

# KNOWLEDGE CAPSULE

## Company Law

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information as originally filed till its dissolution under this Act.

### **Section 8:- Formation of Charitable Trust**

#### **Check points:-**

- ✓ It is proved to the satisfaction of Central Govt.
- ✓ Has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, charity or any such other object.
- ✓ Intends to apply income, if any, in promoting its objects.
- ✓ Intends to prohibit payment of dividend to its members.
- ✓ A company shall not alter the provisions of its Memorandum or Articles except with the previous approval of CG.
- ✓ A firm may be a member of section 8 company
- ✓ Company registered as a section 8 company may be converted into any other kind of company after complying provisions as may be prescribed.
- ✓ Can be amalgamated with another company, having similar objects.

### **Section 10:- Effect of Memorandum & articles**

Subject to provision, The Memorandum and Article of the company, when registered shall bind the **company and to members** thereof to the same extent as if they respectively signed by the company and by each member.

- Company shall mention (one person Company) in case it is an OPC.

### **Notice of change**

- Registered office of the company may be changed within local limits by passing special resolution.
- Shifting / Change in registered office from one registrar (ROC) to another ROC Shall be confirmed/ Approval by Regional Director.
- A company shall give notice of every change of name & Address to the registrar within 30 days of such change.

### **Procedural Aspects**

- Company shall pass Special Resolution
- In case of change of RO from one ROC to another ROC, Company shall take approval/Confirmation from RD.
- RD shall communicate the Confirm of change to company within 30 days from the receipt of application.
- Company shall file the Order copy of the confirmation to ROC Within 60 days from the date of such confirmation.

### **Section 13:- Alteration of memorandum**

#### **Alteration of memorandum**

- A company may alter it's memorandum by passing special resolution & after complying with the procedure.

- The Change in Memorandum requires approval of Central Government.
- No CG Approval is required where the change is in name of company by addition or deletion of word "private".
- Change in registered office from one state to another shall be approved by CG/RD.

### **Procedural Aspects**

- In case of name change of a company, ROC Shall issue a fresh Certificate of Incorporation and update the name in the registers.
- CG/RD after getting application, shall within 60 days (before passing it's order) satisfy itself that alteration have concentrate of it's creditors, debenture holders, and other person have concerned with the company.
- A Company after receiving the order from CG/RD shall file a certificate copy of order with ROC Within a period as prescribed time to time.
- Dissenting shareholders shall be given an opportunity to exit by promoters in accordance with regulations as specified.
- Details of changes (as prescribed) shall be published in the newspapers (one English and one vernacular) where the registered office is situated of the company.

**Related sections:- 10, 14 to 17, 61**

## **Section 14:- Alteration in Articles**

A company may alter its Articles by passing a special resolution and subject to Provisions, including having an effect of change in type of company i.e

- Public company to private company
  - Private company to public Company.
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- ✓ Company being a private company (Conversion of Pvt. To public) alters its articles in such manner that they no longer include restriction and limitations\* which are required to be included in the articles of a private company as per the act.
  - ✓ Conversion of public company to private company shall not be valid unless it is approved by an order of Central government in the manner as may be prescribed.

### **Procedural Aspects**

Every Alteration in Articles and certified copy of order by Central government, approving the alteration (where required), shall be filed with the Registrar (ROC) along with the copy of updated articles within a period of 15 days in a manner as may be prescribed.

### **\*Restrictions and limitations:- examples**

- Restriction in limit of number of members in company
- Restriction in public offer
- Restriction in min number of Directors
- Others

**Related sections:- 10, 15 to 17,**

### **Section 15:- Alteration of Memorandum or Articles to be Noted in Every Copy**

Every alteration made in the memorandum or articles of a company shall be noted in every copy of the memorandum or articles, as the case may be. If a company makes any default in complying with the provisions, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the memorandum or articles issued without such alteration.

### **Section 16:- Rectification of Name of Company**

If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which is identical with or too nearly resembles the name by which a company in existence had been previously registered in the opinion of Central Government, it may direct the company to change its name within a period of three months from the issue of such direction.

### **Section 17:- Copies of memorandum and articles to be given to members.**

- ✓ A company shall, on being so requested by by a member for a copy of Articles, Memorandum, resolutions, agreement as prescribed in the act , company shall send to him within 7 days Subject to payment of such fees as may be prescribed.

- ✓ If a company makes any default in complying the Provisions of this section, the company and every officer of a company in default shall be liable for each default, to a penalty of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

### **Section 18:- Conversion of Companies Already Registered**

A company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions, The registration of a company under this section shall not affect any debts, liabilities, obligations or contracts incurred or entered into, by or on behalf of the company before conversion

### **Section 19:- Subsidiary company not to hold shares in its holding company**

A subsidiary company either by itself, or through its nominees shall not hold any shares in its holding company, and no holding company shall allot or transfer its shares to any of its subsidiary companies, and any such transfer or allotment shall be void.

### **Proviso/ Exception cases (where subsidiary company may hold shares of its holding company)**

- where a subsidiary company holds such shares as a legal representative of a deceased member of holding Company.

## **Forms Related to LLP**

<b>Incorporation Forms</b>		
01.	Application for reservation or change of name	Form 1
02.	Incorporation document and subscriber's statement	Form 2
03.	Details in respect of designated partners and partners of Limited Liability Partnership	Form 2A
04.	Information with regard to limited liability partnership agreement and changes, if any, made therein	Form 3
<b>Forms related to Change in Services</b>		
01.	Notice of appointment, cessation, change in name/ address/designation of a designated partner or partner. and consent to become a partner/designated partner	Form 4
02.	Notice of appointment, cessation, change in particulars of a partners	Form 4A
03.	Notice for change of name	Form 5
04.	Notice for change of place of registered office	Form 15
05.	Application for direction to Limited Liability Partnership (LLP) to change its name to the Registrar	Form 23
<b>Forms Related to Annual Filings</b>		
01.	Statement of Account & Solvency	Form 8
02.	Annual Return of Limited Liability Partnership (LLP)	Form 11



## Case Laws

**Case Study:-** Jasmine Ltd was Incorporated and 5 board meetings were held during the period from July to December in Calendar Year. Sunil, a director appointed as an additional director, attended none of these meetings, for the first 2 meetings he sought leave of absence from the board but did not informed the board for the remaining 3 meetings. Examining the provisions of Companies Act. Conclude whether Sunil is to be termed as disqualified director?

**Provision:-** As per Section 167 (1) of companies Act, 2013 If a director absents himself from **all the meetings** of the board of directors held during a period of 12 months **with or without seeking leave of absence** of the board, he shall be vacated from the office.

**Facts:-** As per the Case stated

1. Mr. Sunil, an Independent Director of Jasmine Ltd. Was absent in all the meetings during the period of 6 months.
2. He have sought leave of absence for first 2 meetings.
3. He have not sought Lease of absence for rest of the meetings.

**Conclusion:-** Thus, Mr. Sunil remains to be a director of the company as he have absented himself for a period of 6 months, it does not means that he have not attended all the meetings for a period of 12 months. Hence Mr. Sunil cannot be disqualified to act as a director.

▶ **Case Study:** - The chairman of Pioneer Scrap and pack ltd. convened a meeting of board of directors for which the 15 days notice was sent to all the directors. Mr Vaibhav was late and reached 10 minutes before the conclusion of the meeting and he objected immediately after the meeting was about to conclude that the agenda for the meeting was not circulated, and the meeting shall be adjourned on next day with a proper agenda. Being a company secretary advice the board, the validity of the meeting.

**Provisions:-** As Per Provisions of Companies Act, 2013 To constitute a valid meeting a 7 days prior notice shall be given to all the directors of the company along with the complete agenda of the meeting, however in case if any Agenda is not given along with the notice it can be included with the approval of chairman.

**Facts:-** As per the Case stated

1. The chairman of Pioneer Scrap and pack ltd. convened a meeting.
2. 15 days notice was sent to all the directors.
3. Mr Vaibhav was late and reached 10 minutes objected that the agenda for the meeting was not circulated.

**Conclusion:-** By applying the provisions to the given case, Contention of Mr. Vaibhav is Invalid hence the meeting was valid and as per the law.

## Some Important Leading Case laws/ Judgements

Topic / Case	Leading Case Law	Decisions / Highlights/ Judgements
Separate Legal Entity	Salomon <b>V.</b> Salomon & co. Ltd.	It was held that a company is a separate legal entity apart from its members and can sue and be sued for all the acts.
	Lalit Surjama Kanodia <b>V.</b> Office Tiger database systems India Ltd.	
Refusal to transfer of shares	Shree Nirmal Kumar <b>V.</b> Jaipur Metal & electrical Ltd.	The Court Held that a company is not allowed to refuse a share transfer.
	Bajaj Auto Ltd. <b>V.</b> N.K. Firodia	The Court Held that, It should be in general interest of company & shareholders.
Return for allotment	Sri Gopal Jalan & co. <b>V.</b> Calcutta stock Exchng. Association Ltd.	The Court Held that, in case of re-issue of forfeited shares there is no allotment, hence company is not liable to file return.
Doctrine of Ultra vires	Ashbury Railway carriage and Iron CO. Ltd. <b>V.</b> Riche	The court held that the company cannot make an Ultra Vires act to be valid, even if every shareholder assents to it.