

## **ARTICLES OF ASSOCIATION**

### **Notes**

#### **Meaning**

- The Articles of Association of a company are its bye-laws or rules and regulations that govern the management of its internal affairs and the conduct of its business.
- The articles regulate the internal management of the They define the powers of its officers. They also establish a contract between the company and the members and between the members inter se. They set out provisions for the manner in which the company is to be administered.
- In particular, they provide for matters like the making of calls; forfeiture of shares; directors' qualifications, appointment, powers and duties of auditors; procedure for transfer and transmission of shares and debenture.

#### **Relationship between Memorandum of Association and Articles of Association**

- The articles regulate the manner in which the company's affairs will be managed. The memorandum defines the company's objects and various powers it possesses; the articles determine how those objects are to be achieved and those powers exercised.
- The articles of a company are subordinate and controlled by the memorandum of association which is the dominant instrument and contains the general constitution of the company.
- The memorandum and the articles are contemporaneous documents, and must be read together, and any ambiguity or uncertainty in the one may be removed by reference to the other. For example, where the memorandum is silent as to whether the company's shares are to be all of one class or might be of different classes, then the power given by the articles to issue shares of different classes resolves the uncertainty and enables the company to do so.
- The memorandum and articles can be read together only to remove an ambiguity or uncertainty. If the memorandum is perfectly clear, a doubt as to its meaning cannot be raised by reference to the articles; in such a case the articles are simply inconsistent with the memorandum and are disregarded.
- In *Ashbury Railway Carriage & Iron Ltd. V. Riche*, Lord Cairns observed :

*“The articles play a part subsidiary to a memorandum of association. They accept the memorandum of association as a charter of incorporation of the company, and so accepting it, the articles proceed to define the duties, rights and powers of governing body as between themselves and the company at large, and the mode and form in which business of the company is to be carried on, and the mode and form in which changes in the internal regulations of the company may from time to time be made.”*

### **Distinction between MOA and AOA :**

- Memorandum lays down the area beyond which the activities of the company cannot go. Memorandum lays down the area beyond which the activities of the company cannot go. Articles provide for regulations inside that area.
- The memorandum contains the fundamental conditions upon which alone the company is allowed to be incorporated. These conditions are introduced for the benefit of the creditors, and the outside public, as well as the shareholders. The articles of association are the internal regulations of the company; they only regulate the relationship between company and the members and members inter se (i.e., amongst members themselves)
- Memorandum of association can be altered only under certain circumstances and in the manner provided in the Articles can be altered by the members by passing a special resolution only.
- Acts done by a company beyond the scope of the memorandum are ultra vires and, thus, absolutely void. They cannot be ratified even by unanimous vote by all the shareholder. But the acts beyond the articles can be ratified by the shareholders provided the relevant provisions are not beyond the memorandum.

### **Alteration of Articles of Association**

- Section 14 provides that subject to the provisions of the Act and to the conditions contained in its memorandum; a company may, by special resolution alter its articles.

### **Limitation on power to alter articles**

1. The alteration must not be inconsistent with the provisions of the Companies
2. The alteration must not exceed the powers given by the memorandum or be in conflict with any provisions of the memorandum.
3. Not be inconsistent with any alteration made by the Tribunal under the articles by an order under Section 242.
4. The altered articles must not include anything which is illegal or opposed to public policy or
5. The alteration must not constitute a fraud on the minority by a majority.

6. The alteration must be bona fide for the benefit of the company as a
7. An alteration of articles to effect a conversion of a public company into a private company cannot be made without the approval of the Tribunal.
8. A company cannot justify breach of contract with third parties or avoid a contractual liability by altering articles
9. Alteration cannot be made under the articles to empower a director to expel a

### **Doctrine of Constructive Notice**

- **Section 399** provides that the Memorandum and Articles when registered with Registrar of Companies ‘become public documents’ and then they can be inspected by any one on payment of the prescribed fee.
- Therefore, any person who contemplates entering into a contract with the company has the means of ascertaining and is thus presumed to know the powers of the company and the extent to which they have been delegated to the directors. This is known as “doctrine of constructive notice”.
- Even if the party dealing with the company does not have actual notice of the contents of these documents it is presumed that he has an implied (constructive) notice of them.
- Illustration – One of the articles of a company provides that a bill of exchange to be effective must be signed by two directors. A bill of exchange is signed only by one of the directors. The payee will not have a right to claim under the bill

### **Doctrine of Indoor Management**

- The doctrine of Indoor Management, also known as the “**Turquand’s Rule**,” is a principle in corporate law that protects individuals who deal with a company in good faith, assuming that the company’s internal procedures are properly followed. This doctrine is rooted in the case of *Turquand v. Marshall (1856)*, where it was established that outsiders are not required to inquire into the internal management of a company.

### **Features of Doctrine of Indoor Management**

- **Presumption of Proper Procedure:** The doctrine presumes that internal processes and procedures of a company are correctly followed, even if they are not. As such, third parties dealing with the company are not expected to investigate whether internal rules or resolutions were adhered to.
- **Protection for Third Parties:** This rule protects those who engage with the company from internal irregularities and ensures that their transactions are not invalidated due to internal procedural flaws.

## **EXCEPTIONS TO THE DOCTRINE OF INDOOR MANAGEMENT**

1. **Knowledge of Irregularity:** If a third party is aware or should have been aware of the irregularity or lack of authority at the time of the transaction, the doctrine does not protect them. In such cases, the transaction might not be enforceable against the company.
2. **Forgery:** The rule of indoor management does not extend to transactions involving forgery or otherwise void or illegal ab For example, if the secretary of a company forged signatures of two of the directors required under the articles on a share certificate and issued certificate without authority, the applicants will be refused registration as members of the company. The certificate would be a nullity and the holder of the certificate will not be allowed to take advantage of the doctrine of indoor management.
3. **Negligence** – The ‘doctrine of indoor management’, in no way, rewards those who behave negligently. Thus, where an officer of a company does something which shall not ordinarily be within his powers, the person dealing with him must make proper enquiries and satisfy himself as to the officer’s If he fails to make an enquiry, he is estopped from relying on the this doctrine. In *B. Anand Behari Lal v. Dinshaw & Co. (Bankers) Ltd.* AIR 1942, an accountant of a company transferred some property of a company in favour of Anand Behari. On an action brought by him for breach of contract, the Court held the transfer to be void. It was observed that the power of transferring immovable property of the company could not be considered within the apparent authority of an accountant.
4. **Acts Against Public Policy:** Transactions that are contrary to public policy or illegal cannot be validated under the doctrine of Indoor Management.



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