**UNIT 1: FORMATION OF A JOINT STOCK COMPANY**

**To be covered under this Unit:** Meaning and Definition–Features of Joinst stock company–Kinds of companies(concepts only)–Formation of a company–Steps–Promotion Stage–Meaning of Promoter, Position of Promoter & Functions of Promoter–Incorporation Stage–Steps in incorporation of a company, Meaning and contents of Memorandum of Association and Articles of Association, Distinction between MOA and AOA, Certificate of Incorporation–Subscription Stage–Meaning, contents and Types of Prospectus–Commencement Stage – Documents to be filed, e-filing, Registrar of Companies(ROC), Certificate of Business commencement.

**Introduction to Companies Act 2013:**

Government of India enforces law for proper functioning any organisation. In order to regulate the activities of companies in our country, government frames new law or amends the existing law from time to time. Revamp of the law helps in smooth functioning of the companies. In this regard various activities are done by the respective authority. Several new concepts are introduced to streamline the law as per present day requirement. Highlights and analysis of Companies Act 2013 is covered herein.

The law relating to the companies is based on the British model. The first piece of legislation relating to Indian companies in 1850 was based on Joint Stock Companies Act of 1844. This legislative though provided for registration of companies and transferability of shares, but it not conform the privileges of limited liability on the members. Companies (Amendment) Act of 1857 provided for registration of companies with or without limited liability. Companies Act of 1866 replaced the amendment Act of 1857. After 4 amendments in the year 1887, 1895, 1900 & 1910 the act was consolidated in 1913.

This ordinance gave way to the Act in 1956 with the object of consolidating & amending the earliest laws relating to companies & other associations and Companies Act 1956 was passed there on. In tune with the changes that took place in the economic & corporate scenarios. Companies Act of 1956 was amended regularly in 1960, 1962, 1963, 1965, 1966, 1969, 1977, 1985, 1988, 1996, 1999, 2000, 2002 and 2006.

On the 29th August, 2013, Companies Act of 2013(No.18 of 2013) with 470 sections in 29 chapters and VII schedules got the consent of the President of India and is applicable in India presently.

**Meaning and Definition:**

According to Section 2(20) “Company” means a company incorporated under this Act or under any previous company law.

Company may be defined as “an artificial & judicial person created by the law with perpetual succession and a common Seal.” Lord Justice Lindley defines, a company as “an association of many persons who contribute money or money’s worth to a common stock & employed for a common purpose.”

**Characteristics Features of Joint Stock Company[OR Advantages of Company]:**

**1.Separate Legal Entity** - The law recognises the independent status of the company. A company has got an identity of its own which is quite different from its members. This implies that a company cannot be held liable for the actions of its members and vice versa. The distinct entity of a company from its members was upheld in the famous Salomon Vs. Salomon & Co case.

**2.Limited Liability** - The liability of the members of a company is invariably limited to the extent of the face value of shares held by them. This means that if the assets of a company fall short of its liabilities, the members cannot be asked to contribute anything more than the unpaid amount on the shares held by them. Unlike the partnership firms, the private property of the members cannot be utilized to satisfy the claims of company’s creditors.

**3.Perpetual Succession** - A company enjoys a continuous existence. Retirement, death, insolvency and insanity of its members do not affect the continuity of the company. The shares of the company may change millions of hands, but the life of the company remains unaffected. In an accident all the members of a company died but the company continued its operations.

**4.Common Seal** - A company being an artificial person cannot sign for itself. A seal with the name of the company embossed on it acts as a substitute for the company’s signatures. The company gives its assent to any contract or document by the common seal. A document which does not bear the common seal of the company is not binding on it.

**5.Transferability of shares** - The capital of the company is contributed by its members. It is divided into shares of predetermined value. The members of a public company are free to transfer their shares to anyone else without any restriction. The private companies, however, do impose some restrictions on the transfer of shares by their members.

**6.Separation of ownership & management** - Though shareholders of a company are its owners, yet every shareholder, unlike a partner, does not have a right to take an active part in the day to day management of the company. A company is managed by the elected representatives of its members. The elected representatives are individually known as directors and collectively as ‘Board of Directors’.

**7.Capacity to sue** - A company being an artificial and judicial person, can sue or can be sued by any person. A case can be filed in the court of law either by company or against the company by any person.

**8.Separate property** - Since a company is an incorporated voluntary association, it can hold property in its name. The legal title of the assets purchased by the company will be its name and not in the name of any other person.

**9.Incorporated association** - A company is a voluntary association of two or more persons. A single person cannot constitute a company. At least two persons must join hands to form a private company. While a minimum of seven persons are required to form a public company. The maximum membership of a private company is restricted to fifty, whereas, no upper limit has been laid down for public companies.

A company comes into existence the day it is incorporated/registered. In other words, a company cannot come into being unless it is incorporated and recognised by law. This feature distinguishes a company from partnership which is also a voluntary association of persons but in whose case registration is optional.

**10.Capacity to Contract** – All legally enforceable agreements are called contracts. A company can enter into contracts with any person for accomplishing its objectives.

**Types of companies:**

**I] Classification of Companies by Mode of Incorporation:**

**1. Chartered Companies -** These companies are formed under a special charter by the monarch or by a special order of a king or a queen. Few examples of royal chartered companies are East India Company, Bank Of England, etc.

**2. Statutory Companies -** These companies are incorporated by a special act passed by the central or state legislature. These companies are intended to carry out some business of national importance. For example, The Reserve Bank of India was formed under RBI act 1934.

#### 3. Registered or Incorporated Companies - These companies are formed/incorporated under the companies Act passed by the government.  These companies come into existence only after these are registered under the Act and the certificate of incorporation is passed by the Registrar of companies.

### II] Classification of Companies based on the liability of the members:

The registered companies can be classified into the following categories based on the liabilities of members:

#### 1. Companies Limited By Shares - These companies have a defined share capital and the liability of each member is limited by the memorandum to the extent of the face value of shares subscribed by him. In this type of company the liability of the members are limited to the extent of unpaid value of shares held by them.

#### 2. Companies Limited By Guarantee - These companies may or may not have a share capital and the liability of each member is limited by the memorandum to the extent of the sum of money (s)he had promised to pay in the event of liquidation of the company for payments of debts and liabilities of the company. In this type of company the liability of each members is limited to a fixed amount which he has guaranteed such companies are also known as guaranteed companies.

#### 3. Unlimited Companies - There is no formal restriction to the amount of money that the shareholder/member of the company has to pay in the event of the liquidation of an unlimited company.

### III] Classification of Companies based on The Number of Members:

#### 1. Public Company (or Public Limited Company) - Under section 2(71) public company” means a company which—

(a) is not a private company;

(b) has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed.

#### Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles.

A public company is a corporation whose ownership is open to the public. In other words, anyone can buy the shares of a public company. There are no restrictions to the number of members of a public company or to the transferability of shares. However, there are some other restrictions:

A public company should have at least 7 members and 3 directors, and issue a prospectus or file a statement in lieu of prospectus with the Registrar before allotting shares.

#### 2. Private Company (or Private Limited Company) - Under section 2(68), “Private company” means a company having a minimum paid-up share capital of one lakh rupees or such higher paid-up share capital as may be prescribed, and which by its articles,—

(i) restricts the right to transfer its shares;

(ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this cause, be treated as a single member:

Provided further that—

(A) persons who are in the employment of the company; and

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and

(iii) prohibits any invitation to the public to subscribe for any securities of the company

#### NOTE: In counting the number of members the past & the present employee members are excludes. In ascertain the limit joint share holders are treated as single members.

A private company cannot be owned by the public; it restricts the number of members, the right to transfer its shares and prohibits any invitation to the public to subscribe for any shares or debentures of the company.

 A private company is a separate legal entity with a suitable company name, an address, at least 2 members and at most 200 members, and at least two directors with one being an Indian resident.

#### 3. One Person Company - U/s 2(62), One Person Company” means a company which has only one person as a member. A one-person company is an Indian private limited company which has only one founder/promoter. The founder should be a natural person who is a country resident. There is also a threshold of paid-up capital (Rs.50 lakh) and average turnover (Rs.2 crores in 3 immediate preceding financial years) for a one-person

### IV] Classification of Companies based on Holding:

**1. Holding company:** Under section 2(46) holding company”, in relation to one or more other companies, means a company of which such companies are subsidiary companies.

**2. Subsidiary company:** Under section 2(87), subsidiary company” or “subsidiary”, in relation to any other company (that is to say the holding company), means a company in which the holding company—

(i) controls the composition of the Board of Directors; or

(ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed

**NOTE:** 1) In ascertaining the share holding only the equity share capital is considered.

2) A company can hold majority shares in any other company either by self or along with its subsidiary.

### V] Classification of Companies based on Nationality:

**1. Domestic Company:** Domestic Company is a company established/incorporated in the home country. This can be classified Government and Non-Government companies.

**a. Government company:** Under section 2(45), Government company means any company in which not less than 51% of the paid-up capital is helped by-

1)Central Government

2) State Government/s

3) Partly by Central and partly by one or more state Government

4) Subsidiary company of a government company.

**b. Non- Goverment Company:** Any Company not fulfilling the conditions given u/s 2(45) are known as Non-government company.

**2. Foreign company:** Under Sec.2(42) “Foreign company” means any company or body corporate incorporated outside India which—

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

### VI] Classification of Companies based on Listing :

**1. Listed Company:** U/s 2(52), “Listed company” means a company which has any of its securities listed on any recognised stock exchange.

**2. Unlisted Company:** “Unlisted company” means a company which has not listed any of its securities on any recognised stock exchange.

**Steps in formation of a company:**

1. Promotion Stage
2. Incorporation Stage
3. Subscription Stage
4. Business commencement Stage

**I)Promotion Stage:** Discovery of a specific business opportunity and subsequent organization of all the factors of production is known as Promotion. This stage is required either by a new business or expanding the existing business.

**Promoter:**A promoter is a person who does all the necessary preliminary works for the formation of the company. He is the first person to have control over the company’s affairs. He is the person to generate an idea for the formation of the company and decides the business activities to be undertaken by the company promoter brings together all factors of production namely land,labour,capital and organisation.

**Definition:** Under sec.2(69) “Promoter” means a person-

(a) who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

(b) who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act:

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity. In short, Promoter is a person who undertakes to form a company with reference to given project and who takes the necessary steps to accomplish the purpose.

**Functions of Promoter:**

1)Promoter decides the name of the company get is approved from the ROC.

2)He decides the details of MOA and AOA.

3)He settles the appointment of bankers,lawyers,auditors and technical consultants.

4)He decides the place of business.

5)Printing of MOA and AOA and its circulation.

6)He undertakes the responsibility of issuing prospectus of the company.

7)Submission of necessary documents to ROC for registration of the company.

8)Collection of certificate of Incorporation and business commencement.

**Legal Status of Promoter:**

1)There are no legal formalities for the position of promoter in a company.

2)He is not an agent or trustee of the company.

3)He is not an agent because there is no existence of principle and agent relationship.

4)He is not a trustee because he doesnot take care anybody’s property.

**Duties of the Promoter:**

1)Promoter should not make any profit at the expense of the company.

2)He can enter into contract with any third persons who are interested in the company.

3)If he makes any profit and fail to disclose the same then he is punishable under the law.

4)He should not misuse his power,position etc.

**Position of Promoter relation to the pre-incorporation contracts:**

1)Before the company being incorporated all the preliminary contracts are understood to be personal contracts of the promoters.

2)If the promoter fails to discharge the terms and conditions of preliminary contracts then he is liable to pay the damages to the third party.

3)The preliminary contracts can be continue or cancelled or alter after incorporation.

**Steps in Promotion Stage:**

**1) Discovery of an idea:** The promoter starts out with an idea to start some new business either in the existing field or in a new field. He makes rough estimate of the probable revenue & expenses.

**2) Detailed Investigation:** The promoter required to make detailed investigation of office with an idea with assistance of many experts like engineers, financial experts, management experts, technical analysts etc.

**3) Assembling:** After detailed investigation the promoted is required to take the support with this consent of the persons like directors, secretary, financial institutions, arranging payment, trademarks and factors of production availability.

**4) Financing:** The promoter has to prepare a prospectus to present to the public and the underwriters to persuade then to the finance proportion.

**II) Incorporation of a company:** After taking all the preliminary steps for registration on application along with necessary documents like stamp duty registration fees etc. has to be made to the registries for incorporation of the company. The registrar will verify of scrutiny all the documents submitted by the promoter and if found correct, certificate of incorporation will be issued to the company.

1)It means registration in the books of Registrar of companies.

2)Whether it is a private company or public company incorporation is compulsory as per the Companies Act, 2013.

3)Public limited company cannot start business until they get certificate of business commencement or certificate of incorporation.

4)Private limited company can start immediately after the receipt of certificate of incorporation.

**Procedure for incorporation of a company:**

1)Application for reservation of name in e-form INC-1 shall be made to the ROC.

2) Preparation and filing of MOA & AOA.

3)By filing e-form DIR-12 the particulars of directors and key managerial personnel are to be informed to the ROC.

4)e-form INC-22 has to be filed with regard to particulars of registered office.

5)Statutory declaration regarding complains all formalities required for incorporation.

6)Power of Attorney has to be filed with the ROC.

7)Payment of registration fee,filing fees,stamp duties etc.

8)Receipt of certificate of Incorporation.

**Certificate of Incorporation:**

1)In significance the existence or legal birth of a company.

2)This certificate is a conclusive evidence regarding existence of the company.

3)Certificate of business commencement(not applicable for private companies).It is required in case of all public companies.

4)The public company can commence its business or operation only after the receipt of Incorporation.

**Documents required for the Registration of a company:**

1) MOA duly signed by the subscribers of capital.

2) AOA duly signed by the subscribers of capital.

3)Agreement made by the promoter with any other individual or firm or company with interest on the company.

4)List of Directors to act so.

5)Qualification shares or deferred shares purchased by the directors.

6)Declaration stating that all the legal formalities are fulfilled by the promoters as per the provision of Companies Act 2013.This declaration should be approved and signed by 3 persons.

* Judge of supreme court or High court
* Company Secretary or Chartered Accountant
* Managing Director of the company

**Documents required for the certificate of commencement of Business:**

1.Minimum capital 5lakh.

2.Consent of the directors to act so.

3.List of qualification shares.

4.Copy of permission or licence given by stock exchange.

5.Submission of prospectus.

6.Declaration stating that the above points are true and correct to the best of the knowledge of managing directors of the company.

Note: 1)All the companies having share capital has to pass through 4 stages.

2)Private company are required to pass through only 2stages because they doesnot require certificate of business commencement and capital subscription the public or outsider.

3)Public limited company all the 4 stages has they require certificate of commencement of business as well as capital subscription from the outsider or general public.

**III) Capital Subscription Stage:**

a)Public companies have to pass through from this stage because they are collecting their capital from the public.In of companies it is collected by the members of the company.

b)Public companies are required to pass on this stage because they require to mobilize their capital from the public.

c)With a view to raise funds meeting of board of directors is required to take a decision like appointment of secretary, bankers, contents of prospectus, listing of shares, etc.

d) Filing copy of prospectus with the registrar signed by all the directors with properly dated.

e)Board of Directors has to decide the technicality of the allotment like pro-rates basis through the resolution and regret letters and submitted to the ROC within 30days.

f)Issue of share certificate to the public and to the registrar signed by at least 2 directors.

g)In case of private company 3 days prior to allotment of shares has to be communicated to the ROC.

**IV) Commencement of Business:**

i)If the company has a share capital then they cannot commence business unless

a)There is a minimum of capital

b)Cash paid by the directors

c)Statutory declaration verified by the secretary

ii) If the company is not issuing prospectus then statement in lieu of prospectus then statement in view of prospectus,money paid by the directors and statutory declaration verified by the secretary are required.

iii) After fulfilling the above requirements with the ROC and ROC will issue certificate of business commencement.

iv) Special provisions are required for the issue of certificate of business commencement.

a)Special resolution by its shareholders.

b)Central government approval.

c)If any of the above provision is violated penalty of Rs.5000 each day to the ROC.

**Documents of the company:**

**Memorandum of Association:**

MOA is a document which contains rules and regulation for the external control to deal with the outsiders.

1)It is the charter or constitution of the company.

2)It defines the area of operation i.e., it significance the powers of the company.

3)It deals with external affairs of the company.

4)It must be printed,divided into paragraphs,stamped signed by subscribers of memorandum and atleast by witness.

5)Schedule I gives the form of MOA.

a) Schedule I Table- A for company limited by shares

b) Schedule I Table-B for company limited by guarantee

c) Schedule I Table-Cfor company limited by both shares and guarantee

d) Schedule I Table-D forUnlimited companies not having share capital

e) Schedule I Table-E for Unlimited companies having share capital

**Importance or Need or Uses or Significance of MOA:**

1. It is a very important document which set out the constitution of the company.
2. It defines the company’s relationship with the outsider and the scope of its activities.
3. It helps the creditors,investors and other outsiders who deal with the company to know the activities of the company.

**Objectives/purpose of MOA:**

1. It helps to know the purpose for which the company is formed and money spent there upon
2. It enables all the persons to know the powers and limitations of the company.

**Clauses of MOA:**

MOA contains 6 clauses.They are:

1. Name clause
2. Situation clause/Registered office clause/Domicile clause
3. Object clause
4. Liability clause
5. Capital clause
6. Association clause

**1.Name clause:**It contains the name of the company which is very important for the registration or incorporation of the company.It should not be similar or identical with the name of an existing company. Name of the company must end with the name limited with an in case of public company and private ltd in case of private company.It shall not use names against social interest.Therefore undesirable names should not be used. The name of the company should not violate the provisions of “Emblems and names(Prevention of improper use)Act,1950

**2. Situation clause:** It indicates the place where the registered office is situated it decides the jurisdiction of the court to which it shall be subject to. All the official correspondence, communications or notices is served on registered offices. Generally the state in which the registered office will be situated is mentioned under this clause. The actual address is given by filing Form 18. In case of change of address of the registered office, same must be informed to ROC to avoid legal consequences.

**3. Object clause:**This is the most important content in the MOA. It should mention the objectives for which the company is formed. Great care to be taken as business needs to be carried out according to the objectives. Any incidental or consequential duties like drawing of the bills, accepting of the bills in the ordinary course of business can be done without being mentioned under this clause. The three parts of the object clause are –

1. Main objects
2. Objects incidental or ancillary to the main objects
3. Other objects

**4. Liability clause:**The liability of the shareholder is limited by-

1. By shares
2. By guarantee
3. Both by shares and guarantee

**5. Capital clause:**The particulars of the proposed capital of the company should be mentioned under this clause. Division, face value and other contents related to the shares should be given under this clause.

**6. Association clause:**It is a declaration made by the subscribers of the memorandum regarding the voluntary association and the shares subscribed by them.

**Alteration of MOA:**

The MOA can be altered only with regard to the following matters, provided the procedure prescribed by the companies Act, 2013 is followed –

1. **Alteration of Name clause - U/s 16:**
2. Change of Name:
3. Name of the company can be altered by passing a special resolution and same has to be filed with ROC within 30 days along with e-form INC-24 and e-form MGT-14.
4. Approval from the central government should be obtained through the above form.
5. In case of change of name due to conversion from private company to public company, then no such approval from central govt is required by filing e-form INC-27.
6. File a copy of altered MOA with ROC.
7. Rectification of Name:
8. In case the company is incorporated by oversight or inadvertently then the same can be rectified.
9. Name of the company can be rectified by passing an ordinary resolution and with the approval of central government by filing e-form INC-24.
10. File a copy of altered MOA with ROC.

Note:

1. Alteration of name to be implemented within 3 months after receiving directions from the ROC.
2. ROC will issue fresh certificate after necessary alteration is done.
3. Rights and obligations of the company remain unchanged or unaffected.
4. **Alteration of Situation clause:**
5. Shifting of registered office from one city, village or town to another:
6. Pass a special resolution.
7. File e-form MGT-14 along with a copy of special resolution within 30 days to ROC.
8. File e-Form INC-22 with ROC within 30 days.
9. Shifting of registered office from jurisdiction of one ROC to another within same state:

a.Pass a special resolution.

b. File e-form MGT-14 along with a copy of special resolution within 30 days to ROC.

c. File e-Form INC-22 with ROC within 30 days.

3.Shifting of registered office from the Jurisdiction of one ROC to another within the same state:

a. Passing special resolution.

b.File e-form MGT-14 along with a copy of special resolution within 30 days to ROC.

c.File e-Form INC-22 with ROC within 30 days.

d.Obtain approval from the regional directors by filing e-form INC-23.

4.Shifting of registered office from one state to another:

a.Passing special resolution.

b.File e-form MGT-14 along with a copy of special resolution within 30 days to ROC.

c. File e-Form INC-22 with ROC within 30 days.

d.Obtain confirmation from company Law Board (CLB) or National Company Law Tribunal (NCLT)& Central govt.

e. The company law board/NCLT will hear the objections from creditors,ROC etc before conformingthe order for shifting the registered office.

f.Along with the above documents file a copy of altered MOA & AOA.

**C. Alteration of Object Clause:**

a.Pass a special resolution.

b.File e-form MGT-14 along with copy of resolution**.**

c.File copy of altered MOA & AOA.

**NOTE:**If the company wants to pursue one of the other objects has main object than the procedure for alteration of object clause should be followed.However,no such requirement arises in case of private company.

**Grounds or Reasons or Need for Alteration:**

Situation clause (Shifting of registered office from one state to another) office or alteration of object clause -

1.To carry on its business economically & efficiency.

2. To attain its main purpose by a new or improved means.

3.To change or enlarge the local area or of its operation.

4.To carry on some business which under existing circumstances can be conveniently combined within the existing business

5.To remove any of the object.

6.To sell or dispose the undertaking or business.

7.To amalgamate with other company.

**D. Alteration of Liability clause:**

1.Increase of liability: The liability of the members cannot be increase without the consent of all the members.

2.Decrease of liability:Refer alteration of Capital clause (same as reduction of capital).

**E. Alteration of Capital clause:**

**Ways of change of capital:**

a. Increase of Authorized capital.

b. Convert shares into stock or vice-versa.

c. Sub-dividing shares of higher amount into shares of lower value.

d. Consolidation of shares of lower value higher value.

e. To cancel unissued shares.

**Procedure for change of capital:**

1.Pass an ordinary resolution in general meeting.

2.File e-form SH-7 with the ROC within 30 days along with the copy of resolution.

3. File a copy of altered MOA.

**Reduction of capital:**

Ways of reduction of capital with the sanction of court:

1. To write off capital which is lost or not represented by available assets.
2. Reduce the liability on partly paid up shares to the extent uncalled.
3. To pay off that part of share capital which is in excess of requirement of the company.

**Procedure for Reduction share capital:**

1. Pass special resolution.
2. File e-form MGT-14 with the ROC.
3. Obtain approval or sanction NCLT/CIB.
4. Court will conform only after hearing the objections of creditors,shareholders etc..
5. The court may require the company to use the words “AND REDUCED”along with its name.
6. File a copy altered MOA.

**Ways of Reduction of capital without the sanction of court:**

1. Reduction of preference shares.

2. To cancel unissued shares.

3. Buy back of shares.

4. Forfeiture of shares.

5. Surrender of shares.

**F. Alteration of Association Clause:**

Alteration of association clause is not possible.

**Articles of Association:**

AOA is a set of rules, regulation,laws & by laws framed for the purpose of internal control of management of the company.It is a subsidiary document to MOA & very much required for incorporation of company. It is compulsory for both private as well as public limited company.It must be printed,divided into paragraphs,stamped,signed by the subscribers the MOA &attested by witness.

The format of AOA is given in schedule I:

Table-F:Company limited by shares.

Table-G: Company limited by both shares & Guarantee.

Table-H:Company limited by Guarantee.

Table- I: Unlimited Company with share capital

Table- J: Unlimited Company without share capital

Note: There are no specific clauses in articles of association therefore it depends upon the company.

**Procedures for Alteration of AOA:**

1. Pass a special resolution.
2. File e-form MGT-14 along with the copy of resolution to the ROC within 30 days.
3. File a copy of altered AOA.

**Limitations on alteration of AOA:**

1. It shall not exceed the powers of MOA.
2. It shall not be contrary to the provision of company Act,or any other Act.
3. It should not be in consistent with court order.
4. The ROC will go through all the documents & incorporate the changes & issue a certified in effect to these changes or with reference to the changes.
5. It should not be in consistent with court order.

**Contents of AOA:**

AOA will consist of the following:

1. Provision relating to alteration of share capital.
2. Provision relating to transfer of shares.
3. Provision relating to transmission of shares: when the shares are sold by the owners then it is called as transfer of shares when the shares are transferred to the legal hire upon the expiry or death of original owner then it is called transmission of shares.
4. Conversion of shares into stock.
5. Provisions relating to borrowings powers ofBoard of Directors.
6. Provisions relating to the allotment of shares.
7. Provisions relating to issue of share certificate.
8. Provision relating to the contracts to be entered by Board of Directors.
9. Provisions relating to issue of shares warrants.
10. Provisions relating to Loans & advances.
11. Provisions relating to winding up the company.
12. Provisions relating to alteration of liability clause.

**Difference b/w MOA & AOA:**

|  |  |  |
| --- | --- | --- |
| Basis of Difference | MOA | AOA |
| Meaning | MOA is a document which contains rules & regulation to deal with the outsiders. | AOA is a document which contains rules and regulation for the internal control. |
| Function | MOA lays down the condition of Incorporation and defines the limits and powers of the company. | It defines the by-laws of the company for its internal management. |
| Mandatory | It is compulsory. | It is not compulsory. |
| Relationship | It governs the external relationship b/w the company and the public. | It is for internal control of the company. |
| Document | MOA is a primary type or supreme document. | It is a subsidiary or secondary document. |
| Scope | It lays down the scope or area of operation beyond which company cannot go. | AOA scope is for making operation by necessary operations. |
| Alteration of MOA | Alteration of MOA can be done by passing a special resolution by the share holders or members of the company. | Alteration of AOA can be done by passing a special resolution by the board of directors. |

**Doctrines of MOA & AOA:**

**1.Doctrine of ultra virus:**

i)The term ultra virus means beyond its power.

ii)Any transaction in the nature of ultra virusis void-ab-initio (from basic).

**2.Doctrine of constructive notice:**

i)At the time of incorporation company has to submit memorandum of association and articles of association with the ROC and such documents becomes public document.

ii)An outsider willing to establish any type of contractual relationship with the company has to go through the details given in MOA & AOA. Aftersufficientunderstand of the MOA & AOA & if he is satisfied then he can enter into contract with the company.Such understanding of MOA & AOA by the outside who is willing to enter into a contract with the company is known as doctrine of constructive notice.

iii)Therefore according to this doctrine every outside dealing with the company is deemed to have notice of the contents of the MOA & AOA.

1. This doctrine protects the company against outsider.

**3.Doctrine of indoor management:**

It is also known as Doctrine of ostensible authority or Turquand rule.

* 1. This doctrine is an exception or limit action to the doctrine of constructive notice.
	2. According to this doctrine every outsider dealing with the company is entitled to presume that as far as internal proceedings concerned everything has properly done.
	3. Therefore this doctrine protects the outsiders against the company.
	4. Exceptions to this doctrine are:
1. Knowledge of irregularity- If even after having sufficient knowledge of irregularity if the outsider enters into a contract with the company and such contracts results in breach of the contract that means [non performance or non-fulfilment of the obligations of the contract by the parties].The outsider should bear the negative consequences of the contract.
2. Negligence- If an outsider not properly understanding the contents of MOA & AOA into a contract with the company with negligence and in case of any breach of contract the outsider cannot protect himself from the negative consequences of the contract.
3. Forgery- If the outsider is not aware about the forgery’s done in the documents of the company then any breach of contract in such case will result in negative consequences.
4. Acting outside the scope of authority- If an outsider after posing sufficient knowledge enters into a contract with the company, by an individual not processing required authority then he has to take the responsibility of paying the damages, compensation, etc,. The company is nowhere responsible.

**Prospectus:**

**Meaning:**Prospectus is a document issued by the company to invest the company in the company’s shares and debentures.In otherwords, any document inviting the deposits from the public for the company’s shares and debentures is known as prospectus.

**Definition:**Under 2(70) “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 document inviting offers from the public for the subscription or purchase of any securities of a body corporate.

**Note:**

1. A public company must necessarily issue prospectus and a company of the same should be filed with the registrar of the company.
2. It must be issued to the public for raising the capital within 90 days of it registration with the ROC.
3. It is useful for the investor to know the details about the company for his investment decisions.
4. In following cases prospectus need not be issued –
5. When the company invites underwriting agents for sales of securities of the company.
6. When the company not offers securities to the public.
7. When the company issues securities to the existing members.
8. When the company makes any advertisement in newspaper.

**Contents of Prospectus:**

1. Name of the company
2. Situation of registered office
3. Details of capital structure
4. Details of management
5. Project details
6. Details of cash flow
7. Financial information
8. Details of underwriters
9. Details of current issue
10. Statement by experts
11. Details of outstanding litigations
12. Stock market high and low prices for each of the last 6 months
13. Risk factors
14. Management’s view of risk factor
15. Other SEBI requirements

**Statement in lieu of prospectus:**

1. It is prepared when the company does not issue the shares to the public.
2. It is a statement similar to prospectus issued by the private offer and shares are issued among the members of the company.
3. A copy of statement in lieu of prospectus has to filed within the ROC 3 days before the allotment of shares to the members of the private company.

**Difference between Prospectus and statement in lieu of prospectus:**

|  |  |
| --- | --- |
| **Prospectus** | **Lieu of prospectus** |
| It is a proper prospectus | It is a Proforma of prospectus |
| It is required to issue of shares to the general public | It is required to issue shares to the members of the company |
| It is issued to the general public | It is issued to the members of the company |
| Filed with the ROC before the applications are received for subscription of shares | 3 days before the allotment of shares |
| Application form is accompanied with the prospectus | Application need not accompanied the same |

**Book Building:**

Book Building is a mechanism wherein the company opens the Initial Public Offer (IPO) for a fixed period within which it collects the bids from investors at various factors between the floor price and cap price. This helps the company to discover the price of the IPO.

**Process of Book Building:**

1. Company plans an IPO via the book building process.

2. Appoint a merchant banker as book runner.

3. Issue a draft prospectus containing all mandatory company disclosures other than price.

4. Draft prospectus filed simultaneously with SEBI.

5. Book runner appoints syndicate members and registered intermediaries for subscription.

6. Price discovery begins through the bidding process.

7. At the close of bidding, book runner and the company decide upon the allocation and allotment of shares.

**E-Filing:**

In order to carry out e-Filing on Companies/LLPs, you have facility to download the e-Form and fill it in an offline mode under the MCA website. Every form has the facility to pre-fill the data available in MCA21 system. Once the e-form is filled you would need to validate the e-form using Pre-scrutiny button. You would then have to affix the relevant digital signatures and save the form. You would need to be connected to the internet to carry out the pre-fill and pre-scrutiny functions. The filled up e-Form as per relevant instruction kit needs to be uploaded on the MCA21 portal. On successful upload, the Service Request Number (SRN) would be generated and you would be directed to make payment of the statutory fees. Once the payment has been made the status of your payment and filing status can be tracked on the MCA portal by using the ‘Track Your Payment Status’ and ‘Track Your Transaction Status’ link respectively.

**The following steps are given to proceed to do e-Filing:**1. Select a category to download an e-Form from the MCA 21portal (with or without the instruction kit).
2. At any time, you can read the related instruction kit to familiarize yourself with the procedures (you can download the instruction kit with e-form or view it under Help menu).
3. Fill the downloaded e-Form.
4. Attach the necessary documents as attachments.
5. Use the **Prefill** button in e-Form to populate the grayed out portion by connecting to the Internet.
6. The applicant or a representative of the applicant needs to sign the document using a digital signature.
7. Click the **Check Form** button available in the e-Form. System will check the mandatory fields, mandatory attachment(s) and digital signature(s).
8. Upload the e-Form for pre-scrutiny. The pre-scrutiny service is available under the **Services** tab or under the **e-Forms** tab by clicking the **Upload e-Form** button. The system will verify (pre-scrutinize) the documents. In case of any inadequacies, the user will be asked to rectify the mistakes before getting the document ready for execution (signature).
9. The system will calculate the fee, including late payment fees based on the due date of filing, if applicable.
10. Payments will have to be made through appropriate mechanisms - electronic (credit card, Internet banking) or traditional means (at the bank counter through challan).
(a) Electronic payments can be made at the Virtual Front Office (VFO) or at PFO
(b) If the user selects the traditional payment option, the system will generate 3 copies of pre-filled challan in the prescribed format. Traditional payments through cash, cheques can be done at the designated network of banks using the system generated challan. There will be five banks with estimated 200 branches authorized for accepting challan payments.
11. The payment will be exclusively confirmed for all online (Internet) payment transactions using paymentgateways.
12. Acceptance or rejection of any transaction will be explicitly communicated to the applicant (including facility to print a receipt for successful transactions).
13. MCA21 will provide a unique transaction number, the Service Request Number (SRN) which can be used by the applicant for enquiring the status pertaining to that transaction.
14. Filing will be complete only when the necessary payments are made.
15. In case of a rejection, helpful remedial tips will be provided to the applicant.
16. The applicants will be provided an acknowledgement through e-mail or alternatively they can check the MCA portal.

**Registrar of Companies:**

Registrars of Companies (ROC) appointed under Section 609 of the Companies Act covering the various States and Union Territories are vested with the primary duty of registering companies floated in the respective states and the Union Territories and ensuring that such companies comply with statutory requirements under the Act. These offices function as registry of records, relating to the companies registered with them, which are available for inspection by members of public on payment of the prescribed fee. The Central Government exercises administrative control over these offices through the respective Regional Directors.