

M.COM. – FIRST YEAR

(II SEMESTER)

Paper: Corporate Laws And Governance

UNIT -III : The Company Act, 2013

Topic: Alteration of Article of Association of a Company

Lecture: 8

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Alteration of Article of Association of a Company

Section 14(1) of the Companies Act, 2013 lays down that subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution, alter its articles including alterations having the effect of conversion of –

- (a) a private company into a public company; or
- (b) a public company into a private company.

A Company may alter its Articles in accordance with the above provisions in any of the manners mentioned below:

- a) by adoption of new set of articles;
- b) by addition/insertion of a new Clause/s;
- c) by deletion of a Clause/s ;
- d) by amendment of a specific Clause/s ;
- e) by substitution of a specific Clause/s .

Key Considerations:

- Any change in the Articles of the company shall conform to the provisions of the Companies Act, 2013/1956, as applicable and the conditions contained in the Memorandum of Association of the company. (Section 14(1))
- For effecting any change in the AOA resulting in the conversion of private company into a public company or vice-versa, company shall additionally follow the procedure prescribed for the conversion of private company into a public company or vice-versa.
- By amendment, Company may insert provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with. (Section 5(3))
- The provisions of entrenchment can be inserted only if agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.(Section 5(4))

The following procedure is to be followed for alteration of AOA under Section 14 of Companies Act, 2013 –

1. Issue not less than 7 days notice and agenda of Board meeting, or a shorter notice in case of urgent business, in writing to every director of the company at his address registered with the company and call a Board Meeting to consider the proposal of alteration of articles of association of a company . (Section 173(3)). Also follow the procedure prescribed for issuing and signing of notice of Board Meeting.

2. Hold a meeting of Board of Directors-

- To consider and decide the articles required to be changed/alterd.
- To pass the necessary Board Resolution for approving proposal of alteration of articles of association of a company subject to the approval of Shareholders.
- To delegate authority to any one director of the company to sign, certify and file the requisite forms with Registrar of Companies or any statutory authority to do all such acts, deeds as may be necessary to give effect to the proposed alteration.
- To fix day, date, time and venue for holding general meeting of the Company for passing a special resolution as required by section 14 of the Companies Act, 2013.
- To approve the draft notice of general meeting along with explanatory statement annexed to the notice as per requirement of the **Section 102** of the Companies Act, 2013.

- To authorize the Director or Company Secretary to sign and issue notice of the general meeting.
3. Prepare and circulate draft minutes within 15 days from the date of the conclusion of the Board Meeting, by hand/speed post/registered post/courier/e-mail to all the Directors for their comments. Also follow the procedure prescribed for preparing, circulation, signing and compiling of Board Minutes.(Secretarial Standards-1)
 4. Send notice of the General meeting proposing the aforementioned special resolution to all the shareholders, directors, auditors and other persons entitled to receive it, by giving not less than clear 21 days notice or shorter notice, if consent for shorter notice is given by at least 95% of members entitled to vote at such meeting, either in writing or through electronic mode in accordance with the **Section 101** of the Act. Also follow the procedure prescribed for issuing and signing of notice and convening of General Meeting.
 5. Hold a shareholders' meeting on the date fixed for the meeting and pass the Special Resolution for altering the Articles of Association by 3/4th majority or unanimously, in case of insertion of provisions of entrenchment by a private company in accordance with **Section 114 (2)** of the Act read with Section 5(4).
 6. After passing special resolution, file a certified copy of special resolution with the Registrar in **E-Form No. MGT.14** under **Section 117** of the Act within 30 days of passing Special Resolution in general meeting along with the following attachments:
 - a. Copy of Special Resolution passed along with Explanatory Statement.
 - b. Notice for convening the General Meeting of the Company
 - c. Altered Articles including the provisions of entrenchment inserted in the articles, if any.
 - d. Shorter Notice Consent Letters from the members in case the General Meeting was convened at shorter notice.
 - e . Any other attachment as may be applicable.
 7. Follow the procedure prescribed for preparing, signing and compiling of minutes of General Meeting.
 8. Make necessary amendments in all the copies of Articles of association of the Company .**[Section 15(1)]**

Note:

1. Where a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, the company shall, as from the date of such alteration, cease to be a private company. (First proviso to Section 14(1))
2. Any alteration having the effect of conversion of a public company into a private company shall not take effect except with the approval of the Tribunal which shall make such order as it may deem fit.(Second proviso to Section 14(1)).
3. For effecting the conversion of a private company into a public company or vice versa, company shall file the application in **Form No.INC.27** with fee. **[Section 14 and Rule 33 of Companies (Incorporation) Rules, 2014] (Pl. also refer Procedure for conversion of a Public Company into a Private Limited Company or vice-versa)**