

LL.B IV SEMESTER

COMPANY LAW, 2013

ARTICLES OF ASSOCIATION

Articles of Association is a document which prescribes the rules and bye-laws for the general management of the company and for the attainment of its object as given in the memorandum of association of the company. It is a document of paramount significance in the life of a company as it contains the regulations for the internal administration of the company's affairs.

The articles of association are a subsidiary to the memorandum of association of the company. They define the rights, duties, powers of the management of a company as between themselves and the company at large. Further, they also prescribe the mode and form in which changes in the internal regulation of a company may be made from time to time. The articles of association of a company must always be in consonance with the memorandum of that company and being subordinate to the memorandum; they cannot extend the objects of a company as specified in the memorandum of the company

According to 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 or applied in pursuance of any previous company law or of this Act.

In the case of *Naresh Chandra Sanyal v. Calcutta Stock Exchange Association Ltd* the Supreme Court provided that the articles of association of a company also establish a contract between the company and its members as well as between the members. This contract governs the ordinary rights and obligations incidental to the membership in the company.

CONTENTS OF ARTICLES OF ASSOCIATION

It is important to pay extra attention to the Contents of the Articles of Association (AOA) at the initial phase since they are important for the ability of the Company to make profits and keep their shareholders satisfied. It is also important to make sure that they are as per the Company's interests because amending the Articles later require a two-thirds majority of the votes at the general meeting of shareholders.

The following are the contents that a Company's Articles of Association (AOA) usually possesses:

DIRECTORS

The AOA defines the guidelines of the Directors' appointment; their qualifications for appointment; their remuneration once appointed and the powers of the Board of Directors in the Company meetings.

GENERAL MEETINGS

The AOA provides the basic framework of all the General Meetings to be conducted as well as all the provisions that are related to the functioning of the General Meetings in any manner.

ACCOUNTING AND AUDITING

The provisions in AOA will define the guidelines subjected to the Auditing of the accounting of the Company.

SHAREHOLDERS

The AOA streamlines the sub-division of the Share capital of the Company including the rights of the Shareholders and the relationship of these rights with other elements of the Company. The shareholders have to pay the whole or part of the remaining unpaid amount on each share purchased on the Company's demand; i.e Call on Shares.

LIEN OF SHARES

The Company is eligible to retain the Shares of any member of the Company in case they fail to pay the debt to the Company. The member will not be allowed to transfer their shares unless they pay their debt.

TRANSFER AND TRANSMISSION OF SHARES

The AOA defines the procedure during the process of transfer of shares between the transferee and the shareholders. Transmission of shares comes into effect with death, insolvency, marriage, succession, etc. It is also a part of AOA despite being involuntary.

FORFEITURE AND SURRENDER OF SHARES

The AOA provides for the rules of forfeiture of shares if the member is not able to meet the purchase payments like paying call money or any allotment on the Shares. Shareholders may choose to surrender or voluntary return their shares to the Company pertaining to the guidelines of the AOA.

CONVERSION OF SHARES IN STOCK

The Company can pass an ordinary resolution in a General Meeting to convert their shares into stock. The management of the decision and resolution passed should be in accordance with the AOA.

ISSUING SHARE WARRANT

Public Limited Companies are eligible to issue a share warrant staying within the provisions mentioned in AOA. A share warrant is a bearer document which is related to the title of shares issued by the Company.

ALTERATION OF CAPITAL

Similar to the conversion of Shares into Stock, AOA provides the rules of the procedure to alter capital as per the Company's interests. The Company can decide to increase, decrease or rearrange the Capital.

VOTING RIGHTS

The AOA notes down the specific Company matters which calls for voting by members as well as the procedure of voting whether by a poll or through proxies.

DIVIDENDS AND RESERVES

The AOA also provides the distribution of dividends among the Shareholders of the Company.

WINDING UP

Winding up of the Company means the liquidation of all the assets of the Company to pay its debt. The remaining monies left after the payment of all debt and expenses are distributed among the shareholders of the Company. The AOA also provides the provisions and procedure related to the Winding Up of the Company .

SPECIAL RESOLUTION AND IT'S PROVISIONS

A Company can alter its Association of Articles if the need arises. The Company has to pass a Special Resolution (a 2/3rd majority of members present in the General Meeting) in order to alter its provisions. It is also important to remember that the Court does not have the power to alter the AOA. These are the specific guidelines that a company has to adhere to achieve a successful alteration:

1. The copy of Special Resolution has to be filed with the Registrar within 30 Days of its Passing.

2. The proposed should not go against the provisions of the Companies Act or the established Memorandum of Association (MOA).i.e. a document that is prepared during the formation of a Company and defines the Company's relationships with the shareholders.
3. The Company should not propose any illegal activity.
4. The alteration proposed cannot be bonafide for the benefit of the Company.
5. The alteration should not increase the liability of the existing members in any manner.

ENTRENCHMENT CLAUSE

The Company can choose to include Entrenchment Provisions in their Articles of Association under Section 5(3) Of Companies Act, 2013. An Entrenchment Clause refers to the effect that a Company may choose to apply to its certain provisions. These provisions, then, can be altered only after meeting specified conditions that are more restrictive than the normal passing of a 2/3rd majority special resolution. The Entrenchment Clause renders the provision difficult or impossible to alter.

Under Section 5(4) and Section (5), Companies Act,2013, the Company can choose to include the Entrenchment Clause in the AOA during the incorporation of the Company, or through an amendment to the AOA of the Company later.