum at the time of incorporation of a Company. This document is subordinate (secondary) to the Memorandum. It is like the Bye-Laws of the company as it contains rules and regulations that governs the internal management of the company. It defines the powers, rights and duties of the Board of Directors and officers and also the manner in which the business of the company will be carried on. It establishes relationship between the company and its members and also between the members.

□ DEFINITION

As per 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 Company law or of this Act.”

Thus, Articles is a legal document in writing which contains rules and regulations which helps in internal management of a company. As every company may be managed differently, the Companies Act, 2013 does not specify the exact contents of the Articles. However, the regulations given in the Articles should not exceed the power of the Company as laid down by its Memorandum or contradict the Companies Act, 2013 or any other Laws.

Articles of Association usually includes rules and regulations regarding powers, rights and duties of governing body, issue of shares, calls on shares, forfeiture of shares, procedure for transfer and transmission of shares and debentures, etc.

Companies Act has given the format in the form of Model Articles i.e. Table F, G, H, I and J for preparing the Articles of Association for different types of Companies.

A Company is free to include all or any of the regulations contained in the Model Articles as applicable to such company. As per the Act, Articles must be signed by all the subscribers who have signed the Memorandum and give all their details like name, address and occupation in the presence of at least one witness who shall sign and attest the signatures and also give his details.

Additional information:

❑ Model Articles as per Companies Act 2013

The Act has given the following Model Articles based on the type of company:

- Table F - Model Articles of Association for Company limited by shares.
- Table G - Model Articles of Association limited by Guarantee and having share Capital
- Table H - Model Articles of Association for Company limited by Guarantee and not having share Capital
- Table I - Model Articles of Association for Unlimited Company having share Capital.
- Table J - Model Articles of Association for Unlimited Company and not having share Capital.

❑ Contents of Articles of Association

A Company may adopt the Model Articles as given by the Companies Act, 2013 or add additional matters as per its requirements.

The Articles of Association usually contain rules and regulations related to the following matters -

- i) Share Capital - Shares and their value and their division into different types of shares.
- ii) Rights of each class of shareholders and procedure for variation of their rights.
- iii) Procedure relating to allotment of shares, making of calls and forfeiture of shares.
- iv) Rules relating to transfer and transmission of shares and the procedure to be followed.
- v) Lien of the company on shares allotted to the members for the amount unpaid by them.
- vi) Increase, alteration or reduction of Share Capital.
- vii) Appointment, remuneration, power, duties, etc. of the Directors and officers of the Company.
- viii) Procedure for conversion of shares into stock and vice versa.
- ix) Provisions related to Board, Committee and General Meetings, Voting rights of members, proxy, quorum, poll, adjournment of meeting etc.
- x) Audit of accounts, transfer of money to Reserves, declaration of Dividend, etc.
- xi) Borrowing powers of the Company and the mode of borrowings.
- xii) Issue of Share Certificates including procedure for issue of duplicate share certificate.
- xiii) Constitution and composition of Audit committee, Remuneration Committee, Corporate Social Responsibility Committee.

- xiv) Provision for winding up of Company.
- xv) Arbitration
- xvi) Indemnity

Lien on shares: means company has right of possession of shares till the member does not pay off his debts or liabilities to the company.

- ❑ Articles of Association of a Private Company must contain 3 restrictions viz -
 - i) Limit the number of members to 200
 - ii) Restrict right to transfer shares
 - iii) Prohibits inviting public to buy its shares, debentures or any securities of the company.

❑ **Entrenchment of Articles / Entrenched Articles :**

Entrenched Articles are those Articles (Provisions) which cannot be altered by passing only a special resolution but a more elaborate procedure as prescribed by the Act must be followed. e. g. To alter the name of the Company 9/10 th majority should agree.

Entrenchment Articles can be done at the time of formation of a company or even later on.

❑ **Alteration of Articles of Association**

The Companies Act states that subject to the provisions of the Act and the conditions contained in the Memorandum of Association, a company can alter its Articles of Association by passing a special resolution in the General Meeting of the Company. Alterations in the Articles, bind the members in the same way as the original Articles did.

A Company can alter its Articles of Association in the following ways -

- i) by adoption of new set of an Articles
- ii) by deletion of an article
- iii) by addition or insertion of a new article
- iv) by substitution of an article
- v) by amendment of an article

❑ **DOCTRINE OF INDOOR MANAGEMENT**

It is an accepted fact that certain information which is internal to a company cannot be known by outsiders. Hence they act in accordance to the information they get from the Memorandum of Association and Articles of Association.

Doctrine of Indoor Management states that persons entering into a contract with the company need not inquire whether the company or its officers have properly followed the internal proceedings as stated in the Articles. It is assumed that the company acts as per its Memorandum and Articles of Association.

Doctrine of Indoor Management protects the interest of the outsiders when they act based on the Memorandum and Articles of Association of a Company as outsiders are not bound to inquire into the regularity of internal proceedings.



Activity :

Read the Memorandum and Articles of Association of Tech Mahindra Limited From the website <http://www.techmahindra.com/sites/Resources>.

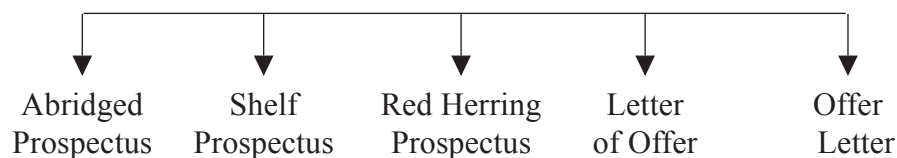
4.3 PROSPECTUS

When a Public company, is collecting capital by issuing shares to the public has to issue a document called 'Prospectus.' Prospectus is a document which contains information about various aspects about the company and invites the investors to buy the securities offered by the company.

Section 2 (70) of Companies Act, 2013 defines prospectus as “any document described or issued as a prospectus and includes Article 32a Red Herring Prospectus or shelf prospectus or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.”

The prospectus must contain true and factual disclosures as investors decide to invest based on the information given in the prospectus.

Types of Prospectus issued by a company



1. ABRIDGED PROSPECTUS

It contains the main contents of a prospectus but in brief. It is attached with the application form issued by the company while offering its securities. Abridged prospectus is issued only in case of Public offer made by a company.

2. SHELF PROSPECTUS

A public company may raise funds from the public by issuing securities as and when it needs more funds. For every such issue, fresh prospectus is to be issued. The process of preparing and registering a prospectus is very time consuming. Thus, instead of preparing fresh prospectus for every issue, a company can prepare 'Shelf Prospectus'. Shelf prospectus can be used for all issues made by the company upto one year from the date of first offering of securities under that prospectus.

However, an 'Information Memorandum' is to be filed with the ROC every time a subsequent offer of securities is made during the validity period of one year of the shelf prospectus. The Information Memorandum contains latest material facts such as any new charges created on assets of the company, changes in the financial position from that of the succeeding offers, etc.

Charges : charges is an interest or lien created on the assets of the company when it uses them as security to borrow money.

3. RED HERRING PROSPECTUS

A Red herring prospectus is a kind of incomplete prospectus as it does not include complete particulars of the quantity of securities offered or the issue price of the securities being offered. It is usually issued at the time of IPO or for any issue done under the Book Building process.

IPO (Initial Public offer) is when company offers its shares for the first time to the public.

Book Building process'. It is a process by which company determines issue price of securities based on demand from the public.

A Red Herring prospectus shall have the same obligations that are applicable to prospectus. A Company must file a Red Herring Prospectus with ROC at least 3 days prior to the opening of the subscription list and the offer.

4. LETTER OF OFFER

When a company undertakes further issue of shares by making a Rights Issue i.e. offering shares directly to its existing shareholders in proportion to the shares held by them, the company issues a document called as 'Letter of offer'. It contains the details of the offer.

5. OFFER LETTER

An offer letter is issued to select group of investors by a company when it makes private placement offer of securities. Private placement means when a company is offering its shares to any select group of investors.

❏ CONTENTS OF PROSPECTUS

A prospectus must contain the following -

1. Information and Reports :

As per the Companies Act, prospectus must contain information such as the name of the issuing company, its full Registered office address with phone numbers, email address, nature, number and price of securities being offered, details of Lead Merchant Banker, Registrar to the Issue, names of Stock Exchange where the shares are to be listed, a clause on general risk, date of opening and closing of issue etc. It must also have reports on financial information. SEBI specifies the contents to be included in the prospectus.

Lead Merchant Bankers are Financial Institutions which guides companies in issuing Shares.

Registrar to the issue are agents appointed by company to collect application forms and money, maintain records of investors, etc.

2. Declaration :

There should be a declaration by the company saying that all the provisions of the Companies Act have been complied with and that the prospectus does not contain anything contrary to the provisions of Companies Act, Securities Contracts (Regulation) Act, 1956 and SEBI Act, 1992 and the rules and regulations made thereunder.

3. Statement of an Expert :

A prospectus may contain a statement made by an expert like a Company Secretary, Chartered Accountant, Cost Accountant, Valuer, Engineer, etc. relating to matters that they have looked into. The Expert has to give written consent to issue the prospectus.

4. Any other matter as may be prescribed by the Companies Act.

❑ STATUTORY REQUIREMENTS IN RELATION TO PROSPECTUS

1 Draft Prospectus to be made Public

A draft prospectus filed with SEBI by the company should be made available to the Public and to the Stock Exchanges where the company wants to list its shares.

2. Signed by Directors

Prospectus must be signed by all Directors or by the duly authorized attorney.

3. Registration of Prospectus

A copy of the prospectus must be registered (filed) with the ROC before issuing it to the public.

4. Dating of prospectus

A prospectus has to be dated. The date on the prospectus is considered as the date of publication of the prospectus.

5. Issuing prospectus to the Public

Prospectus must be issued to the public within 90 days from the date of registering a copy with the ROC.

❑ Penalty for non-compliance

If a Prospectus is issued in contravention of the above mentioned provisions, the penalty is as follows -

- 1) The company shall be liable to pay a fine between ₹ Fifty Thousand and Three Lacs, and
- 2) Every person who has knowingly involved in issuing such a prospectus, will be punishable with imprisonment for upto 3 years or with fine between ₹ Fifty Thousand and ₹ Three Lacs or with both.

❑ MIS-STATEMENTS IN A PROSPECTUS

As the investors make their decision to invest based on the information given in the prospectus, care should be taken to ensure all information is accurate and no material fact is omitted.

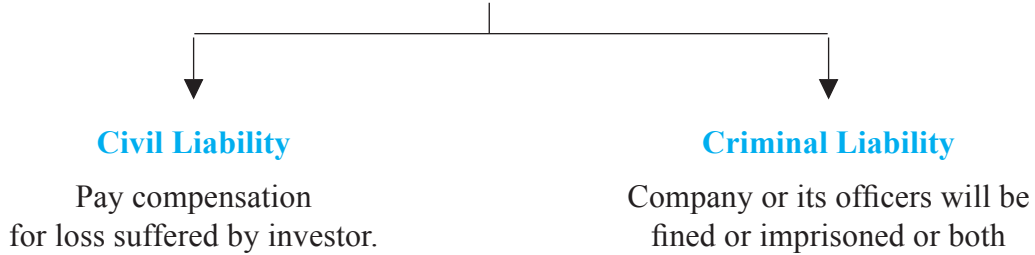
An untrue statement or mis-statement means -

- i) The statement is misleading in form or content, or
- ii) Where any inclusion of a statement or its omission is likely to mislead the reader.

If an investor has bought shares of a company based on a prospectus which had misleading information or suppressed material information, then he can take action against the Company.

If there is any untrue or mis-statements in the prospectus, the company and persons responsible for issuing such prospectus will have to face following liability.

Liability incase of mis-statement



4.4 DISTINCTION BETWEEN MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION

Sr. No.	Points	Memorandum of Association	Articles of Association
1)	Meaning	It is the document which defines the aims and objectives of the company.	It is the document which contains the rules and regulations for internal management of the company.
2)	Status	It is the primary document without which no company can be formed.	It is the second most important document prepared at the time of incorporation of the company. It is subordinate to Memorandum.
3)	Scope	It lays down the area beyond which the activities of the company cannot go. It lays down the boundaries within which the Articles will be framed.	It provides the regulations within the boundaries laid down by the Memorandum. It thus lays down the scope within which company can function.
4)	Contents in which	It lays down the range of activities a company can do and cannot do. It contains the Name of the company, state in which Registered office is located, capital structure, details of objects of company, liability of members, etc.	It lays down rules and regulations for internal management of the company. It contains details of allotment of securities, appointment, duties and powers of directors, auditors, officers, winding up procedure etc.
5)	Relation	It defines relationship between company and outsiders.	It defines relationship between Company and members and between the members.
6)	Contradict	It cannot contain anything which contradicts the Companies Act or any other statute.	It cannot contain any provisions which contradicts the Companies Act as well as the Memorandum.

Sr. No.	Points	Memorandum of Association	Articles of Association
7)	Alterations	The process of Alteration of Memorandum is little complicated as approval of Central Government may be needed at times.	Altering the Articles is a simple process as often only a special resolution is needed to alter it.

SUMMARY

- At the time of Incorporation, every company has to submit Memorandum of Association and Articles of Association.
- Memorandum of Association is the Primary document. It describes the nature and character of the company i.e. states the aims and objectives of the company. It establishes relationship between company and outsiders. It has following clauses :
 - Name Clause :** Name of the company
 - Registered office address :** The state where the company's registered office is located.
 - Object clause :** The main object (activity) of the company and other activities which can be taken up in furtherance of the main object.
 - Capital clause :** describes the capital structure of a company, types of shares, etc.
 - Liability clause :** describes the extent of liability of the members
 - Association or subscription clause :** contains the name, details and signatures of subscribers to the Memorandum.
- Doctrine of Ultra Vires: It states that any act beyond the powers of memorandum is null and void.
- Articles of Association is subordinate document to the Memorandum. It contains the rules and regulations for internal management of the company. It contains provisions for allotment of shares, transfer and transmission of shares, payment of Dividend, appointment, duties and powers of Directors, Managing Directors, etc.
- Doctrine of Indoor Management protects people who enter into contracts with company assuming that the company follows all procedure and rules as mentioned in the Memorandum and Articles of Association.
- Prospectus: It is an invitation to the public to buy the shares of a Company. A company can issue Shelf prospectus, Red Herring prospectus, Letter of offer etc. depending upon the kind of issue it is making.
- Misstatements in Prospectus refers to any untrue or misleading information given in the prospectus. Company and its officer may face Civil and Criminal Liability for misstatements in prospectus.



EXERCISE

Q.1 A. Select the correct answer from the options given below and rewrite the statements.

- 1) is a primary document of the company which contains the aims and objectives of the company.
a) Memorandum of Association b) Articles of Association c) Prospectus
- 2) describes the relationship between company and outsiders.
a) Memorandum of Association b) Articles of Association c) Prospectus
- 3) The clause describes the range of activities a company can undertake.
a) Name b) Capital c) Object
- 4) Any act done by the company beyond the powers of Memorandum is called as
a) Doctrine of Indoor management b) Ultra Vires c) Mis-statement
- 5) acts are void or legally ineffective.
a) Object clause b) Main Object c) Ultra Vires
- 6) clause contains the details of liability of the members.
a) Name b) Liability c) Object
- 7) clause states the amount of Authorised capital with which the company is registered.
a) Liability b) Object c) Capital
- 8) contains rules and regulations for internal management of the company.
a) Articles of Association b) Prospectus c) Memorandum of Association
- 9) Articles establishes relationship between company and
a) Members b) Outsiders c) ROC
- 10) is an invitation to the public to subscribe for the shares of the Company.
a) Memorandum b) Prospectus c) Articles of Association
- 11) For making multiple issue of shares within a year, a company can prepare a Prospectus.
a) Abridged b) Shelf c) Red Herring
- 12) is an incomplete prospectus.
a) Red Herring Prospectus b) Shelf Prospectus c) Abridged Prospectus

B) Match the pairs.

Group 'A'		Group 'B'	
a)	Capital clause	1)	Details of capital structure of a company
b)	Liability clause	2)	Used for multiple issue of shares
c)	Acts beyond the powers of Memorandum	3)	Abridged Prospectus
d)	Red Herring Prospectus	4)	Describes main objectives
e)	Shelf Prospectus	5)	Used for Rights Issue
		6)	Incomplete Prospectus
		7)	Ultra Vires
		8)	Doctrine of Indoor management
		9)	Extent of liability of members
		10)	Articles of Association

C. Write a word or a term or a phrase which can substitute each of the following statements:-

- 1) Primary document of a company which states aims and objectives of a company.
- 2) Document which establishes company's relationship with outsiders.
- 3) Document which states the limits within which a company has to operate.
- 4) Document which contains, Name Clause, Registered Office Clause, Capital Clause, etc.
- 5) Document which is subordinate to the Memorandum of Association.
- 6) Document which contains rules and regulations for internal management.
- 7) Term used for acts beyond the scope of Memorandum of Association.
- 8) Clause which describes the main activities a company can undertake.
- 9) Clause which gives details of authorized capital or Registered Capital.
- 10) Clause which describes the extent of liability of members.
- 11) Last clause of Memorandum which contains name, signature and other details of all the subscribers to the Memorandum.
- 12) Document which establishes relationship between a company and its members.
- 13) Document issued by public company inviting public to subscribe to its shares.
- 14) Prospectus attached with every share application form.
- 15) Prospectus used for multiple issue of shares within a year.
- 16) It is an incomplete prospectus.
- 17) This prospectus does not contain information about quantum of shares to be issued or the price at which shares will be issued.

D) State whether the following statements are True or False:

- 1) Memorandum of Association and Articles of Association is prepared at the time of incorporation of a company.
- 2) Memorandum of Association describes the nature and character of the company.
- 3) Memorandum establishes relationship between Company and Members.
- 4) Any act done by the company beyond the powers of Memorandum is Ultra Vires.
- 5) Articles of Association can have provisions which contradicts the Memorandum.
- 6) Memorandum need not have a Liability Clause.
- 7) Articles of Association is subordinate to Memorandum.
- 8) Memorandum contains rules and regulations for internal management of a company.
- 9) Every subscriber who signs the Memorandum must also sign the Articles.
- 10) Entrenched Articles cannot be easily altered.
- 11) Prospectus can be issued by a private company.
- 12) Only public companies can issue Prospectus.
- 13) Prospectus must be issued within 1 year from the date of filing it with the ROC.
- 14) Actions can be taken against a company or its officers for misstatements in prospectus.
- 15) Every company has to issue shelf prospectus every time it offers shares to the public.
- 16) Red Herring prospectus does not contain details of the price at which shares will be sold by the company.
- 17) Letter of offer is issued at the time of Rights Issue.

E) Find the odd one.

- 1) Name, Clause, Rights of Board Directors, Object clause.
- 2) Rights of shareholders, Appointment and remuneration of Directors, Liability clause.
- 3) Shelf prospectus, Abridged Prospectus, Articles of Association.

F) Complete the sentences.

- 1) The documents which states the aims and objectives of a company is called as
- 2) Any act done by the company which goes beyond the powers of Memorandum of Association will be called as
- 3) The document which is subordinate to the Memorandum of Association is called
- 4) The document which contains the rules and regulations governing internal management of a company is called
- 5) The document issued by a company to invite investors to buy its securities is called as

G) Select the correct option form the bracket.

Group 'A'	Group 'B'
1) -----	Memorandum of Association
2) Liability clause	-----
3) Incomplete Prospectus	-----
4) -----	Establishes relationship between company and its members

(Articles of Association, Red Herring Prospectus, Primary document, details of liability of members)

H) Answer in one sentence.

- 1) Which document contains the aims and objectives of the company?
- 2) What does the capital clause describe?
- 3) When is Abridged Prospectus issued?

I) Correct the underlined word and rewrite the following sentences.

- 1) Articles of Association states the aims and objectives of the company.
- 2) Prospectus is subordinate to Memorandum of Association.
- 3) Prospectus contains liability clause.

J) Arrange in proper order.

- 1) a) subscription clause
b) Name clause
c) Object clause

Q. 2 Explain the following terms/concepts.

- | | |
|----------------------------------|----------------------------|
| 1) Memorandum of Association | 2) Articles of Association |
| 3) Name Clause | 4) Object Clause |
| 5) Liability Clause | 6) Capital Clause |
| 7) Registered Office Clause | 8) Ultra Vires act |
| 9) Doctrine of Indoor management | 10) Prospectus |
| 11) Mis-statements in Prospectus | 12) Abridged Prospectus |
| 13) Shelf Prospectus | 14) Red Herring Prospectus |

Q. 3 Study the following case/situation and express your opinion.

- 1) The Articles of a company stated that while borrowing any money from outsiders, the document must have the signatures of the Managing Director (MD) and any one of the Director. The Articles of Association clearly stated the procedure to be followed while

borrowing money. The Managing Director did not follow all the procedures but still borrowed money from Mr. X. Mr. X assumed that the MD has followed the required procedures.

- a) Can the MD be held punishable for his act?
 - b) Under which Doctrine can Mr. X take action against the company?
 - c) Explain the Doctrine.
- 2) Mr. A entered into a contract with Star Limited company and as advance payment gave a cheque of ₹ 1 lac to a Director Mr Sam. Mr. Sam is not the Managing Director. Articles states that only the MD is authorized to sign any contracts or receive any payments on behalf of the company.
- a) Did Mr. Sam have the authority to accept the cheque? Why?
 - b) Can Mr. Sam's action be called as Ultra Vires? Why?
- 3) The Object clause of Memorandum of a company stated the main object as manufacturing of plastic chairs and tables and any other activity in furtherance of achievement of its main activity. The Board of Directors wants to now also produce TV. Serials and feels that the shareholders may give their permission.
- a) Can the company with immediate effect start producing TV. Serials? Why?
 - b) How can the object clause of the company be altered?
- 4) A public limited company has issued all the shares mentioned in its Memorandum as Authorized Capital. Now the Company wants to make a public issue of 10,000 shares at face value of ₹ 100 Per share, to raise more funds for its expansion activities.
- a) Which clause of Memorandum needs to be altered?
 - b) In which meeting the alteration can be approved?
 - c) Which document should the company issue to invite the public to buy its shares?
- 5) A Company stated in its prospectus that it has been making profits since the last 5 years. However, Mr. X. an investor found out that two years back the company had not made any profit. The prospectus was filed with the ROC on 1 st Jan, 2017 and was issued to the public on 10 th Feb 2018.
- a) Can Mr. X state that there was a misstatement in the prospectus?
 - b) If found guilty which two types of liability will the company and its officers face?
 - c) Can the prospectus be valid for issue to the public on 10th Feb 2018.
- 6) A Company plans to offer Rights Issue.
- a) Which document must it send to its shareholders for offering the Rights Issue?
 - b) Instead of Rights Issue, if the company wants to issue shares to the public, which document must it issue for inviting the public to subscribe for it?
 - c) Name the document which is called as incomplete prospectus.

Q.4 Distinguish between the following.

- 1) Memorandum of Association and Articles of Association.

Q. 5 Answer in brief.

- 1) State any four clauses of Memorandum of Association.
- 2) State any four contents of Articles of Association.
- 3) State the Statutory requirements in relation to Prospectus.

Q.6 Justify the following statements.

- 1) Memorandum of Association defines the limitations of the powers of the company.
- 2) Ultra vires acts are null and void
- 3) Contents of Articles can be altered.
- 4) Doctrine of Indoor Management protects outsiders who are unaware of the correctness of internal proceedings of a company.
- 5) Prospectus is an important document issued by a public company.
- 6) Company and officers responsible for issuing Prospectus are liable for mis-statements in Prospectus.

Q.7 Answer the following questions:

- 1) Briefly explain the clauses of Memorandum of Association.
- 2) Define Memorandum of Association. Explain its features.
- 3) What is Articles of Association? Explain briefly its content.
- 4) Define Prospectus. Explain its contents.

