

E-contents

Course M.Com Part II

Paper IX

Topic: Articles of Association

By Prof. (Dr.) Reyazuddin

School – Commerce and Management

Date: 17/05/2020

---

# Articles of Association

**Definition:** The **Articles of Association or AOA** are the legal document that along with the memorandum of association serves as the constitution of the company. It is comprised of rules and regulations that govern the company's internal affairs.

The articles of association are concerned with the internal management of the company and aims at carrying out the objectives as mentioned in the memorandum. These define the company's purpose and lay out the guidelines of how the task is to be carried out within the organization. The articles of association cover the information related to the board of directors, general meetings, voting rights, board proceedings, etc.

The articles of association are the contracts between the shareholders and the organization and among the shareholder themselves. This document often defines the manner in which the shares are to be issued, dividend to be paid, the financial records to be audited and the power to be given to the shareholders with the voting rights.

The articles of association can be considered as the user manual for the organization that comprises of the methodology that can be used to accomplish the company's day to day operations. This document is a binding on the shareholders and the organization and has nothing to do with the outsiders. Thus, the company is not accountable for any claims made by any external party.

## **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.

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

The alteration of the Articles should not sanction anything illegal. They should be for the benefit of the company. They should not lead to breach of contract with the third parties. The following are the regulations regarding alteration of articles:

A company may alter its Articles with a special resolution. Due importance and care should be given to ensure that the alteration of AoA does not conflict with the provisions of the Memorandum of Association or the Companies Act. A copy of every special resolution altering the Articles must be filed with the Registrar within 30 days of its passing.

1. The proposed alteration should not contravene the provisions of the Companies Act.
2. The proposed alteration should not contravene the provisions of the Memorandum of Association.
3. The alteration should not propose anything that is illegal.
4. The alteration should be bonafide for the benefit of the company.
5. The proposed alteration should in no way increase the liability of existing members.

6. Alteration can be made only by a special resolution.
7. Alteration can be done with retrospective effect.
8. The Court does not have any power to order alteration of the Articles of Association.

**The articles of association is comprised of following provisions:**

- Share capital, call of share, forfeiture of share, conversion of share into stock, transfer of shares, share warrant, surrender of shares, etc.
- Directors, their qualifications, appointment, remuneration, powers, and proceedings of the board of directors meetings.
- Voting rights of shareholders, by poll or proxies and proceeding of shareholders general meetings.
- Dividends and reserves, accounts and audits, borrowing powers and winding up.

**It is mandatory for the following types of companies to have their own articles:**

1. **Unlimited Companies:** The article must state the number of members with which the company is to be registered along with the amount of share capital, if any.
2. **Companies Limited by Guarantee:** The article must define the number of members with which the company is to be registered.
3. **Private Companies Limited by Shares:** The private company having the share capital, then the article must contain the provision that, restricts the right to transfer shares, limit the number of members to 50, prohibits the invitation to the public for the further subscription of shares in the form of shares or debentures.

**Difference between Memorandum and Articles of Association**

Parameter	MOA	AOA
Objectives	It defines and delimits the <u>objectives</u> of a company. Further, it specifies the <u>conditions</u> of <u>incorporation</u> .	It lays down the rules and regulations for the internal management of the company. Hence, it also contains the <u>bye-laws</u> of the company.

Relationship	It defines the relationship of the company with the outside world.	It defines the relationship between the company and its members.
Alteration	It can be altered only under special circumstances. Also, it usually requires the permission of the Regional <u>Director</u> or the Tribunal.	It can be altered by passing a special resolution.
Ultra Vires	Acts beyond the scope of the MOA are ultra vires and void. Furthermore, even unanimous consent of all shareholders cannot ratify it.	Acts which are ultra vires the AOA can be ratified by a special resolution of the <u>shareholders</u> . However, such acts should not be ultra vires the MOA.

According to Section 5 of the Companies Act, 2013, the AOA must have the following components:

### **Regulations**

The AOA must contain the regulations for the management of the company.

### **Inclusion of matters**

The Articles must specify all matters, in accordance with the rules. Furthermore, a company can include additional matters deemed necessary for its management.

### **Provisions for entrenchment**

Entrenchment means fortification or protection.

The AOA can contain provisions for entrenchment for specific provisions. The provisions for entrenchment can ensure that the specified provisions are altered only if certain conditions or procedures are met or complied with. These conditions are usually more restrictive than those applicable for a special resolution.

The inclusion of the provisions for entrenchment is possible:

- On the formation of the company

- Also, by amending the Articles with approval from all members of the company. Further, in the case of a public limited company, with a special resolution.

Regardless of whether the provisions for entrenchment are added on the formation or after an amendment, the company must give a notice to the Registrar of the same.