
UNIT 6 ARTICLES OF ASSOCIATION

Structure

- 6.0 Objectives
- 6.1 Introduction
- 6.2 Meaning and Purpose of Articles
- 6.3 Registration of Articles
- 6.4 Contents of Articles
- 6.5 Alteration of Articles
- 6.6 Relationship between Memorandum and Articles
- 6.7 Distinction between Memorandum and Articles
- 6.8 Effect of Memorandum and Articles
- 6.9 Constructive Notice of Memorandum and Articles
- 6.10 Doctrine of Indoor Management
- 6.11 Let Us Sum Up
- 6.12 Key Words
- 6.13 Some Useful Books
- 6.14 Answers To Check Your Progress
- 6.15 Terminal Questions/Exercises

6.0 OBJECTIVES

After studying this unit, you should be able to:

- explain the meaning and the purpose of articles of association
- describe the contents of articles of association
- explain the relationship of and distinction between articles and memorandum
- explain the legal effects of the memorandum and articles
- explain the doctrines of constructive notice and indoor management
- explain the procedure for alteration of articles of association.

6.1 INTRODUCTION

You have learnt in earlier units that a company is an incorporated body. Therefore, rules are to be framed for the management of its internal affairs and the conduct of its business. The relationship between the company and the members constituting it, is to be defined. The rights and duties of members *vis-a-vis* the company are to be described. All such rules and regulations are given in the Articles of Association. The Articles is the second important document which has to be filed with the Registrar of companies.

The Companies Act, 1956, in Table A of Schedule I has given model regulations for the management of a company limited by shares. A company limited by shares may adopt all or any of the regulations contained in Table A. Every company must have Articles of Association. In this unit you will learn about the significance of the Articles and its contents. You will also note the distinction between the Memorandum and the Articles. The procedure of altering the Articles has also been explained briefly. You will also study the legal effects of these documents. The doctrine of Indoor management has been explained in detail, which will help you to appreciate the purpose of these documents.

6.2 MEANING AND PURPOSE OF ARTICLES

Section 2(2) of the Companies Act defines Articles as *the Articles of Association of a company as originally framed or as altered from time to time in pursuance of any previous companies law or of this Act*. This definition is not sufficient to explain its meaning.

The Articles of Association of a company are the rules and regulations relating to the management of its internal affairs. They are similar to the 'partnership deed' in a

partnership. The Memorandum defines the **area beyond** which the company cannot act while **the articles** contain the rules and regulations for **carrying out** the business of the company. Thus 'Articles' is subordinate to, and controlled by the 'Memorandum'.

The Articles embody the powers of directors, officers **and** of the shareholders as to voting **etc.**, the **mode** and the **form** in which the **business** of the **company** is to be carried out and the mode and the form in which the changes in the internal regulations can be made. The **rights**, duties and powers of the company *vis-a-vis* the members are included in the Articles of Associations. The Articles bind not only the existing members, but **the** future members of the company also. Even the successors, legal representatives or heirs of members are **bound** by whatever is contained in the Articles. In fact, the Articles **bind** the company and the members as if they had been signed by each one of them.

Articles of Association is the **basis of contract between the company and the members**. **Members** have **certain rights** against **the company**. Also **members** have **certain duties** towards the company. These rights and duties of **members** are given in the Articles. **For** example, a **member** is under an obligation to pay call **money** on his shares as and **when** the **directors** of the **company** decide to **make** the calls in accordance with the procedure laid down in **the** Articles of Association. If the **member** fails to make the **payment**, his **shares may** be forfeited by **the** company in accordance with **the procedure** prescribed. **On the other hand**, a member has a **number of rights**. **For** example, he **has** a right to attend the **meeting** of the Company and vote.

Further, Articles of Association of a **company** constitute a **contract** not only between members and **the company**; but **members** inter *se* also. This is explained in detail under 6.8 (Effect of Memorandum and Articles).

6.3 REGISTRATION OF ARTICLES

Section 26 of the Act requires that every private company, an unlimited company and a company **limited** by guarantee **must** have their own articles **and** it should be registered along with the **memorandum**. **But** a public company limited by shares need not necessarily have its own articles. A public company limited by shares may either have its own articles or it may adopt either wholly or partly Table A of Schedule I of the Companies Act. Even if it does register Articles of its own, Table A will still apply automatically unless it has been excluded or modified. In other words, there are three possible **alternatives** in which a public company limited by shares may adopt Articles of Association. **These** are:

- i) It may adopt Table A in full; or
- ii) It **may** wholly exclude Table A and set out its own Articles in full; or
- iii) It may set out its own Articles and adopt part of Table A.

If such a company goes in for the first alternative, then **it** is not necessary to get **any** Articles of Association registered. It has only to endorse on the face of the **Memorandum** of Association, that it has **adopted** Table A as its Articles of Association.

You should note that the Articles of a private limited **company** must contain the **three** restrictions as given in Section 3(1) (iii). The Articles of Association of **an unlimited** company should state the number of **members** with which the **company** is to be registered and, if the company has a share **capital**, the amount of share capital **with** which the **company** is to be registered [Section 27 (1)].

In the case of a company limited by guarantee, the articles should state the number of members **with** which **the company** is to be registered [Section 27 (2)]. The Articles of Association must be printed, divided into paragraphs, numbered consecutively and signed by each subscriber of the **Memorandum** of Association in the presence of at least one witness who shall attest the signature and shall likewise add his address, description and occupation, if any [Section 30].

6.4 CONTENTS OF ARTICLES

You have learnt that the Articles of Association of a company contains the rules and regulations for **the** internal management of the **company**.

The Articles of Association of a company should usually contain rules and regulations relating to the following matters:

- i) The exclusion, wholly or in part, of Table A, in the case of a public company limited by shares. But other companies may, if they so desire, include the relevant provisions from Table A in their Articles of Association.
- ii) Share capital—shares and their value and its division into equity and preference shares, if any.
- iii) Rights of each class of shareholders and the procedure for variation of their rights.
- iv) Procedure relating to the allotment of shares, making of calls and forfeiture of shares.
- v) Increase, alteration and reduction of share capital.
- vi) Transfer and transmission of shares.
- vii) Lien of the company on shares allotted to the members for the amount unpaid in respect of such shares.
- viii) Appointment, **remuneration**, power, duties etc. of the directors and officers of the **company**.
- ix) Conversion of shares into stock.
- x) Notice of the meetings, voting rights of members, quorum, poll, proxy, etc.
- xi) Audit of Accounts, transfer of amount to the Reserves, declaration of dividend, **etc.**
- xii) Borrowing Powers of the company and the mode of borrowing.
- xiii) Adoption of preliminary contracts, if any.
- xiv) Issue of share certificates.
- xv) Issue of share warrants.
- xvi) Keeping of different Registers..
- xvii) Regarding winding up of the company.

The Articles of Association must be prepared carefully and it must contain rules in regard to all such matters which are required to be contained therein and which are **necessary** for the smooth functioning of the company.

But you **must** remember that the articles must not contain anything **which** is against the provisions of the Companies Act or the Memorandum of Association. **For** example, the Articles must not contain a rule permitting the payment of dividend out of capital, because according to Section 205 dividend can be paid only out of profits.

6.5 ALTERATION OF ARTICLES

You know that the Articles contain the rules and regulations for the internal management of the company. A company has a statutory right to alter its Articles of Association. Section 31 of the Companies Act, 1956 empowers a company to **alter** or add to its Articles of association. The articles can be altered by following the procedure laid down **in the Act**.

Section 31 of the Companies Act, provides that subject to the provisions of this Act **and** to the conditions contained in its Memorandum, a **company may**, by special resolution alter its Articles. It may be noted that a company cannot deprive itself of its power to alter Articles either by an **agreement** or by a provision to that effect in the Articles themselves.

However, no alteration made in **the Articles** which has the effect of converting a public company into a private **company shall** have effect unless such alteration has been approved by the Central Government [Provisos to Section 31 (1)]. Any alteration made in the Articles of Association shall be as valid as if originally contained in the Articles [Section 31(2)].

The Companies Act gives wide powers to the members of the company to alter its Articles. However, the alteration should be made bona fide for the benefit of the company as a whole and not for the benefit of majority of the shareholders.

This power of alteration of Articles is subject to whatever is contained in the Companies Act, 1956 or the company's Memorandum of Association. In other words, the Articles of Association cannot be **altered** in such a way as to be contrary to whatever is given in the Company's Act, or the company's; Memorandum of Association. For example, the Companies Act, 1956 prohibits a company from purchasing its own shares. Now, the company cannot alter its Articles in such a way as to empower itself to purchase its own shares. Thus, there are certain limits within which the alteration of **Articles** can be carried out.

Limitations on Power to Alter Articles

Though a company can alter its **Articles** at any time just by passing a special resolution, but a few restrictions are placed on such a power. These are:

- i) The alteration in the Articles proposed to be made must not be in conflict with whatever is contained in Memorandum of Association.
- ii) The alteration in the Articles must not be inconsistent with any provisions of the Companies Act, 1956. For example, Sections 106-107 deal with the procedure for variation of shareholder's rights. The Articles cannot be altered so as to include rules which are contrary to the provisions in Sections 106-107 of the Companies Act, 1956.
- iii) The alteration in the Articles cannot be **made** in such a way as to include anything which is illegal either under the Companies Act, 1956 or any other law.
- iv) The alteration must be bonafide being made for the benefit of the company as a whole. The following case of **Allen v. Gold Reefs** of West Africa illustrates this point. In this case, the original Articles gave the **company** a lien on all shares "not fully paid-up" for calls due to the company. **S** was the only member holding **some** fully paid-up shares, but he also owned money to the company for calls due on other shares. **S** died **and** his shares were inherited by his legal representatives. The company, thereafter, altered its Articles enabling **the** company to exercise lien on all shares—whether fully paid or not. Now the question arose **whether** the company could exercise lien even on fully paid-up shares.

It was held that the company could do so as it was done **bona fide** for the benefit of the company as a whole.

- v) An alteration which has the effect of compelling a member to take or subscribe for more shares, or in any way increasing his liability to contribute to the **share** capital of the company is not binding on the existing members, unless he has given his consent in writing (Section **38**).
- vi) A company may pass a special resolution and convert the uncalled capital into a reserve liability to be called up only at the time of winding up (Section 99). But a reserve liability once created cannot be unreserved but **may** be cancelled on reduction of capital.
- vii) No alteration in the Articles can be made so as to convert a public company into a private company without the approval of the Central **Government** (Section 31).
- viii) **No** alteration to the Articles can be made which would discriminate between the majority shareholders and the minority shareholders so as to give the former an advantage of which the latter have been deprived.
- ix) No alteration can be made so as to enable the company to commit a breach of contract with a third **party**. The company shall remain liable for damages for its breach.
- x) The alteration must not be inconsistent with an order of the court. Such alterations can be made by the company only with the leave of the court,

A copy of the special resolution authorising the alteration must be filed with the Registrar within 30 days of passing the said resolution. According to Section 40 of the Act, alteration should be noted in every copy of the Articles of Association. and the Articles of association. issued after the date of alteration should be in accordance with the alteration.

Check Your Progress A

1) What is **the** purpose of Articles?

.....

2) What is the meaning of Articles?

.....

3) What is included in Table A of Schedule I?

.....

4) List my four items which are included in Articles?

.....

5) State whether the following statements are True or False

- i) Articles of Association regulate the relationship of the company with Members.
- ii) A Private Company may adopt Table A.
- iii) Articles is the Charter of a Company.
- iv) Every company is required to frame its own Articles of Association.
- v) Articles of Association constitute a contract between members *inter se*.
- vi) Articles of Association must be signed by subscribers to the Memorandum.
- vii) Articles of a Company can contain matters inconsistent with the provisions of the Companies Act, 1956.
- viii) Articles of Association are not required to be registered in case of a private company limited by shares.

6) Fill in the Blanks.

- i) Articles of Association are subsidiary to
- ii) Articles of Association are the rules and regulations for the management of of the Company.
- iii) A public Company limited by shares may adopt as its Articles of Association.,
- iv) Articles of Association can be altered by passing a

6.6 RELATIONSHIP BETWEEN MEMORANDUM AND ARTICLES

The Memorandum of Association is a **fundamental** document of a company just like a constitution of a country. It is **the** main document as placed **alongwith** Articles which is **subordinate** to and is controlled by the Memorandum of Association.

The Articles **cannot confer powers** on the company other than those given in the Memorandum of Association of the company. Therefore, at the time of **framing** the Articles or making **alteration** in the Articles, it **must** be ensured that the original regulations or **the** altered ones do not exceed powers of the company **given** by the Memorandum, nor give validity to any provision which is contrary to the Companies Act, 1956. For **example**, the Company's objects clause is divided into two parts and is given in the Memorandum of Association. The objects given in the 'Other objects' can be **started** only after following the **procedure** given in the Companies Act. In such a situation, the company cannot make a provision in the Articles empowering the company to start business in the other objects clause along with the objects given in the 'main objects clause' at the time when the company is incorporated.

The Memorandum is of interest to outsiders who wish to deal with the company, while the articles are of interest mainly to the shareholders and directors.

6.7 DISTINCTION BETWEEN MEMORANDUM AND ARTICLES

The following are the main points of distinction between the **Memorandum** and Articles:

- 1) Memorandum of Association is the **charter** of the company. It lays down the scope and

powers of the company. In fact, Memorandum defines the area beyond which the actions of the company cannot go. Inside that area the shareholders may make such regulations for the governance of the company as they think fit.

- 2) Memorandum of Association is a fundamental document. Articles of Association are subordinate, to and are controlled by the Memorandum of Association.
- 3) The purpose of Memorandum is two fold:
 - i) to tell the intending purchaser of shares the scope of the activities of the company and the objects on which his money will be invested.
 - ii) to tell those who deal with the company as to what the objects of the company are so as to enable them to enter into only those contracts with the company which are not *ultra vires*. The purpose of the of the Articles of Association is to provide rules and regulations for the internal management of the company. Thus, a company is not bound to an outsider, but it is bound to a member by whatever is contained in its Articles of Association.
- 4) Articles of Association is the basis of a contract between the company and its members, Memorandum of Association generally defines the relation between the company and outsiders.
- 5) A public company limited by shares need not frame its own Articles of Association. It may adopt Table A as its Articles. But every company, without exception, must prepare its own Memorandum of Association.
- 6) The clauses of the Memorandum cannot be easily altered. The company has to follow the strict procedure for the alteration of its clauses. In some cases alteration requires the approval of the Company Law Board or the Court. Whereas, Articles can be altered easily by passing a special resolution.
- 7) Any act which is beyond the powers given in the Memorandum is *ultra vires* and void and it cannot be ratified even by the whole body of shareholders. But any act which is *ultra vires* the Articles may be ratified by shareholders by passing a special resolution.

6.8 EFFECT OF MEMORANDUM AND ARTICLES

Section 36 provides that the Memorandum and Articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the Memorandum and of the Articles. Thus, the Memorandum and Articles constitute a binding contract between the company and each of its member. The legal effects can be studied under the following headings:

- i) **Members bound to Company** : The memorandum and Articles constitute a contract binding the members to the company. Each member is bound by whatever is contained in them as if both these documents were signed by him.

In **Boreland's Trustee v. Steel Brothers and Co. Etd.** case, the Articles of the company provided that the shares of any member who became bankrupt would be sold to other persons at a price fixed by the directors. B, a shareholder became bankrupt and his trustee in bankruptcy claimed that he was not bound by the articles and could therefore, sell those shares at their true value. But it was held, that the trustee in bankruptcy was bound by the Articles as it constituted a binding contract between the members and the company.

Similarly in **Bradford Banking Company v. Briggs** case where the Articles provided that the company shall have a first charge on the shares for the debts due to it by members. One of the members owing money to the company borrowed money from the bank on the security of shares. The bank gave notice of deposit of shares to the company. It was held that the company has priority over the shares.

From the above, it is clear that company can sue its members for the enforcement of the Articles and can restrain its members through court, from violating any provisions contained therein.

- ii) **Company bound to the Members** : Since the Articles and Memorandum constitute a contract binding the company to its members, the company, in its turn, is also bound to the members by whatever is contained in them. For example, it must confine its activities to the objects clause in the Memorandum. If it proposes to enter into any *ultra*

vires contract, any member of the company can go to a Court and obtain an order of injunction **restraining** the company from doing **so**. Similarly, the company is bound to individual members in respect of their ordinary rights as members. For example, he can exercise his right to receive a share certificate, the dividend warrant, notice for the meeting etc; to vote at the meeting, to elect directors etc. according to the rules and regulations given in **the Articles**.

- iii) Member bound to Member :** The Memorandum and Articles do not constitute express contract between the members of the company. Yet each member is bound by these documents on the basis of an implied contract to the other members. The Articles regulate their rights *inter se*. As between members *inter se*, each member is bound by the Articles and Memorandum to the other members. However, this right can be exercised through the company only except in some exceptional cases. For example, if a member has committed a breach of the Articles, say, he has not paid his calls on his shares, another member has no right to sue him.

It is only the company which can sue a defaulting member. However, if a member holds a majority of the shares of the company and does not allow **an** action to be taken in the name of the company, the complaining members are entitled to maintain a suit in their own name against such a member provided the acts complained are a fraud on the minority or are *ultra vires* the company.

- iv) The company is not bound to outsiders :** The Articles of Association do not constitute any contract between the company and the outsiders therefore, outsider cannot sue the company. **An** outsider is not entitled to enforce the articles against the company for any breach of a right that is conferred on him by the articles. Even if the name of an outsider is mentioned in the Articles for any proposed business, the company is not bound by it. The following case of **Eley v. Positive Government Life Assurance Co. Ltd.** illustrates this point.

The Articles of the company contained a provision that Eley would be the solicitor of the company for life and would not be removed from office except for misconduct. Eley acted as solicitor to the company and also became a member of the company. The company, however, terminated his services. Thereupon, he sued the company for damages for breach of contract, **Held**, the Articles cannot be the basis of a contract between the company and an outsider. It would be noted here that he was trying to exercise his right as an employee and not as a member. A person can be a member of the company and at the same time may be a creditor or employee of the company. In the above case, he was trying to exercise his right **as** an employee of the company. There was no independent contract between the company and Eley apart from whatever was contained in the Articles. Therefore, his suit was dismissed.

6.9 CONSTRUCTIVE NOTICE OF MEMORANDUM AND ARTICLES

You have learnt that for incorporating a company, the Memorandum and Articles of Association are required to be registered with the Registrar of Companies. On registration, the Memorandum and Articles of Association become public documents. These documents are available for public inspection either in the Office of the company or in the office of the Registrar on payment of one **rupee** for each inspection.

Every person who deals with the company, whether shareholder or an outsider, is presumed to have read these documents and is deemed to know the contents of these documents. This type of presumed knowledge of these documents is termed the 'Constructive Notice' of Memorandum and Articles of Association.

Therefore, any person dealing with the company cannot argue that he has not read the documents, such as Memorandum, of the company. For example, if a person enters into a **contract** with a company and supplies some material to the company, but the company refuses to pay on the ground that this contract is *ultra vires* the company, then the supplier cannot, in his defence, take the plea that he did not know the provisions of the Memorandum of Association of the company,

Thus if a person deals with a company which is not covered by these documents, he cannot take the plea in a Court that he was unaware of the contents of the Memorandum and Articles. He is presumed to have **not** only notice of these documents, but to have read them and understood **them** according to their proper meaning. It is immaterial if he has not even seen **them**.

The above doctrine of Constructive Notice is, however, modified by the **doctrine** of Indoor Management.

6.10 DOCTRINE OF INDOOR MANAGEMENT

The doctrine of indoor management is an exception to the rule of constructive notice. The doctrine of indoor management **imposes** an important limitation on the rule of constructive notice. According to the rule of constructive notice, persons dealing with the company are presumed to have read and understood the contents of these two documents. Once they are satisfied that the company has got the power to enter into the proposed transaction, they are required to do no more. They **are** not bound to enquire into the regularity of any internal proceedings. They are entitled to assume that **the provisions of** the Articles of Association have been complied with by the company. This doctrine seeks to protect the outsiders against the company.

Therefore, if a transaction appears to be within the powers of the company, then the company cannot escape liability by showing that there was some irregularity in following the **procedure**. A person can be presumed to know the constitution of the company, but not what may or may not have taken place within the doors that are closed to him. This doctrine is known as the 'doctrine of indoor management' or the rule in **Royal British Bank v. Turquand**. The facts of this case were as follows: The directors of a company were authorised by the articles to borrow on bond such sums of money, as authorised **from** time to time, by a resolution of the company, in General Meeting. The directors borrowed money from Turquand and issued a bond to him. No resolution of the company, as was required to be passed according to the Articles of Association was passed. **Held**, Turquand could sue **the** company on the bond, as he was entitled to assume that whatever was required to be done as regards the internal management of the company was done. In other words, he was entitled to assume that the resolution of the company in General Meeting authorising the directors to borrow money on the basis of bond had been passed. He was not duty-bound to inquire whether the resolution had been actually passed or not. However, he must have found out whether the company had the power to borrow or not, as that was the burden imposed upon him by the doctrine of Constructive Notice.

Exceptions

The doctrine of indoor management is subject to **the** following limitations:

- 1) **Knowledge of Irregularity** : A person who has knowledge of an irregularity regarding the internal management of the company cannot claim protection provided by this doctrine. The knowledge of irregularity **may be** actual or constructive. In this connection the case of **Howard v. Pokent Ivony Co.** is relevant. The directors were empowered to borrow money **upto** £ 1,000 and sanction of the shareholders was **required** for an amount in excess of this. The directors themselves lent to the company an amount in excess of the borrowing powers without the consent of the shareholders. It was held that the directors had the notice of the internal **irregularity** and therefore the company was liable to them only for £ 1,000.
- 2) **Negligence** : If a person who deals with the company, does not take the trouble of reading these documents to find out whether the proposed transaction is within the scope of **powers** of the company or not, he cannot claim any benefit under the doctrine of indoor management.
- 3) **Acts Beyond Apparent Authority** : If an officer of the company does something, which would not ordinarily be within his powers, the person dealing with him must make proper inquiries and satisfy himself as to the officer's authority. If he fails to make proper inquiry in spite of suspicious circumstances, he cannot claim any protection **under** the doctrine of indoor management.

In **Anand Bihari Lal v. Dinshaw & Co.'s**, case the accountant of the company transferred some property of the company to the plaintiff. The transfer was held by the Court to be void, because the power to transfer property could not be considered within the apparent authority of the accountant. The plaintiff were put to suspicion as they should have enquired thoroughly before entering into the transaction.

- 4) **Forgery** : The rule is not applicable when the document relied upon by the outsiders turns out to be a forged one. A company is not liable for forgeries committed by its Officer.

In the case of **Ruben v. Great Fingal Consolidated Company**, a share certificate was issued by the Secretary of the company under the two forged signatures of the directors as required by the articles. The holder of the share certificate wanted to be registered as a member of the company, but the company refused to accept him as a member of the company. The share certificate holder's plea was that he had no means to find out the genuineness of the signatures, therefore, he should be protected. But it was held that the doctrine of indoor management is not applicable to cases of forgeries.

Check Your Progress B

- 1) What is meant by constructive notice?

.....
.....
.....
.....

- 2) What do you mean by doctrine of indoor management?

.....
.....
.....
.....

- 3) List the exceptions to the doctrine of indoor management?

.....
.....
.....
.....

- 4) State whether the following statements are True or False.

- i) Articles may explain any ambiguity included in the Memorandum.
- ii) Any one dealing with the company is presumed to have notice of the contents of the Memorandum and Articles.
- iii) Any one dealing with the company is not entitled to assume that whatever was required to be done as regards internal management of the company, has been done.
- iv) Articles of Association regulates the relations of company with its members.
- v) A person who could discover irregularity while dealing with a company cannot claim benefit of the doctrine of indoor management.

- 5) Fill in the blanks.

- i) Memorandum and Articles, when registered, bind a company and its
- ii) Every person dealing with a company is presumed to have notice of the contents of
- iii) Any one dealing with the company is to assume that whatever was required to be done in the internal management of the company has been done.

6.11 LET US SUM UP

Articles of Association is an important document of a company. It contains rules and regulations which govern the management of the internal affairs of the company. They

define the duties and rights of the company, its members and directors in their respective capacities.

Articles are **subordinate** to Memorandum of Association, which is considered to be the prime document of a company. However Articles can be made use of for explaining any ambiguity in the Memorandum.

A company has the statutory right to alter its articles by passing a special resolution. This **right** cannot be curtailed either by an **agreement** or a clause in the articles. However, alterations in the articles can be made subject to certain limitations. Alteration must not be inconsistent with the Memorandum of Association or the provisions of the Act. Both the documents—the Memorandum and Articles are considered to be public documents. Therefore anyone dealing with the company is presumed to have the knowledge of their contents. However, he is entitled to assume that whatever was required to be done as regards the internal management of the company, has been done. However, there are some exceptions to this rule.

6.12 KEY WORDS

Constructive Notice : A knowledge of the contents of documents on the part of those who are dealing with the company is **presumed** by law.

Inter se: Amongst themselves.

Public Document : Any document **which** is in the possession of an officer of the government, and is **open** to inspection is **known** as a public document.

Table A : Schedule I to the Companies Act includes Table A. This Table contains model rules and **regulations** for a company **having** a share capital.

6.13 SOME USEFUL BOOKS

Chawla R.C. and K.C. Garg, 1990. *Mercantile Law*, Kalyani Publishers: New Delhi
(Chapter 5, Section on Company Law)

Kapoor N.D., 1990. *Elements of Company Law*, Sultan Chand and Sons: New Delhi
(Chapter 6)

Kuchhal M.C., 1989-90. *Modern Indian Company Law*, Shree Mahavir Book Depot: Nai Sarak, Delhi (Chapter 6)

6.14 ANSWERS TO CHECK YOUR PROGRESS

- A 5) i) True ii) False iii) False iv) False v) True vi) True vii) False viii) False
6) i) Memorandum of Association ii) Internal Affairs iii) Table A
iv) Special resolution.
- B 4) i) True ii) True iii) False iv) True v) True
5) i) Members ii) Memorandum and Articles of Association iii) entitled

6.15 TERMINAL QUESTIONS EXERCISES

- 1) What are Articles of Associations? How can they be altered?
- 2) "The power of altering Articles of Association is wide, yet it is subject to a large number of limitations." Explain.
- 3) What are the usual contents of the Articles?
- 4) Explain the legal effect of the Articles of Association. How far they are binding on outsiders?
- 5) Explain briefly the relation between Memorandum and Articles of Association.
- 6) What is the distinction between a Memorandum and Articles of Association.
- 7) Explain the 'doctrine of indoor management'. Are there any exceptions to this doctrine?

8) Answer the following problems giving reasons:

- i) The secretary of a company issued a share certificate in favour of 'A', which apparently complied with the company's articles, is purported to be signed by two directors and the secretary and it had the company's seal affixed to it. In fact, the secretary had forged the signature of the directors and affixed the seal without authority. Is the certificate binding on the company?
- ii) The Articles of a company contained a clause that prohibits any alteration. Is the clause valid?
- iii) The majority of shareholders of a company passed a special resolution to alter its Articles of Association so as to give powers to the directors to require any shareholder who competed with company's business to transfer his share to any nominee of the directors. The plaintiff who carried on competing business challenged the validity of the alteration. Give your decision.
- iv) The Articles of Association of a company contained a clause in which it was stated that A shall be the solicitor for the company and that he shall not be removed except on the ground of misconduct. Can the company remove A even though he is not guilty of misconduct?
- v) Company 'A' lends money to Company 'B' on a mortgage of its assets and the procedure laid down in the articles was not complied with and the directors of the two companies were the same. Is the mortgage binding upon Company B?

HINTS

- i) No. A forgery is a nullity. Therefore, certificate is not binding on the company (Refer to Ruben v. Great Fingal Consolidated Co.)
- ii) No. The power to alter articles is a statutory power and therefore, it cannot be taken away.
- iii) The alteration is perfectly valid as it is in the overall interest of the company.
- iv) Yes, the company can remove A because the Articles of Association constitute no contract between the company and the outsider (Refer to Eley v. Positive Govt. Life Assurance Co. Ltd.).
- v) No. The mortgage is not binding on Company B. The directors had knowledge of the irregularity.

Note : These questions will help you to understand the unit better. Try to write answers for-them. But do not submit your answers to the University. These **are** for your practice only.