

ICSI-CCGRT – “GEETA SAAR” – A Brief of Premier on Company Law

Section - 2 of Companies Act, 2013: Definition – Clause (5) Articles

Articles or Articles of Association

Clause (5) of Section 2 of the Companies Act, 2013 defines Articles as thus: “Articles” means the Articles of Association of a Company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act.

1. Meaning of Articles of Association:

“Articles” are defined as the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act.

Clause (2) of section 2 of Companies Act, 1956 was dealing with the definition of the term, which is stated as below:-

“Articles” means 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, including, so far as they apply to the company, the regulations contained, as the case may be, in Table B in the Schedule annexed to Act No. 19 of 1857 or in Table A in the First Schedule annexed to the Indian Companies Act, 1882 (6 of 1882), or in Table A in the First Schedule annexed to the Indian Companies Act, 1913 (7 of 1913), or in Table A in Schedule I annexed to this Act.

A company is an incorporated body. Hence, there is requirement of certain rules and regulations formed for the management of its internal affairs and conduct of its business as well as the relation between the members and the company and company. The interrelation between the members, company and directors are recorded. It is an important document which needs to be filed with the Registrar of Companies.

Section 5 of the Act deals with the provisions related to Articles. Articles are the regulations for managing the affairs of the Company. Articles of Association is one of the primary and constituent documents which is vital for the functioning of the company. The Articles shall also contain such matters, as may be prescribed and it shall include any such additional information which is considered necessary for its functioning.

2. Memorandum v. Articles of Association

Memorandum of Association is the constitution of the company whereas the Articles of Association are the rules and regulations for managing the affairs of the company.

In case the provisions of the Memorandum and Articles are inconsistent with any of the provisions of the Companies Act, 2013 or rules made thereunder, the Act will prevail over Memorandum and Articles of Association of the company by virtue of section 6.

The Company may either adopt the model Articles of Association provided in the Act such as Table F (for a Company limited by shares), Table G (Company limited by guarantee), Table H (Company limited by guarantee and not having share capital), Table I (Unlimited Company and having share capital) and Table J (Unlimited Company not having share capital) (as may be applicable) in Schedule I of the Companies Act, 2013 or frame their own Articles which are not inconsistent with the provisions of the Act or rules made thereunder.

3. Exclusion of model Articles of Association

A company, may by virtue of its preamble, fully or partially exclude the applicability of Table F by making a specific statement. In other words, a company may by specific statement exclude applicability of Table F. In such case, it is prudent to include all the empowering provisions to enable it to exercise various powers under the Act which require specific provisions in its articles. For example, in case

of company for which Table F is not applicable, for appointing an additional director the company requires specific power in its articles.

Further, in case the articles of the company do not specifically exclude Table F or the articles are silent about the applicability of Table F, the provisions of Table F will be applicable to the extent of the matters not provided in those articles.

Memorandum or Memorandum of Association

Clause (56) of Section 2 of the Act defines the term Memorandum as under:

“Memorandum” means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act.

1. Meaning of ‘Memorandum’

“Memorandum” means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act.

The definition of ‘Memorandum’ under the Companies Act, 2013 is similar to the Companies Act, 1956. A Memorandum of Association is a legal document prepared in the formation and registration process of a Company to define mainly Name, object, capital liability of the members of the company.

In *Life Insurance Corporation of India v. Escorts Ltd. & Ors*, the Supreme Court has compared Memorandum with the Constitution: “A Company is, in some respects, an institution like as State functioning under its ‘basis Constitution’ consisting of the Companies Act and the memorandum of Association”.

Under the Act, the memorandum serves an important purpose: it evidences the intention of the subscribers to the memorandum to form a company and become

members of that company on formation. In the case of a company that is to be limited by shares, the memorandum will also provide evidence of the members' agreement to take the shares mentioned against their name.

The only difference in the Memorandum of Association in the Companies Act, 2013 and Companies Act, 1956 lies in the form of Memorandum as suggested in Schedule I of the Acts. The Memorandum was specified in Table B, C, D and E in Schedule I of Companies Act, 1956 whereas the Memorandum shall be in respective forms specified in Tables A, B, C, D and E (as may be applicable) in Schedule I of the Companies Act, 2013.

2. Departure from the definition

The definition of 'memorandum' as discussed above is to be referred for all the purposes except where the context otherwise provides. In the following context, the definition given is not required to be referred:

Sl. No.	Section	Relevant text
1.	2(1)	"abridged prospectus" means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf.
2.	388(2)	For the purposes of this section, a statement shall be deemed to be included in a prospectus, if it is contained in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

In both the above two cases, the context calls interpretation of the term with the generic meaning of the word 'memorandum'.