**Unit 2 : Documents**

* Memorandum of association
* Articles of association
* Doctrine of constructive notice and indoor management
* Prospectus shelf and red herring prospectus
* Misstatement in prospectus
* GDR, Book building
* Issue , allotment and forfeiture of share,Transmission of shares
* Buyback and provisions regarding buyback
* Issue of bonus shares

**Memorandum of association**

**Meaning :-** Memorandum of association is one of the documents which has to be filled with the Registrar of companies at the time of incorporation of a company. It is a document which sets out the constitution of the company . It contains the fundamental conditions upon which alone the company is allowed to be incorporated.

 **Contents of memorandum (sec4):-**

1. Name clause [sec4(1)(a)]:-The name of the company with “Limited”as the last word in case of public ltd. company and wth “private limited” as the last word in case of private ltd.company. One peson company shall also describe as” One Person company” in brackets under sec12.
2. Registered office clause [Sec4(1)(b):-]The name of the state in which the Registered office of the company is situated. Such office must be in existence on and from the 15th day of its incorporation.
3. Objects clause [sec4(1)(c):- The objects of the company to be classified as-
(i)objects for which the company is proposed to be incorporated
(ii) Any matter considered necessary in furtherance thereof.
4. Liability clause [sec4(1)(d)]:-The liabilty of the members is limited if the company is limited by guarantee or by shares.
5. Capital clause [sec4(1)(e)]:-The memorandum of a company limited by shares must state the authorised or nominal share capital , the different kinds of shares and the nominal value of each share.
6. Association clause [sec13(4)(f)]:-This clause provides that those whon have agreed to subscribe to the memorandum must signify their willingness to associate and form a company.
7. Nomination or succession clause (in case of one person company) :- In case of a one person company ,there is a requirement to have 7th clause to describe the nominee in the event of death of the subscriber.

**Alteration of clauses of memorandum**

A) Change of name :-

 a)By special resolution :- A company may by passing a special resolution alter its name with the approval of the Central Government in writing. If the alteration involves change of the name to private limited or public limited, permission of Central Government is not required.

 b) By ordinary resolution :-In case a company has been registered with a name which in the opinion of the central government is identical with or too nearly resembles a name of an existing company, the Central Government may ask it to change its name. In such case ordinary resolution has to be passed with the previous approval of central government signified in writing.

 A company which is defaulting in filing its due Annual returns or Balance sheets or which has defaulted in repayment of matured deposits and debentures and/or interest are prohibited to change its name.

 The intimation of name change should be given to the Registrar who will issue a fresh certificate of incorporation. The change of name shall be complete and effective only on the issue of such a certificate.

B) Change of Registered office :-

 a) Change of registered office from one place to another place in the same city, town or village: - If a company wants to change its registered office from one place to another within the same city, the Board of Directors will pass a special resolution and the Registrar must be informed of the change in eform 18 within 30 days.

 b) Change of Registerd office within the state:- Where the Registered office is to be changed outside the local limits of any city,town or village in the same state under the jurisdiction of same ROC, a special resolution has to be passed. A notice of such change shall be given to the Registrar within 30 days of the change.

 In case of jurisdiction of different ROC within the same state, the confirmation by the Regional director will be there will be necessary for changing the Registered office from one place to another within the same state.The company shall give notice of new location to ROC within the 30 days of change in registered office.

 c)Change of registerd office from one state or union territory to another state :- If a company wants to change its Registered office from one state to another state ,a special resolution must be passed by company and a copy thereof must be filed with the Registrar within the 30 days. This alteration of provisions of memorandum shall take effect only when it is confirmed by the central government on petition. A certified copy of the order confirming the alteration shall be filed by the company with the Registrars of each of the states and the Registrar of each state shall registrar the same.

 **The Doctrine of Ultra Vires**

 The Memorandum of Association of a company defines the objects a company is working for and the powers and rights through the exercise of which it seeks to achieve those objects. Section 4(1)(c) states that a company should lay down its objects and anything necessary in furtherance of such objects in its memorandum. This specified list of objects and powers bind the company and its directors within its limit. This means that no representative of the company can act outside the scope of these objects. Any act of the company that is beyond these objects is called ultra vires . Such an act cannot be ratified by the directors even if they wish to. The word Ultra means beyond and Vires means power. Hence Ultra Vires meaning is an act of the company which is beyond the powers given to the company via objects specified in the MOA of the company.

 The Doctrine of ultra vires is a fundamental law of the Indian Companies Act. It lays down that if any act of the company or any contract entered into by the directors , on behalf of the company, is beyond the powers vested in the directors and company by the object clause of the MOA,it is considered null and void. Such null and void acts are not legally binding on the company.The doctrine of Ultra vres limits the acts of the company within the boundaries set by the objects clause of the MOA.

**Articles of Association**

Articles of Association is an important document of a Joint Stock Company. It contains the rules and regulations or bye-laws of the company. They are related to the internal working or management of the company. It plays a very important role in the affairs of a company. It deals with the rights of the members of the company between themselves.

**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](https://accountlearning.com/remuneration-of-auditors-who-fixes-the-remuneration/).

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.

**Doctrine of Constructive Notice and Indoor management**

Memorandum of Association and articles of association are two most important documents

needed for the incorporation of a company. The memorandum of a company is the constitution of that company. It sets out the (a) object clause, (b) name clause, (c) registered office clause, (d) liability clause and (e) capital clause; whereas the articles of association enumerate the internal rules of the company under which it will be governed. Undoubtedly, both memorandum of association and the articles of association are public documents in the sense that any person under section 610 of Indian company act, 1956 may inspect any document which will include the memorandum and articles of the company kept by the registrar of companies in accordance with the rules made under the destruction of records act, 1917 being documents filed and registered in pursuance of the act. As a consequence, the knowledge about the contents of the memorandum and articles of a company is not necessarily restricted to the members of the company alone. Once these documents are registered with the registrar of companies, these become public documents and are accessible by any members of the public by paying the requisite fees. Therefore, notice about the contents of memorandum and articles is said to be within the knowledge of both members and non-members of the company. Such notice is a deemed notice in case of a members and a constructive notice in case of non-members. Thus every person dealing with the company is deemed to have a constructive notice of the contents of the memorandum and articles of the company. An outsider dealing with the company is presumed to have read the contents of the registered documents of the company. The further presumption is that he has not only read and perused the documents but has also

understood them fully in the proper sense. This is known as the rule of constructive notice.

So, the doctrine or rule of constructive notice is a presumption operating in favour of the

company against the outsider. It prevents the outsider from alleging that he did not know

that the constitution of the company rendered a particular act or a particular delegation of

authority ultra vires.

The ‘**doctrine of constructive notice'** is more or less an unreal doctrine. It does not take

notice of the realities of business life. People know a company through its officers and not

through its documents. The courts in India do not seem to have taken it seriously though.

For example, in *Dehra Dun Mussorie Electric Tramway Co. v. Jagmandardas****,*** the Allahabad high court allowed an overdraft incurred by the managing agent of a company when under the articles the directors had no power to delegate their borrowing power.

 The doctrine of indoor management is an exception to the rule of constructive notice. It

imposes an important limitation on the doctrine of constructive notice. According to this

doctrine "persons dealing with the company are entitled to presume that internal

requirements prescribed in memorandum and articles have been properly observed". A

transaction has two aspects, namely, substantive and procedural. An outsider dealing with

the company can only find out the substantive aspect by reading the memorandum and

articles. Even though he may find out the procedural aspect, he cannot find out whether the

procedure has been followed or not. For example, a company may have borrowing powers

by passing a resolution according to its memorandum and articles. An outsider can only

found out the borrowing powers of the company. But he cannot find out whether the

resolution has in fact been passed or not. The outsiders dealing with the company are

presumed to have read and understood the memorandum and articles and to see that the

proposed dealing is not inconsistent therewith, but they are not bound to do more; they

need not inquire into the regularity of the internal proceedings as required by the

memorandum and articles. They can presume that all is being done regularly.

 The doctrine of indoor management is also known as the TURQUAND rule after Royal British

Bank v. Turquand. In this case, the directors of a company had issued a bond to Turquand.

They had the power under the articles to issue such bond provided they were authorized by

a resolution passed by the shareholders at a general meeting of the company. But no such resolution was passed by the company. It was held that Turquand could recover the amount

of the bond from the company on the ground that he was entitled to assume that the

resolution was passed.