

- **Alteration of articles (sec 31) (now section 14 of companies act 2013)**

Any Company which intended to make any change to the Article of Association (AOA) of its company, will have to comply with the provisions of Section- 14 of Companies Act, 2013 and any other applicable provisions of the Act and applicable rules.

Company can alter its Article by way of addition, deletion, modification, substitution, or in any other way, only if it wants. Every alteration made in the articles of a company shall be noted in every copy of the memorandum or articles, as the case may be.

Section 31 empowers every company to alter its articles at any time with the authority of a special resolution of the company and filing copy with the Registrar. Since it is a statutory power a company will not be deprived of the power of alteration by a contract with anyone.

The power of alteration of articles conferred by sec 31(now sec 14 of companies act 2013) is almost absolute. It is subject only to two restrictions- It must not be in contravention with the provisions of the Act.

It is subject to the conditions contained in the memorandum of association.

The proviso to sub-section (1) says that an alteration which has the effect of converting a public company into a private company would not have any effect unless it is approved by the Central Government.

Alteration against memorandum-

Hutton v. Scarborough Cliff Hotel Co, a resolution was passed in a general meeting of a company altered the articles by inserting the power to issue preference shares which did not exist in the memorandum. It was held inoperative. However, after Andrews v. Gas Meter Co Ltd this view has been

changed where a company was allowed by changing articles to issue preference shares when its memorandum was silent on the point. The power of alteration of art is subject only to what is clearly prohibited by the memorandum, expressly or impliedly.

#### Alteration in breach of contract-

A company may change its articles even if the alteration would operate as a breach of contract. If the contract is wholly dependent on the articles, the company would not be liable in damages if it commits breach by changing articles. But if the contract is independent of the articles, the co will be liable in damages if it commits breach by changing articles. Thus in *Southern Foundries Ltd v. Shirlaw*, where a Managing Director was appointed for a term of ten years, but was removed earlier under the new articles on amalgamation with another company, the company was held liable for breach of contract.

#### Alteration as fraud on minority shareholders-

An alteration must not constitute a fraud on the minority. It should not be an attempt to deprive the company or its minority shareholders of something that in equity belongs to them.

Alteration increasing liability of members- no alteration can require a person to purchase more shares in the company or to increase his liability in any manner except with his consent in writing.

Thus, the power of alteration should be exercised in absolute good faith in the interest of the company.

#### Alteration of articles (section 14 of companies act 2013)—

(1) 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: Provided that where a company being 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: Provided further that 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.

(2) Every alteration of the articles under this section and a copy of the order of the Tribunal approving the alteration as per sub-section (1) shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same.

(3) Any alteration of the articles registered under sub-section (2) shall, subject to the provisions of this Act, be valid as if it were originally in the articles.