

BRIEF on ARTICLES OF ASSOCIATION:

Every individual must follow certain rules and regulations to have a balanced life. Same is the case with a company which needs to follow a set of rules and regulations to manage all its internal affairs. According to Companies Act, 2013, there are two important documents of a company. They are Memorandum of Association (MoA) and the other one is Articles of Association (AoA). The document which manages the internal regulations is Articles of Association.

Primary Document – Memorandum of Association

Secondary Document – Articles of Association

What is Articles of Association?

An Article of Association (AoA) sets down the important rules and regulations for the internal management of the company where it specifies the roles, rights, duties, powers and management of the company.

Memorandum of association specifies the objectives of the company and AOA helps to achieve those objectives. Moreover, AOA contains the bye-laws of the company, therefore, every director of such company and other members must perform their functions in accordance with AOA.

What law says about Articles of Association?

According to Section 2(5) of the Companies Act, 2013, “Articles” means “Articles of Association of a company as originally framed or has been altered from time to time in accordance of any previous company law or for this Act. Accordingly, AoA is a kind of public document which can be examined from the company’s registered office and helps to develop the relationship between the company and its internal management.

According to the Companies Act, 2013 it is mandatory for each and every company to have its own Articles of association and get it filed for registration.

Like the Memorandum of Association, the Articles should also be:

- Printed.
- Divided into paragraphs numbered consecutively
- Signed
- Witnessed, and
- Stamped

Importance of Articles of Association:

The importance of both AoA and MoA is manifold and are integrated to each other. Documentation of both such documents is the one of the preliminary step in the company formation. Further, it doesn’t matter whether it is a Private Company or a Public Company, but you need to start the formation process after drafting the AoA and MoA. It is like the foundation of the building which needs to be constructed.

Rules and regulations of the Public listed company are stricter than the Private Company. So, it is better to draft a good AoA for the benefit of the company and also for all the employees who are directly or indirectly associated with it. An article of association includes only the basic requirements through clauses which a company should have.

Contents of Articles of Association

The articles generally deal with the following

1. Classes of shares, their values and the rights attached to each of them.
2. Calls on shares, transfer of shares, forfeiture, conversion of shares and alteration of capital.
3. Directors, their appointment, powers, duties etc.
4. Meetings and minutes, notices etc.
5. Accounts and Audit
6. Appointment of and remuneration to Auditors.
7. Voting, poll, proxy etc.
8. Dividends and Reserves
9. Procedure for winding up.
10. Borrowing powers of Board of Directors and managers etc.
11. Minimum subscription.
12. Rules regarding use and custody of common seal.
13. Rules and regulations regarding conversion of fully paid shares into stock.
14. Lien on shares.

What should a company do when it wants to alter the articles?

As per Section 14 of the Companies Act, 2013, a company may alter its articles by passing a special resolution.

Whatever alteration a company does in its articles, it must be filed with the Registrar with a printed copy of the articles within 15 days. Alteration of the article can be done in following ways:

- Adopting new set of articles
- Adding or inserting any new article
- Deleting any article
- Amending any specific article
- Substituting any specific article

Note: Any alteration done to convert a public company into a private company cannot take place without the approval of Tribunal

How would you alter the Articles of Association?

If you as a company propose to alter the articles of association, you need to follow the below procedure:

1. Convene a Board Meeting: Just hold a board meeting to consider what articles you need to alter and just pass a formal resolution for this.

- Fix a time, date and venue for the General Meeting to pass a special resolution

- Approve notice and agenda for such general meeting.
- Authorize a Company Secretary to issue such notice of General Meeting
- When Board Meeting concludes, send to the stock exchange, if shares are listed, particulars of the proposed alteration.

2. Convene a General Meeting: First of all as discussed above, issue a notice of the General Meeting to all the members, directors and auditor of the company

- Intimate to stock exchanges also
- You need to pass a special resolution in the general meeting
- All the proceedings of the general meeting must be passed to the stock exchanges, if your shares are listed
- File with ROC (Registrar of Companies), Form MGT-14
- Post which you can make necessary changes in all the copies of the AoA.

What would be the effect of Alteration of Articles?

Articles cannot be altered if they are not proper and are inconsistent with any provisions of the law. Moreover, you cannot alter them for the sake of doing illegal business. As a result, all the members are bound by the valid alteration whether they voted for or against it.

Conclusion:

It is a very well settled company law principle that the articles of association of a company cannot override the provisions of the Companies Act, 2013. Further, the articles of association of a particular company are also bound to take care of the memorandum of association of the company as the articles are subordinate to the memorandum of the company as well as any other company law in force at that time. Thus, it is of primary importance that when a company is being incorporated, and the articles of association of the company are being prepared, the same must be done in accordance with memorandum of association, the Companies Act, 2013 and any other company law which is in force at that time.
