

## Alteration of Articles of Association:

A company can alter its Articles as many times as company wants but after following the procedure required by law. All procedure regarding change of articles of association is described in the company's ordinance section 28.

As section 28 contains that all companies have power to change the article so no company can write in its articles that company by articles of association is not allowed to change the articles, if a company writes this provision of not allowed to change its articles this provision is against the general law and it has no enforceability.

### Special resolution:



A company can alter its articles of association after passing special resolution; this special resolution is very necessary requirement that even if there is some clerical mistake in articles of association and company want to just rectify this mistake, it cannot rectify it unless it passes special resolution.



After passing special resolution company is required to submit the copy of this resolution with the commission within 15 days after passing the resolution.



A company is required to embody the copy of special resolution in its altered articles of association.

### Restrictions on alteration of articles of association

Although it is the right of the company to alter its articles however the power to alter its articles is subject to the following restrictions,

- a) Statutory restrictions
- b) Restrictions imposed by judicial decisions

### Statutory restrictions

1. Alteration cannot be made after passing ordinary resolution; alteration shall be only possible after passing special resolution.
2. Alteration must be in the limits provided by memorandum of association, if an object or clause is not present in the memorandum, a company cannot add this clause in its articles of association.
3. Alteration must not contravene any of the provisions of companies ordinance applicable for that time in Pakistan.
4. Alteration can be <sup>not</sup> force a member to increase its liability towards the company for example to buy more shares or to pay more money towards the debts of the company, but if a member himself/herself gives his consent in writing and willingness to increase his/ her liability, now articles of association is allowed to include this provision of increase in liability.

## Restrictions imposed by judicial decisions

1. Where the court has made an order under section 153 that a company cannot make any change which is inconsistent with the order of the court without the leave of the court
2. Power of alteration cannot be used to exploit the rights of shareholders.
3. Alteration cannot order a company to commit the breach of contract.
4. Power of alteration can be used only for the whole benefit of the company, any alteration which gives special benefit to few persons [Directors and major shareholders] is not allowed by the court.
5. Clerical errors should be rectified only after passing a special resolution and not by action of rectification.
6. The court has no jurisdiction to rectify the mistakes in the registered articles.

## Steps for alteration of articles

1. **Legal documents:** instruct the company's legal advisors to draft the alteration together with a notice to members of an extraordinary general meeting.
2. **Approval of Stock exchange:** If a company is registered on stock exchange the draft for alteration must be sent to the stock exchange for approval.
3. **Directors meeting:** after the stock exchange has approved the alteration, call a meeting of directors formally to approve the alteration and fix a date for an extraordinary general meeting.
4. **Notice of E.G.M.** send the notice of extraordinary general meeting to the members at least 21 days before the date of meeting
5. **Filing special resolution:** after the meeting now the company will file the copy of special resolution which is passed by the members in an extraordinary general meeting and this filing must be done within 15 days after passing the resolution.
6. **Intimation to stock exchange:** send a copy of special resolution and a copy of altered articles of association to the stock exchange.
7. **Amendment:** amend all the unissued copies of articles of association so that the resolution is embodied in or annexed to the articles of association.

## Binding force of Articles of association:

1. Members are bound to the company and the company can sue members for the enforcement of the provisions of articles.
2. Company is bound to the members and the members can sue company for the enforcement of the provisions of articles.
3. Members among themselves are bound by the provisions of articles
4. Company or members are not bound to outsiders who are not members of the company

## Alteration to be noted in every copy:

Where an alteration is made in the articles every copy of the articles issued after date of alteration shall conform to the articles as so altered.

If, where any alteration is made and the company at any time after the date of alteration issues any copy or copies of the articles which do not confirm the alteration it shall be liable to fine up to Rs. 1000 per copy so issued, and every officer of the company who knowingly and willfully issues such copies of articles of association which do not confirm the alteration of articles shall be liable to the same penalty.

## Copies of articles and memorandum:

Any member on request can get the copy of articles and memorandum; in this regard member shall submit an application to the registrar of company along with the prescribed fee by the company. After getting application and fee a company is bound to send required documents within 14 days if a company does not send the required documents, it can be sued and subject to payment of penalty.

**Note: the same rule applies for any person in the society.**

**What is doctrine of indoor management?**

## Reading assignment:

**You are required to find out the differences between articles of association and memorandum of association some are given in your book at page number 101.**