

**Incorporation of Companies and  
Company Secretarial Practice under  
*COMPANIES ACT NO. 7 OF 2007***

**SRI LANKA LAW COLLEGE**

**PRACTICAL TRAINING PROGRAMME FOR  
LEGAL APPRENTICES**



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**Presentation by**

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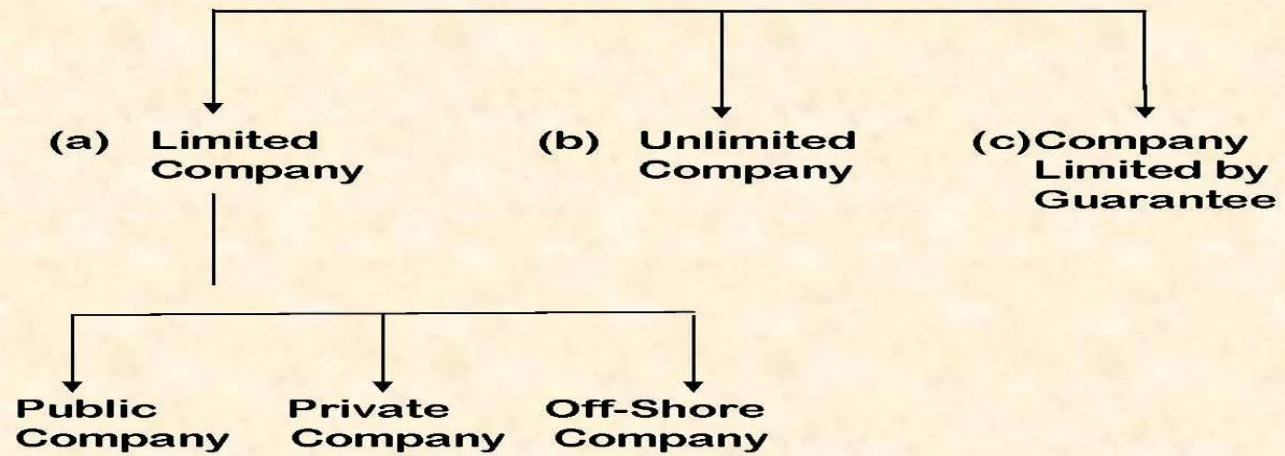
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**9<sup>th</sup> October 2016**

# COMPANIES



## INCORPORATION OF A COMPANY

(OTHER THAN A COMPANY LIMITED BY GUARANTEE)

- APPLICATION ON FORM 1
- ADOPT MODEL ARTICLES OR ANNEX A SET OF ARTICLES
- NO MEMORANDUM OF ASSOCIATION

**OUT**

DOCTRINE OF ULTRA VIRES

**IN**

CERTAIN RESTRICTIONS (Sec. 17)

DOCTRINE OF ULTRA VIRES NO MORE RULE OF OUR COMPANY LAW

**BUT**

- BUT OBJECTS CLAUSE CAN BE INCLUDED IN THE ARTICLES



MAY NEED  
THE OBJECTS  
CLAUSE

## CERTAIN RESTRICTIONS

- MAJOR TRANSACTIONS - SEC. 185
- PROSPECTUS BY A PUBLIC COMPANY - SEC. 37(1)
- 4<sup>TH</sup> SCHEDULE - ITEM (1)
- OBJECTS CLAUSE IN THE ARTICLES OF EXISTING COMPANIES (Sec. 486)
- BOARD'S POWER OF MANAGEMENT - WIDE UNDER SEC. 184 -BUT SUBJECT TO ARTICLES

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The Memorandum of Association of an existing company is now DEEMED to form a part of the Articles of Association of the Company. **Sec. 486(2)**



## **INCORPORATION – STEPS BY STEPS**

- **Name Approval**
- **Application for registration of a Company**
- **No Memorandum of Association**
- **Articles of Association may include objects if necessary**
- **Certificate of Incorporation**
- **Public Notice – within 30 working days **Sec 9(1)****
- **Proof of Publication – within 60 working days . Gazettes No. 1566/32 of 12/09/2008**



## ABOLITION OF DOCTRINE OF ULTRA VIRES

Ultra – 'beyond'

Vires – 'powers'

- (a) The doctrine of 'ultra vires' is **no more** a rule of our Company law as the New Act does not recognise it. A Company is now **not** required to have a **memorandum**. However it can have the **objects** as a part of the Articles of Association, if the rules of the Securities Exchange Commission or Stock Exchange or a Board of Investment agreement requires the objects to be included. Any company with foreign shareholdings is also required to have the objects.
- (b) The Fourth Schedule to the Act sets out in terms of Section 37(1) the matters to be specified by a public company in its **prospectus**. The first matter is "**the business which the subscribers or promoters** intend that the Company should carry out during the period of **five years** from the date of commencement of business by the Company."
- (c) Section 185(1) which contains the provisions in respect of **major transactions** provides, *inter alia*, that "a company shall **not** enter into any major transaction unless such transaction is a transaction which the Company is expressly authorised to enter into by a provision in its articles which was included in it at the time the Company was incorporated."
- (d) Section 185(2) defines a 'major transaction' to mean, *inter alia*, "a transaction or service of transactions which have the purpose or **effect of substantially altering the nature of the business** carried on by the Company."
- (e) According to Section 188 it is a duty of every director of a company not to act or agree to the company acting in a manner that **contravenes** any provisions of **the Act** or the provisions contained in the **Articles** of the company.
- (f) Although the doctrine of 'ultra vires' is now abolished largely to protect the interests of third parties dealing with the Companies, the Directors and the Secretaries should be mindful of these provisions pointed out in (a) to (e) above.



## ARTICLES

The articles of association of a company may provide for any matter **not inconsistent with the provisions of this Act other than the First Schedule** to the Act, and in particular may provide for—

- (a) the objects of the company;
- (b) the rights and obligations of shareholders of the company; and
- (c) the management and administration of the company.

It must be remembered that a Company may have its articles not inconsistent with the provisions of the Act. However it can adopt or vary the Model Articles in the First Schedule to the Act.

## **ADOPTION OF FIRST SCHEDULE AND MODIFICATION**

The **articles of association** set out in the **First Schedule** to the Act (hereinafter referred to as “**model articles**”) will apply in respect of any company other than a company limited by guarantee, except to the extent that the company adopts articles which exclude, modify or are inconsistent with the model articles. (Section 14)



## **EFFECT OF**

## **ARTICLES**

**SUBJECT TO THE PROVISIONS OF SECTION 89 THE ARTICLES OF THE COMPANY WILL BIND THE COMPANY AND SHAREHOLDERS AS IF THERE WAS A CONTRACT BETWEEN THE COMPANY AND THE SHAREHOLDERS, IN PARTICULAR ANY MONEY PAYABLE BY ANY SHAREHOLDER TO THE COMPANY WILL BE A DEBT DUE FROM THAT SHAREHOLDER TO THE COMPANY. SECTION 16**

**SECTION 89 READS AS FOLLOWS SAFEGUARDS THE SHAREHOLDER FROM INCREASE OF ANY LIABILITY UNLESS HE AGREES THERETO.**

**“NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE ARTICLES OF THE COMPANY, A SHAREHOLDER SHALL NOT BE –**

**(A) BOUND BY A RESOLUTION ALTERING ITS ARTICLES; OR**

**(B) REQUIRED TO ACQUIRE OR HOLD MORE SHARES IN THE COMPANY.**

**“WHERE THAT RESOLUTION OR THE HOLDING OF THOSE SHARES WOULD INCREASE THE LIABILITY OF THE SHAREHOLDER TO THE COMPANY, UNLESS THE SHAREHOLDER AGREES IN WRITING TO BE BOUND BY THE RESOLUTION OR TO ACCEPT THE SHARES, AS THE CASE MAY BE.”**



**STATEMENT OF OBJECTS**

**WHERE THE ARTICLES OF A COMPANY SETS-OUT THE OBJECTS OF THE COMPANY, THERE SHALL BE DEEMED TO BE A RESTRICTION PLACED BY THE ARTICLES IN CARRYING ON ANY BUSINESS OR ACTIVITY THAT IS NOT WITHIN THOSE OBJECTS, UNLESS THE ARTICLES EXPRESSLY PROVIDE OTHERWISE.**

**SECTION 17(1)**

**WHERE THE ARTICLES OF A COMPANY PROVIDE FOR ANY RESTRICTION ON THE BUSINESS OR ACTIVITIES IN WHICH THE COMPANY MAY ENGAGE—**

- (A) THE CAPACITY AND POWERS OF THE COMPANY WILL NOT BE AFFECTED BY SUCH RESTRICTION; AND**
- (B) NO ACT OF THE COMPANY, NO CONTRACT OR OTHER OBLIGATION ENTERED INTO BY THE COMPANY AND NO TRANSFER OF PROPERTY BY OR TO THE COMPANY, WILL BE INVALID BY REASON ONLY OF THE FACT THAT IT WAS DONE IN CONTRAVENTION OF SUCH RESTRICTION. SECTION 17(2)**

**HOWEVER, THESE PROVISIONS WILL NOT AFFECT -**

- (A) THE ABILITY OF A SHAREHOLDER OR DIRECTOR OF THE COMPANY TO MAKE AN APPLICATION TO COURT UNDER SECTION 233 TO RESTRAIN THE COMPANY FROM ACTING IN A MANNER INCONSISTENT WITH A RESTRICTION PLACED BY THE ARTICLES, UNLESS THE COMPANY HAS ENTERED INTO A CONTRACT OR OTHER BINDING OBLIGATION TO DO SO; OR**
- (B) THE LIABILITY OF A DIRECTOR OF THE COMPANY FOR ACTING IN BREACH OF THE PROVISIONS OF SECTION 188. Please also see SECTION 17(3)**



## DRAFTSMAN'S MIND

ON

THE EFFECT OF THE STATEMENT OF OBJECTS IN THE

ARTICLES

“THIS PROVISION IS AN IMPORTANT ELEMENT OF THE REMOVAL OF THE *ULTRA VIRES* DOCTRINE, SO FAR AS OUTSIDERS ARE CONCERNED. A RESTRICTION IN THE ARTICLES ON THE ACTIVITIES OF A COMPANY CAN BE ENFORCED IN ADVANCE BY A DIRECTOR OR SHAREHOLDER, BUT BREACH OF THIS RESTRICTION DOES NOT AFFECT THE VALIDITY OR ENFORCEABILITY OF TRANSACTIONS ENTERED INTO BY THE COMPANY. WHERE THE ARTICLES OF A COMPANY STATE THE OBJECTS OF THE COMPANY POSITIVELY, AS IS THE CASE WITH ALL EXISTING COMPANIES, THERE IS DEEMED TO BE A RESTRICTION IN THE ARTICLES ON DOING ANYTHING OUTSIDE THOSE OBJECTS.”

LOSS SUFFERED BY A COMPANY AS A RESULT OF ENGAGING IN AN UNAUTHORIZED ACTIVITY MAY BE RECOVERABLE FROM THE DIRECTORS WHO APPROVED THE ACTIVITY IN QUESTION.

Quoted from "Consultation Draft of 31.8.1995"



## PRIVATE COMPANIES

A Company will be a Private Company **only and if only** it complies with the provisions of Section 27 which requires the articles of that company to include provisions which—

- (a) **prohibit** the company from **offering** shares or other securities issued by the company **to the public**; and
- (b) **limit the number of its shareholders to fifty**, not including shareholders who are—
  - (i) employees of the company; or
  - (ii) former employees of the company who became shareholders of the company while being employees of such company and who have continued to be shareholders after ceasing to be employees of the company.

## **APPLICATION FOR REGISTRATION OF A COMPANY**

An application for incorporation of a company, **other than a company limited by guarantee** may be made to the Registrar-General of Companies :-

- (i) in the prescribed form **(Form 1)**
- (ii) signed by each of the initial shareholders
- (iii) together with the following documents:-
  - a) a **declaration** stating that to the best of such person's or persons' knowledge, the **name** of the company is **not identical or similar** to that of an existing company
  - b) the **articles of association** of the company, if different from the articles set out in the First Schedule to the Act, and signed by each of the initial shareholders;
  - c) **consent** from each of the **initial directors** under section 203 to act as a director of the company; **(Form 18)** and
  - d) **consent** from the **initial secretary**, under subsection (2) of section 221 to act as secretary of the company. **(Form 19)**



## NAME REQUIREMENTS

Type of Company

Name should end with  
the words

Every Listed  
Company



“Public Limited  
Company”, or “PLC”

Every other limited  
company



“Limited” or ‘Ltd’

Private Company



“(Private) Limited”,  
or “(Pvt) Ltd.”

**(Section 6)**

- RESTRICTIONS
- QUALIFIED RESTRICTIONS



## **CHANGE OF NAME**

- Prior approval from the Registrar
- Only by a **Special Resolution**
- **Notice** to the **Registrar** on Form 3 (not to use Form 39) within 10 working days
- Registrar's **fresh certificate**
- **Not to affect** any –
  - rights
  - obligations, or
  - pending legal proceedings

Sec. 8(4)

- **Public Notice** – within **20** working days

**Sec. 9(2)**

- To file proof of publication of public notice – within 60 working days

**(please see Regulation 3 of 12.09.2008)**

## **GIVING COMPANY NAME AND NUMBER** **MANDATORY**

A company should ensure that **its name** and its **company number** are **clearly** stated in—

- (a) all **business letters** of the company;
- (b) all **notices** and other **official publications** of the company;
- (c) **all bills of exchange, promissory notes, endorsements, cheques and orders** for money or goods signed on behalf of the company;
- (d) all **invoices**, receipts and **letters of credit** of the company;
- (e) all **other documents** issued or signed by the company which creates or is evidence of a legal obligation of the company; and
- (f) the **company, seal** if any.

**(Section 12)**



## REGISTERED OFFICE

1. Every company should have a registered office in Sri Lanka. A company can now have its registered office in **any part of Sri Lanka** (under the earlier Law it was required to have it in the judicial district mentioned in the Memorandum of Association).
2. **Subject to** the company's **articles** and to the requirements to give notice to the Registrar on **Prescribed Form 13** the board of a company may change the registered office of the company at any time. It may be prudent to **delete the clause** in respect of the registered office in the Memorandum of association of an existing company as it also becomes part of the Articles.
3. The new Act has introduced a **new requirement** that if the registered office of a company is at the **offices of any chartered accountant, attorney-at-law, or any other person**, the description of the registered office shall state—
  - (i) that the registered office of the company is at the offices of the Chartered Accountant, Attorney-at-Law, or any other person; and
  - (ii) particulars of the location of those offices.
4. Notice of change of registered office on Form 13 be given to the Registrar will take effect **five working days** after the notice is received by the Registrar, or on such **later date** as may be specified in the notice. **(Please see sections 113 and 114).**



**CHECK LIST IN RESPECT OF STATUTORY FORMS AND RETURNS**

Section		Time Limit	Form	Fees
4	Application for incorporation of a Company <u>with</u> the Articles of Association	—	1	Limited – Rs. 15,000/=
				Unlimited – Rs.12,500.00
32	Application for incorporation of a Company Limited by Guarantee <u>with</u> the Articles of Association	—	5	Rs.25,000/=
8	<b><u>Change of Name</u></b>			
	Name Approval			Rs. 1,000/=
	Special Resolution – Notice for EGM			
	Notice to R.G.C.	10 W.D.	3	Rs. 1,000/=
	Obtaining certificate of incorporation with new name	—	4	-----
	<b><u>Allotment of Shares</u></b>			
51	Notice to RGC of Issue of shares	20 W.D.	6	Rs. 1,000/=
55	Notice of calls on shares / particulars attached to a Share purchased by shareholders	10 W.D.	7	Rs. 1,000/=
59	Reduction of Stated Capital	10 W.D.	8	Rs. 1,000/=
63	Notice of acquisition or redemption by Company of own shares	immediately	9	Rs. 1,000/=

	<b><u>Charges</u></b>			
102	Certificate of charge to be lodged with RGC	21 W.D.	10	Rs. 5,000/=
105	Register of Charges and Memorandum of Satisfaction of charges	10 W.D.	11	Rs.1,000/=
	<b><u>Registered Office and Records</u></b>			Rs. 1,000/=
114	Notice of change of <b>registered</b> office address	5 W.D. (in advance)	13	Rs. 1,000/=
116(4) 124(3) 124(4)	Notice of Change of Location of the records and registers	10 W.D.	14	Rs. 1,000/=
131(1)	<b>Annual Return</b>	30 W.D. from AGM	15A guarantee companies 15 for other companies	Rs. 5,000/=
149(2)	Notice of location of accounting records	at intervals not exceedin g periods of 6 months	16	Rs. 1,000/=
171	Notice of adoption or change of <b>Balance Sheet Date</b> with the prior approval of RGC		17	Rs. 1,000/=
	<b><u>Appointment /Changes in Directors</u></b>			
203	<u>Consent</u> and Certificate	within 20 WD	18	Rs. 1,000/=
223	Notice of change	within 20 WD	20	Rs. 1,000/=
	<b><u>Appointment / Change in Secretaries</u></b>			
221	Consent and Certificate	within 20 WD	19	Rs. 1,000/=



223	Notice of change	— within 20 WD	20	Rs. 1,000/=
	<b><u>Amalgamation</u></b>			
244	Obtain Certificate of Amalgamation and Certificate of incorporation	—	21A or 21B and 21C	Rs. 1,000/=
	<b><u>Acquiring Shares</u></b>			
246	Notice of Acquisition of not less than 90%	—	22	Rs. 1,000/=
	<b>OFFSHORE COMPANY</b>			
5 & 262	Obtaining Certificate of registration	—	2E	Rs. 100,000/=
261	Notice of amendments /alterations of particulars	—	23	Rs. 1,000/=
265	Notice of Cessation to carry on business	—	24	Rs. 1,000/=
	<b>OVERSEAS COMPANY</b>			
Part XVIII	Obtaining certificate of registration	—	42	Rs. 50,0000/=
491	Returns of alterations of particulars	—	35	Rs. 1,000/=
493	Notice of change of name	—	36 or 37	Rs. 1,000/=
Part XVIII	Obtaining certificate of change of name		43	
496	Notice of ceasing to have a place of business		38	Rs. 1,000/=

15(2) and Several other Sec.	<b>SPECIAL RESOLUTION</b>	10 WD	39	Rs. 350/=
	<b><u>Existing company</u></b>			
487	Application for re-Registration	Before 2/5/2008	40	-----
	Application for re-Registration – overseas companies			Not required
485	Obtaining Certificate of incorporation with a new number	—	41	-----
489	Registration of principal office/place of business	—	44	Rs. 1,000/=
489	Registration of particulars of Directors	—	45	Rs. 1,000/=
489	Registration of name and address of Authorized person		46	Rs. 1,000/=

*Note :* Registration fees are payable as per the gazette and are subject to variation from time to time. However, the above specified fees are subject to 15% VAT.



## **STATUTORY BOOKS AND REGISTERS**

A Company should ensure that the following statutory books and registers are duly maintained

- (a) **MINUTES BOOKS:** For recording proceedings of General and Board Meetings - Section 147
- (b) **ATTENDANCE BOOKS:** For recording attendance at Company and Board Meetings. In the case of some companies their Books of Director have decided to dispense with the requirements of taking attendance at the Board Meeting
- (c) **INDEX OF SHAREHOLDERS :** When the number of Shareholders exceeds 50 – (Section 126).
- (d) **SHARE REGISTER :** A Share Register recording the shares issued by the Company and the names and the last known address of each shareholders and the number of shares of each class held by them during the last 10 years and should also include the date of issue, repurchase or redemption of shares from or transfer of shares by or to (Section 123).
- (e) **REGISTER OF DIRECTORS AND SECRETARIES:** Register of Directors and Secretaries containing their names residential address and business occupation (if the secretary is a corporate body its name and registered and principal office) – (Section 223).
- (f) **REGISTER OF CHARGES:** For recording all charges specifically affecting property of the Company and all floating charges on the undertaking or any property of the Company specifying in each case a short description of the property charged, amount of the charge and except in the case of securities to bearer the names of persons entitled thereto – (Section 110).
- (g) **INTERESTS REGISTER –** Register to record any transaction or proposed transactions with the Company in which a Director is interested within the meaning of Section 191 – (Section 192).
- (h) **OTHER COMPANY RECORDS** referred to in Section 116.



## REGISTRATION OF CHARGES

- ◆ **'Charge'** is defined to include a mortgage. The charges required to be registered are listed in Sec. 102(2).
- ◆ Charge created by a company on the security of its property or undertaking – to be registered within 30 days from the date of instrument of charge on Form 10 (Sec. 102). If it is in respect of a charge by an instrument executed outside Sri Lanka time for registration is extended to 3 months from the date of execution.
- ◆ If not registered, it is **void** against any **liquidator or any creditor** of the Company – Sec. 103



### **COMMON SEAL NOT MANDATORY**

One of the important deviations made by the new Act is **dispensing with the mandatory requirements of the common seal**. However, the new Act recognizes that a company may have a common seal. For example, Sec. 12(1) states that a company shall ensure that its name and its company number are clearly stated in the common seal, if any.

\_\_\_\_\_ However \_\_\_\_\_  
Please examine the Articles of Association. The Directors have to comply with the Articles.



## **CONTRACTS ON BEHALF OF THE COMPANY**

### **(A) COMMON SEAL NOT MANDATORY**

ONE OF THE IMPORTANT DEVIATIONS MADE BY THE NEW ACT IS DISPENSING WITH THE MANDATORY REQUIREMENT OF THE COMMON SEAL. HOWEVER, THE NEW ACT RECOGNIZES THAT A COMPANY MAY HAVE A COMMON SEAL. FOR EXAMPLE, SECTION 12(1) STATES THAT A COMPANY SHALL ENSURE THAT ITS NAME AND ITS COMPANY NUMBER ARE CLEARLY STATED IN THE COMMON SEAL, IF ANY.

### **(B) MODE OF EXECUTION**

A CONTRACT OR OTHER ENFORCEABLE OBLIGATION MAY BE ENTERED INTO BY A COMPANY BY ITS AUTHORISED PERSONS AS PROVIDED FOR IN SECTIONS 19 AND 20.

### **(C) PRE-INCORPORATION CONTRACTS**

SECTIONS 23 TO 25 CONTAINS PROVISIONS GIVING SANCTITY TO PRE-INCORPORATION CONTRACTS.

### **(D) AUTHENTICATION OF DOCUMENTS**

A DOCUMENT OR RECORD OF PROCEEDINGS REQUIRING AUTHENTICATION BY A COMPANY SHALL BE SIGNED BY A DIRECTOR, SECRETARY, OR OTHER AUTHORISED OFFICER OF THE COMPANY. (SECTION 26)



## COMPANY SECRETARY

### SECRETARY

Sec. 221 (1)

**Mandatory for every Company  
to have a Secretary**

Sec. 222

**Qualifications (1)**

Sec. 221 (2)

**Consent on Prescribed Form 19**

Sec. 221 (3)

**Tenure  
named in the application for  
registration or amalgamation  
proposed continues till cessation**

Sec. 221 (4)

**Appointment/Removal by the  
Board of Directors**

Sec 223 (1)

**Particulars of the Secretary to be  
entered in the Register of Directors  
and Secretaries**

Sec 223 (2) & (3)

**Notice of Change to R.G.C. on the  
prescribed form 20 within 20 W.D.**

## DIRECTORS

### 1. NUMBER

Sec. 201

- ◆ at least two for a Public Company
- ◆ at least one for any other Company

### 2. QUALIFICATIONS

Any person who is not disqualified under Sec. 202(2) can be appointed as a Director of a company. The following persons are so **disqualified** :-

- (a) a person who is **under eighteen** years of age;
- (b) a person who is an **undischarged insolvent**;
- (c) a person who is or would be prohibited from being a director of or being concerned or taking part in the promotion, formation or management of a company, **under the Companies Act, No. 17 of 1982**, but for the repeal of that Act;
- (d) a person who is **prohibited** from being a director or promoter of or being concerned or taking part in the management of a company under section **213** (Persons prohibited from managing companies) or section **214** (Court may disqualify directors) of this Act;
- (e) a person who has been adjudged to be of **unsound mind**;
- (f) a person that is **not a natural person**;
- (g) in relation to any particular company, a person who does **not comply with any qualifications for directors contained in the articles of that company**.



**DIRECTORS****3. DISQUALIFICATIONS**

Where a person—

- (a) has been **convicted of any offence** under this Act which is **punishable by imprisonment**;
- (b) has been convicted of an offence involving **dishonest or fraudulent acts**;
- (c) is adjudged **insolvent under the Insolvency Ordinance** (Cap. 97) ; or
- (d) adjudged to be of **unsound mind**,

such person should not, during the period of five years after the conviction or adjudication, as the case may be, be a director or promoter of or in any way, whether directly or indirectly, be concerned or take part in the management of a company, unless that person first makes an application to obtain the leave of the court. Leave may be given on such terms and conditions as the court thinks fit. (Section 213(1))

**4. COURT MAY DISQUALIFY DIRECTORS**

Where a person—

- (a) is **prohibited** from being a director of company under **section 213**;
- (b) while a director of a company, has **persistently failed to comply with the provisions of this Act**;
- (c) has been convicted of an **offence of involving dishonest or fraudulent acts** in a country other than Sri Lanka; or
- (d) was a director of a **company** which became **insolvent** and that person's conduct as a director of that company or of any other company makes that person unfit to be a director of a company,

the **court may make an order** that the person shall not, without leave of court, be a director or promoter of or in any way whether directly or indirectly be concerned or take part in the management of a company, for such period not exceeding ten years as may be specified in the order.



## DIRECTORS

### 5. APPOINTMENT AND REMOVAL

- 5.1. **First Directors** : Directors named in the application for incorporation or in the amalgamation proposal will continue as a Director until he ceases to be such a director in accordance with the provisions of the Act (Sec. 204(1))
- 5.2. **Subsequent Directors** : can be appointed by ordinary resolution of shareholder unless the articles otherwise provides (Sec. 204(2)) Every appointment of Directors should be voted on individually. (Sec. 205)
- 5.3. **Removal** : Subject to the provisions in the articles a director may be removed from office by ordinary resolution passed at a general meeting called for that purpose (Sec. 206).
- 5.4. **Vacation or Cessation Office:** The Office of director of a company will be vacated if the Director –
- (a) resigns from his office in accordance with subsection(2);
  - (b) is removed from office in accordance with the provisions of this Act or the articles of the company;
  - © becomes disqualified from being a director in terms of the provisions of section 202;
  - (d) dies;
  - (e) vacates office pursuant to subsection (2) of section 210; or
  - (f) otherwise vacates office in accordance with the articles of the company. - **Sec 207**
- 5.5. **Resignation**
- A notice of resignation of a Director will become effective when it is received at the registered office of the Company or at a later time specified in the notice (Sec. 207(2))
- However where a company has only one director that director may not resign office until that director has called a meeting of shareholders to receive notice of resignation and to appoint one or more new directors. In any event notices of resignation of a sole director will not take effect until the date of such meeting of shareholders. - **Sec 208 (1)**



**DIRECTORS****6. VALIDITY OF ACTS OF DIRECTORS - Sec 209**

The acts of a person as a director will valid notwithstanding the fact that :-

- (a) the person's appointment was **defective**; or
- (b) the person is **not qualified** for such appointment.

**7. AGE LIMIT**

A person who has attained the age of **70 years** will vacate office if he is a Director –

- of (i) a public Company or
- of (ii) a private Company which is a subsidiary of a public company,

- (a) at the conclusion of the annual general meeting commencing **next after** he **attains** the age of 70 years ;
- (b) **if** he is **reappointed** as a director after attaining the age of seventy years, at the **annual general** meeting **following that reappointment**.

**Unless reappointed by a resolution** passed at a general meeting approving such reappointment declaring that the age limit would not apply to him **(Section 210 and 211)**.

**DIRECTORS****8. POWERS OF MANAGEMENT**

**Section 184** vests the power of management a company in its board of directors subject to the provisions in the articles of association of the Company. Of course the board of directors should be mindful of the provisions of section 185 in respect of the major transaction and the statement made in the Company's prospectus issued under Section 37(1) read with the Fourth Schedule. If there is an **unanimous agreement** of shareholders in terms of section 31(1) certain specified provisions (including section 185 or major transactions) will not apply to a **private Company**. *Please see the Second Schedule to the Act*

**9. DELEGATION OF POWERS**

**Section 186** permits delegation by the board of directors to delegate their powers as provided for therein **subject to** any restrictions in the **articles** of association of the Company.



**DIRECTORS****10. Duties**

The new Act imposes statutory duties on directors of Company :-

- (a) to act in **good faith and in the interests of the Company** (Section 187)
- (b) to **comply with the Act and the Company's articles of association** (Section 188)
- (c) **not to act** in a manner which is **reckless or grossly negligent** but to **exercise the degree of skill and care** that may be reasonably be expected of a person of his knowledge and experience. (Section 189)
- (d) **to rely on and use information and advice** received from others only **if** he knows that such reliance is **not unwarranted** and if he is print on notice after making adequate inquiries (Section 190).
- (e) to make **disclosure of interests** (Section 192);
- (f) **not to use company information** (Section 197)
- (g) **to disclose share dealings** (Section 200)
- (h) **to approve remuneration and other benefits for directors only as provided** for in Section 216.
- (i) **not to give loan or provide guarantee or security to a director** unless permitted under Section 217;
- (j) **to act as provided for in Section 219 in the event of a situation of insolvency;**
- (k) **to call an extra-ordinary general meeting if it appears that there will be serious loss of capital (as provided for in Section 220).**

### **SERIOUS LOSS OF CAPITAL**

THE NEW ACT CONTAINS ANOTHER SALUTARY PROVISION WHICH WILL BE WELCOMED BY SHAREHOLDERS. THAT PROVISION IS INTENDED TO PROVIDE FOR A COMPANY'S SHAREHOLDERS TO BE ADVISED OF THE SITUATION WHERE THE COMPANY'S ASSETS ARE REDUCED TO LESS THAN HALF ITS STATED CAPITAL.

IF AT ANY TIME IT APPEARS TO A DIRECTOR OF A COMPANY THAT THE NET ASSETS OF THE COMPANY ARE LESS THAN HALF OF ITS STATED CAPITAL, THE BOARD WILL BE REQUIRED WITHIN TWENTY WORKING DAYS OF THAT FACT BECOMING KNOWN TO THE DIRECTOR, CALL AN EXTRAORDINARY GENERAL MEETING OF SHAREHOLDERS, AS PROVIDED FOR IN SECTION 220, TO BE HELD NOT LATER THAN FORTY WORKING DAYS FROM THAT DATE.

### **DUTY OF DIRECTORS TO ACT ON INSOLVENCY**

THE NEW ACT INCLUDES PROVISIONS TO ENSURE THAT IN THE CIRCUMSTANCES OF DOUBTFUL SOLVENCY, THE QUESTION OF WHETHER THE COMPANY SHOULD TRADE ON IS CONSIDERED BY THE BOARD, AND CREATES AN INCENTIVE FOR DIRECTORS TO PARTICIPATE IN MAKING THAT DECISION AND TO APPROACH IT CAUTIOUSLY. A DIRECTOR OF A COMPANY WHO BELIEVES THAT THE COMPANY IS UNABLE TO PAY ITS DEBTS AS THEY FALL DUE WILL BE BOUND FORTHWITH TO CALL A MEETING OF THE BOARD TO CONSIDER WHETHER THE BOARD SHOULD APPOINT A LIQUIDATOR OR AN ADMINISTRATOR AS PROVIDED FOR IN SECTION 219.



## MAJOR TRANSACTIONS

A company cannot enter into any **major transaction unless** such transaction is -

- (a) **approved** by special resolution;
- (b) **contingent** on approval by special resolution;
- (c) **consented** to in writing by all the shareholders of the company; or
- (d) a transaction which the company is **expressly authorized** to enter into by a provision in its articles which was included in it at the time the company was incorporated.

However, this restriction will not apply to -

- (a) a transaction under which a company gives, or agrees to give, a **floating charge** over all or any part of the property of the company;
- (b) a transaction entered into by a **receiver** appointed pursuant to an instrument creating a floating charge over all or any part of the property of the company;
- (c) a transaction entered into by an administrator or **liquidator** of a company.

The provisions contained in Sec. **185** in respect of the Major Transactions will **not apply to Private Companies** acting with **unanimous shareholder** approval.

Although the doctrine of ultra vires is abolished under the new law and the objects are not mandatory one has to be mindful of the item (d) in the definition of "Major transaction" quoted above. A transaction (or a series of transactions) which has (have) the purpose or effect of substantially altering the nature of the business carried on by the Company cannot be entered into without the approval or rectification at least 75% of the Shareholders unless it is included in one of the objects (included in the Articles). Therefore it may be prudent to have a set of objects to cover all the anticipated businesses.

**Assets**" has been defined to include property of any kind, whether corporal or incorporeal;



**Major transaction**", has been defined to mean –

- (a) the **acquisition** of, or an **agreement** to acquire, whether contingent or not, assets of a value which is greater **than half the value of the assets of the company before the acquisition**;
- (b) the **disposition** of, or an agreement to dispose of, whether contingent or not, the whole or more than half by value of the assets of the company;
- (c) a transaction which has or is likely to have the effect of the company **acquiring** rights or interests or incurring obligations or liabilities of a value which is **greater than half the value** of the assets before the acquisition; or
- (d) a **transaction, or series of related transactions** which have the purpose or effect of **substantially altering the nature of the business** carried on by the company. (Section 185)
- (e) "Assets" is defined to include PROPERTY of any kind, whether corporeal or incorporeal.

Section 185(2)





**ALERT**

**FOR**

**LAWYERS & SECRETARIES**

**DIRECTORS TO COMPLY WITH THE ACT AND THE ARTICLES – SECTION 188**

**‘KNOWLEDGE TO THE CONTRARY’ – SECTION 21**

**PRE-INCORPORATION CONTRACTS AND RATIFICATION – SECTION 23 - 25**


## **INDEMNITY AND INSURANCE**

A company can indemnify or directly or indirectly effect insurance for a director or employee of the company or of a related company only in the manner set out in sec. 218.



## SHARES

**Shares**  No par value  
Stated Capital

**Different classes** – possible  redeemable  
preferential rights  
special voting rights (Sec. 49)

**Rights**  one vote on a poll  
equal shares in dividends  
equal share in distribution of surplus assets } subject to Articles

**Other Rights** can be conferred by the Board of Directors with the terms of issue if consistent with the Articles. Sec. 51

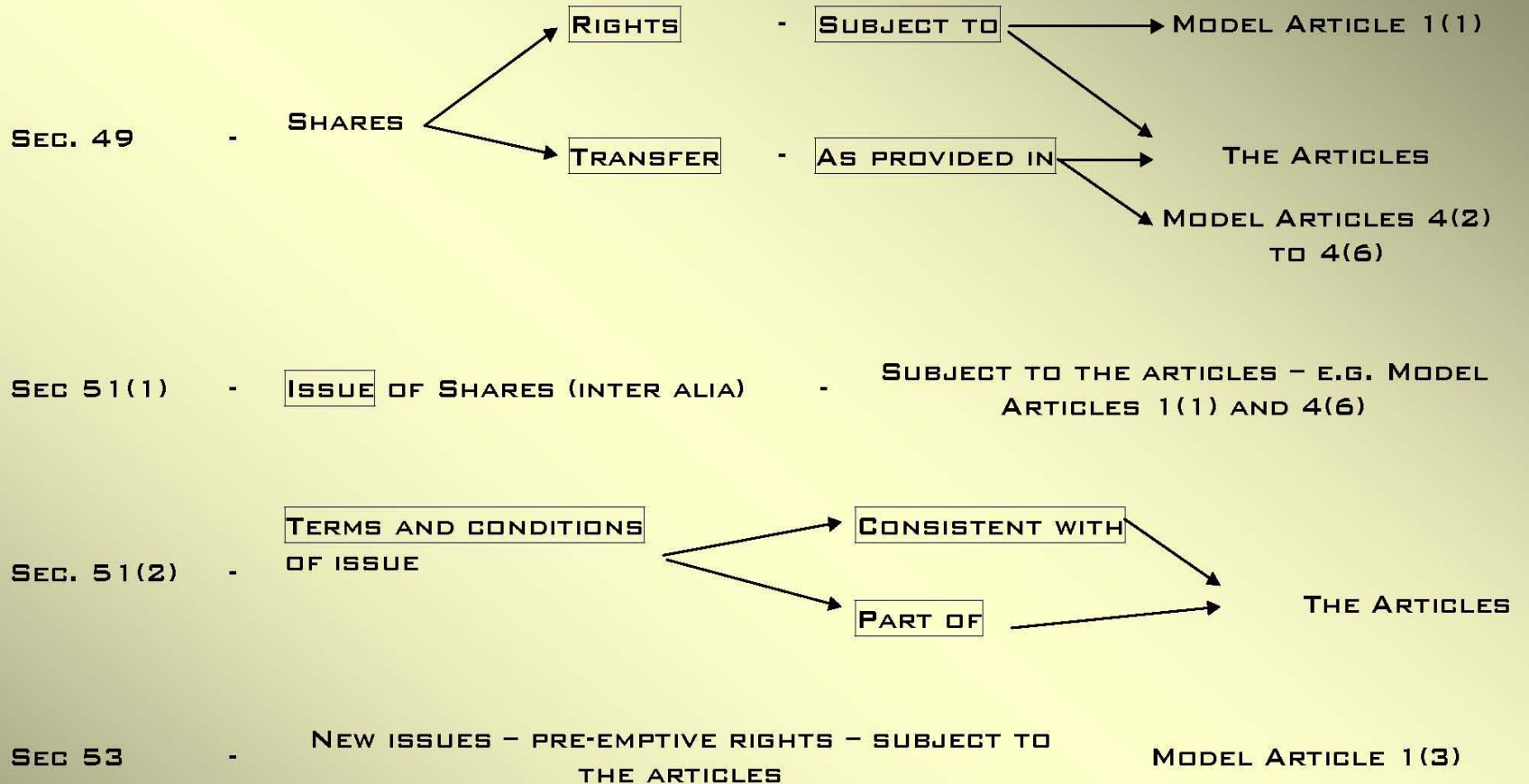
**Notice** to the Registrar within 20 working days (with a copy of the terms of issue)

**Consideration** - Sec. 52  
- to issue shares within 20 days of receipt  
Of the consideration

**Pre-emptive rights** - Sec. 53 – subject to the Articles

**Method of issue** - entry in Share Register – Sec. 54

# SHARES -V- ARTICLES





## **DISTRIBUTION TO SHAREHOLDER**

**"Distribution"** is defined to mean—

- (a) the direct or indirect transfer of money or property, other than the shares of a company, to or for the benefit of a shareholder; or
- (b) the incurring of a debt to or for the benefit of a shareholder, in relation to a share or shares held by that shareholder, whether by means of a payment of a dividend, a redemption or other acquisition of the share or shares, a distribution of indebtedness or otherwise.

Before a distribution is made by a company to any shareholder, such distribution shall -

- (a) be authorised by the board ; and
- (b) unless the articles provide otherwise, be approved by the shareholders by ordinary resolution.

The board of a company may authorise a distribution at such time and in such amount as it considers appropriate, where it is satisfied that the company will, immediately after the distribution is made, satisfy the solvency test.

(Section 56)

## Solvency Test

A company will be deemed to have satisfied the solvency test, if—

- (a) it is **able to pay its debts** as they become due in the normal course of business; **and**
- (b) the value of the company's **assets is greater** than —
  - (i) the value of its **liabilities**; and
  - (ii) the company's **stated capital**.

In determining whether a company satisfies the solvency test, the board;

- (a) shall take into account the most recent financial statements of the company prepared in accordance with section 151 of the Act.
- (b) shall take into account circumstances the directors know or ought to know which affect the value of the company's assets and liabilities.
- (c) may take into account a fair valuation or other method of assessing the value of assets and liabilities.

(Section 57)



## **Dividends**

A **dividend** is a **distribution out of profits** of the company other than an acquisition by the company of its own shares, or a redemption of shares by the company.

The board of a company should not authorise a dividend in respect of some shares in a class, and not others of that class; or of a greater amount in respect of some shares in a class than other shares in that class, except where—

- (a) the amount of the dividend is reduced in proportion to any liability attached to the shares under the articles; or
- (b) a shareholder has agreed in writing to receive no dividend, or a lesser dividend than would otherwise be payable.

Section 60

## Personal liability of Directors for irregular distribution

Where, in relation to a distribution to which Section 61(1) applies, the procedure set out in section 56 has not been followed; or reasonable grounds for believing that the company would satisfy the solvency test did not exist at the time the certificate was signed, **every director** who—

(a) failed to take reasonable steps to ensure the procedure was followed; or

(b) signed the certificate,

as the case may be, will be **personally liable** to the company to repay to the company, so much of the distribution as the company is not able to recover from shareholders. (Section 61)



### **Alteration of Shareholder's Rights**

A company cannot take any action that would affect the rights attached to shares unless that action has been approved by a **special resolution of each interest group**. (Section 99)

For the purposes of this section, **the rights attached to a share include :-**

- (a) the rights, privileges, limitations, and conditions attached to the share under this Act or the articles, including voting rights and rights to distributions;
- (b) pre-emptive rights under section 53;
- (c) the right to have the procedure set out in this section, and any further procedure required by the articles for the amendment or alteration of the articles observed by the company; and
- (d) the right that a procedure required by the articles for the amendment or alteration of the articles not be amended or altered.

## LIABILITY AND POWERS OF SHAREHOLDERS

### LIABILITY

SUBJECT TO

ARTICLES

SEC. 87 - LIABILITY - EXPRESSLY PROVIDED FOR IN THE ARTICLES

SEC. 89 - RESOLUTION ALTERING ARTICLES TO INCREASE LIABILITY DOES NOT BIND A SHAREHOLDER WHO HAS NOT AGREED THERETO

### POWERS

SEC. 90 - POWERS TO BE EXERCISED

SUBJECT TO

THE ARTICLES

SEC. 99 - ALTERATION OF THE SHAREHOLDERS' RIGHTS - MUST BE WITH SPECIAL RESOLUTION OF THE AFFECTED INTEREST GROUP.

## ALTERATION OF SHAREHOLDER'S RIGHTS

A COMPANY CANNOT TAKE ANY ACTION THAT WOULD AFFECT THE RIGHTS ATTACHED TO SHARES UNLESS THAT ACTION HAS BEEN APPROVED BY A SPECIAL RESOLUTION OF EACH INTEREST GROUP. (SECTION 99)



## **MINORITY BUY-OUT RIGHTS**

- (A) WHERE A SHAREHOLDER IS ENTITLED TO VOTE ON THE EXERCISE OF THE POWER SET OUT IN:-
- (I) PARAGRAPH (A) OF SUBSECTION (1) OF SECTION 92 TO ALTER THE COMPANY'S ARTICLES, AND THE PROPOSED ALTERATION IMPOSES OR REMOVES A RESTRICTION ON THE BUSINESS OR ACTIVITIES IN WHICH THE COMPANY MAY ENGAGE OR
  - (II) PARAGRAPH (B) OR (C) OF SUBSECTION (1) OF SECTION 92 IN RESPECT OF MAJOR TRANSACTIONS OR AMALGAMATION, AND THE SHAREHOLDERS RESOLVED TO EXERCISE THOSE POWERS, AND –
    - (A) THE SHAREHOLDER CAST ALL THE VOTES ATTACHED TO SHARES REGISTERED IN THE SHAREHOLDER'S NAME AND HAVING THE SAME BENEFICIAL OWNER, AGAINST THE EXERCISE OF THE POWER; OR
    - (B) WHERE THE RESOLUTION TO EXERCISE THE POWER WAS PASSED UNDER SECTION 144, THE SHAREHOLDER DID NOT SIGN THE RESOLUTION IN RESPECT OF THE SHARES REGISTERED IN THE SHAREHOLDER'S NAME AND HAVING THE SAME BENEFICIAL OWNER,
- THAT SHAREHOLDER WILL BE ENTITLED TO REQUIRE THE COMPANY TO PURCHASE THOSE SHARES IN ACCORDANCE WITH SECTION 94. (SECTION 93)
- (B) WHERE AN INTEREST GROUP HAS APPROVED THE TAKING OF ANY ACTION THAT AFFECTS THE RIGHTS ATTACHED TO SHARES, THE COMPANY BECOMES ENTITLED TO TAKE THE ACTION; AND
- (I) A SHAREHOLDER WHO WAS A MEMBER OF THE INTEREST GROUP CAST ALL THE VOTES ATTACHED TO THE SHARES REGISTERED IN THAT SHAREHOLDER'S NAME AND HAVING THE SAME BENEFICIAL OWNER AGAINST APPROVING THE ACTION; OR

(II) WHERE THE RESOLUTION APPROVING THE TAKING OF THE ACTION WAS PASSED UNDER SECTION 144, A SHAREHOLDER WHO WAS A MEMBER OF THE INTEREST GROUP DID NOT SIGN THE RESOLUTION IN RESPECT OF THE SHARES REGISTERED IN THAT SHAREHOLDER'S NAME AND HAVING THE SAME BENEFICIAL OWNER,

SUCH SHAREHOLDER WILL BE ENTITLED TO REQUIRE THE COMPANY TO PURCHASE THOSE SHARES IN ACCORDANCE WITH SECTION 94. (SECTION 100)

“INTEREST GROUP” IS DEFINED TO MEAN – IN RELATION TO ANY ACTION OR PROPOSAL AFFECTING RIGHTS ATTACHED TO SHARES, A GROUP OF SHAREHOLDERS –

(A) WHOSE AFFECTED RIGHTS ARE IDENTICAL; AND

(B) WHOSE RIGHTS ARE AFFECTED BY THE ACTION OR PROPOSAL IN THE SAME WAY.

***PROCEDURE:***

- ❖ ***NOTICE REQUIRING PURCHASE – SECT. 94***
- ❖ ***PURCHASE BY COMPANY – SEC. 95***
- ❖ ***PURCHASE OF SHARES BY THIRD PARTY – SEC. 96***
- ❖ ***COURT MAY GRANT EXEMPTION – SECT. 97***
- ❖ ***COURT MAY GRANT EXEMPTION IF COMPANY IS INSOLVENT – SEC. 98***



# SHAREHOLDERS

<p>Shareholders of a Company are:</p> <p><b>Sec. 86</b></p>	<ul style="list-style-type: none"> <li>the persons entered on the <b>register of shareholders</b></li> <li>the <b>initial shareholders</b> of a newly formed or amalgamated company;</li> <li>those deemed to be so under <b>Sec. 86(3)</b></li> <li>holders of shares through <b>the Central Depository System.</b></li> </ul>
<p>Liability of Shareholders</p> <p><b>Sec. 87</b></p>	<ul style="list-style-type: none"> <li>Liability limited as provided for in the Company's Articles or the Act</li> <li>Not bound by amendments to articles or requirement to acquire or hold shares if it would increase liability unless agreed in writing</li> <li>Former holder not liable for calls unless held shares in 12 months prior to liquidation</li> <li>However, person to whom shares were issued or assumed liability for balance due</li> </ul>
<p>Powers of Shareholders</p> <p><b>Sec. 90 and 91</b></p>	<ul style="list-style-type: none"> <li>reserved to be exercised by the Act, at meetings or by resolutions</li> <li>reserved to be exercised by the Articles also at meetings or by resolutions but subject to the Articles</li> <li>however, certain powers can be exercised only by Special Resolutions</li> <li>certain special resolutions can be rescinded by subsequent special resolutions but certain others cannot be rescinded</li> <li>other powers can be exercised by <b>Ordinary</b> resolutions.</li> </ul>
<p>Rights of Shareholders</p> <p><b>Sec. 92</b></p>	<ul style="list-style-type: none"> <li>no alteration without a special resolution of the affected interest group</li> <li>minority buy-outs</li> <li>major transactions</li> <li>rights of action for oppression and/or mismanagement</li> <li>restraining orders</li> <li>derivative actions</li> </ul>

## MEETINGS

	Private or unlimited companies	Other Companies	Relevant Section
AGM	Not less than 15 working days notice	Not less than 15 working days notice	135
Meetings to consider special resolutions or resolutions requiring special notice	Not less than 15 days notice	Not less than 15 days notice	143
Other meetings	Not less than 05 days notice	Not less than 10 days notice	135
Waiver of notice for AGM	By all the Shareholders	By all the Shareholders	135
Waiver of notice for meetings to consider special resolutions	Shareholders with 85% of voting rights	Shareholders with 85% of voting rights	143
Waiver of notice for other meetings	Shareholders with 95% of voting rights	Shareholders with 95% of voting rights	135



## **MEETINGS AND VOTES WHEN THE ARTICLES ARE SILENT**

The following provisions will have effect in so far as the articles of the company do not make other provisions in that behalf—

- (a) **notice** of the meeting of a company should be served on **every shareholder** of the company in the manner in which notices are required to be served under the provisions of the model articles;
- (b) **two or more shareholders** holding shares which carry not less than **ten percent** of the votes which may be cast on an issue, may **call a meeting** to consider and vote on that issue;
- (c) in the case of a **private company two shareholders**, and in the case of **any other company three shareholders**, present in person or by an authorised representative under the provisions of paragraph (a) of subsection (1) of section 138 will be a **quorum**;
- (d) **any shareholder elected** by the shareholders **present at a meeting** may be **chairman** thereof;
- (e) **no shareholder** will be entitled to vote at any general meeting, **unless all calls or other sums** then payable by him in respect of shares in the company **have been paid**;
- (f) where voting is by **show of hands**, **each shareholder** shall have one vote, and on a **poll** every shareholder will have **one vote** in respect of **each share** held by him. (Section 136)



## **POWER OF COURT TO ORDER MEETINGS**

Where for any reason, it is **impracticable to call a meeting** of a company in any manner in which meetings of that company may be called, or to **conduct the meeting** of the company in the manner specified by the articles or this Act, **the court** may either of **its own motion** or on the application of any **director** of the company or of any **shareholder** of the company who would be entitled to vote at the meeting, **order a meeting of the company to be called**, held and conducted in such manner as the court thinks fit, and where any such order is made, may **give such ancillary or consequential direction** as it thinks expedient, and any meeting called, held and conducted in accordance with any such order shall for all purposes be deemed to be a meeting of the company duly called, held and conducted and any such **direction** may include a direction that **one shareholder** of the company present in person or by proxy shall be deemed to **constitute a meeting**. (Sec. 137)



## **SHAREHOLDERS' RESOLUTIONS IN WRITING**

1. **Subject to** the provisions contained in the **articles**, a **resolution in writing** signed by **not less than eighty five percent** of the shareholders who would be entitled to vote on that resolution at a meeting of shareholders, who **together hold not less than eighty five percent** of the votes entitled to be cast on that resolution, is as valid as if it had been passed at a meeting of those shareholders. However, if the Secretary to the Treasury is the holder of a share in the company his consent in favour of such resolution is mandatory.
2. **Subject to** the provisions contained in **the articles**, a **resolution in writing that—**
  - (a) relates to a matter that is required by the Act or by the articles to be decided at a meeting of the shareholders of a company; and
  - (b) is signed by the shareholders specified in section 144(1),is **deemed** to be made **in accordance** with the provisions of this Act or the articles of the company.
3. It will not be necessary for a company to hold an **annual general meeting of shareholders** under section 133, if everything required to be done at that meeting (by resolution or otherwise) is done by resolution in accordance with section 144.
4. Within **five working days** of a resolution being passed under this section, the company should send a **copy of the resolution to every shareholder** who did **not sign** the resolution. Where a **company fails** to comply with those company will be **guilty of an offence**, and be liable on conviction to a fine not exceeding one hundred thousand rupees; and every officer who is in default will be **guilty of an offence** and be liable on conviction to a fine not exceeding fifty thousand rupees.
5. A resolution may be signed **without any prior notice** being given to shareholders.
6. A person who is registered as the **holder of parcels of shares** having different beneficial owners, **may** expressly sign a resolution under this section in respect of shares having one beneficial owner and refrain from signing the resolution in respect of shares having another beneficial owner.
7. Notwithstanding any provision in the Act, where the **Secretary to the Treasury** is the holder of a **share** of a company, any resolution in writing (referred above) shall not be valid **unless the consent in writing of the Secretary to the Treasury** as a holder of the share is also obtained in favour of such resolution. (Section 144)



## **SPECIAL RESOLUTIONS**

A resolution is a **special resolution when** it has been passed—

- (a) by a **seventy-five percent** majority of the votes of those shareholders entitled to vote and voting on the question;
- (b) at a general meeting of which **not less than fifteen** working days' **notice**, specifying the intention to propose the resolution as a special resolution has been duly given:

**Provided** that, where it is so agreed by the shareholders having the right to attend and vote at any such meeting, being shareholders together representing not less than **eighty five percent** of the total voting rights at that meeting, a resolution may be proposed and passed as a special resolution, at a meeting of which **less than fifteen working days' notice** has been given. (Section 143)

Every Company should notify the Registrar within ten (10) working days each special resolution passed by it in the prescribed form 39.



## **RESOLUTIONS REQUIRING SPECIAL NOTICE**

Where by any **provision**, in the **Act**, **special notice** is **required** of a resolution, the resolution will not be effective unless *notice of the intention to move it* has been given to the company **not less than twenty-eight days before the date of the meeting** at which it is to be moved, and the company should give its shareholders notice of any such resolution at the same time and in the same manner as it gives notice of the meeting or, if that is **not practicable**, **should** give them notice thereof, either by **advertisement** in a newspaper having an appropriate circulation or in any other manner allowed by the articles, **not less than fifteen working days** before the date of the meeting: Provided that where, **after notice of the intention to move such a resolution has been given** to the company, **a meeting is called** for a date twenty-eight days or less from the date of the notice, the notice though not given within the time required by this section shall be deemed to have been **properly given for the purposes thereof**. (Section 145)



## **PRIVATE COMPANIES: SPECIAL PROVISIONS**

### **(a) Private Companies**

A Company will be a Private Company **only and if only** it complies with the provisions of Section 27 which requires **the articles** of that company to include provisions which –

- (i) **prohibit** the company from **offering** shares or other securities issued by the company **to the public**; and
- (ii) **limit the number of its shareholders to fifty**, not including shareholders who are –
  - (a) employees of the company; or
  - (b) former employees of the company who became shareholders of the company while being employees of such company and who have continued to be shareholders after ceasing to be employees of the company.

### **(b) Interests Register can be dispensed with**

A private company may by **unanimous resolution** of its shareholders **dispense** with the keeping of an **interests register**, and while such a resolution is in force, no provision of this Act which requires any matter to be entered in the interests register of a company, will apply to such private company.

A **unanimous resolution** referred to above will **cease** to have effect, if any shareholder gives notice in writing to the company that he requires it to keep an interests register. (Section 30)



## UNANIMOUS AGREEMENT BY SHAREHOLDERS OF A PRIVATE COMPANY

Where **all the shareholders** of a **private company** agree in writing to any action which has been taken, or is to be taken by the company —

- (a) the taking of that action is deemed to be **validly authorised by the company, notwithstanding any provision in the articles of the company to the contrary**; and
- (b) the provisions contained in the list of **sections** of the Act specified in the **Second Schedule** to the Act shall **not apply** to and in relation to that action.

(Section 31)

**PROVISIONS TO WHICH UNANIMOUS AGREEMENT  
ARRANGEMENT CANNOT BE APPLIED**

- Section 52 (Consideration for issue of shares)
- Section 53 (Pre-emptive rights to new issues)
- Section 56 (Distributions)
- Section 60 (Dividends)
- Section 61 (Recovery of distributions)
- Section 64 (Purchase of own shares)
- Section 70 (Restrictions on giving financial assistance)
- Section 90 (Exercise of powers reserved to  
shareholders)
- Section 92(1)(b) (Powers exercised by special  
resolution)
- Section 99 (Alteration of shareholder rights)
- Section 185 (Major transactions)
- Section 192 (Disclosure of interest)
- Section 193 (Avoidance of transactions)
- Section 216 (Remuneration and other benefits)
- Section 217 (Restrictions on loans to directors)
- Section 218 (Indemnity and insurance)



## **BOARD MEETINGS**

- The Articles of Association govern the proceedings of the Boards of Directors of Companies. The Directors should meet as provided for and required by the Articles of Association.
- The notice of a Board Meeting should be given in terms of the Articles of Association. In the absence of provisions in respect of notice in the Articles, a reasonable notice is necessary.
- If the Articles permit, the Directors can pass resolutions in writing which are commonly referred to as "circular resolutions".
- Modern Articles provide for Board Meetings by conference calls (on telephone).

## **CHECKLIST FOR MEETINGS**

	<b>Board Meetings</b>	<b>General Meetings</b>
<b><u>Prior Arrangements</u></b>		
Notice	√	√
Agenda to be incorporated in the notice	(Unless the Articles provide or the Directors decide otherwise)	√
Proxy Form	-	√
Poll Sheet	-	√
List of proxies received	-	√
<b><u>At the Meeting</u></b>		
Recording attendance and excuses	√	√
Checking quorum	√	√
Recording the minutes	(Unless the Directors arrange otherwise)	√
<b><u>After the Meeting</u></b>		
Drafting and submitting minutes to the Chairman for approval	(Unless the Directors arrange otherwise)	√
Circulating copies of the minutes with the notice of the next meeting	√	Normally confirmed at the first Board Meeting after the GM
Filing necessary forms/returns with the Registrar of Companies whenever necessary	√	√
Updating records/registers whenever necessary	√	√



## MINUTES

- Every company should cause **minutes** of all proceedings of general meetings and meetings of its directors, to be **entered in books** kept for that purpose.
- Any such minutes purporting to be **signed** by the **chairman** of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, will be evidence of the proceedings.
- Where minutes have been made in accordance with these provisions of the proceedings at any general meeting, or a meeting of directors, as the case may be, of the company, then, **until the contrary is proved**, the meeting will be **deemed** to have been duly **held** and convened, and **all appointments** of directors, managers or liquidators, made at the meeting will be **deemed** to be **valid**.

## **OVERSEAS COMPANY**

A company incorporated outside Sri Lanka can establish a place of business in Sri Lanka and register its branch in Sri Lanka under the provisions of Part XVIII of the Act. Although the Companies (Special Provisions) Law No. 19 of 1974 and the Foreign Companies (Special Provisions) Law No. 9 of 1975 have been repealed by Section 533(2) of the Act, Section 489(7) of the Act provides as follows:-

“A company incorporated outside Sri Lanka shall not establish a place of business within Sri Lanka or be registered as an overseas company, where the business being carried on by that company does not conform to the stipulations made by or under the Exchange Control Act.”



### IMPORTANT FORMS

Form 1	Application for Registration of a Company under Section 4(1)
Form 3	Notice of Change of Name under Section 8(2)
Form 5	Application for Incorporation of a Company Limited by Guarantee under Section 32
Form 6	Notice of issue of Shares under Section 51(4)(a)
Form 7	Notice of calls on shares or particulars of obligations attached to a Share performed by Shareholder under Section 55(1)
Form 8	Notice of reduction of Stated Capital under Section 59(5)
Form 9	Acquisition or redemption by Company of own shares under Section 63(4)
Form 10	Certificate of charge created by the Company under Section 102(1)
Form 11	Register of Charges, and of Memorandum of Satisfaction of Charges of ----- ----- Co. Ltd. Under Section 105(1)
Form 13	Notice of Company's change of Registered Office under Section 114(2)
Form 14	Notice of change of location of the records and registers under section 116(4), 124(3)(a) and 124(4)
Form 15	Annual Return of a Company other than a Company limited by guarantee pursuant to Section 131(1)
Form 15A	Annual Return of a Company limited by Guarantee pursuant to Section 131(1) and see 35(1)
Form 16	Notice of location of accounting records under Section 149(2)(b)
Form 17	Notice of adoption or change of Balance Sheet Date under Section 171(6)
Form 18	Consent and Certificate of Director under Section 203
Form 20	Notice of change of Director/Secretary and Particulars of Director/Secretary under Section 223(2)
Form 22	Notice under Section 246(1)
Form 23	Notice of Amendments or Alterations of Particulars of an Off-Shore Company under Section 261(3).
Form 24	Notice by an Off-shore company of its intention to cease to carry on business under Section 265(a)
Form 25	Statement of Affairs pursuant to Section 283(1)
Form 31	Claim of a secured creditor under Section 358(4)
Form 35	Return of alterations of particulars of an Overseas Company under section 491
Form 36	Notice of change of name of an Overseas Company under Section 493 (4)(a)
Form 37	Notice of change of name of an Overseas Company under Section 493 (4)(b)
Form 38	Notice by a Registered Overseas Company of ceasing to have a place of business under Section 496
Form 39	Notice of a special resolution (including that passed under Section 15(2) but excluding that passed under Section 8 (1))
Form 40	Application for registration of an Existing Company under Section 487(1)
Form 44	Notice of full address of the registered or principal office of a company incorporated outside Sri Lanka and its principal place of business pursuant to Section 489(d)
Form 45	List and particulars of the directors of a company incorporated outside Sri Lanka with a place of business established in Sri Lanka pursuant to Section 489(b)
Form 46	List of the names and address of persons resident in Sri Lanka authorized to accept service on behalf of a company incorporated outside Sri Lanka with a place of business established in Sri Lanka pursuant to Section 489(c)

KN/RP

ComLaw-Sem-12June(BA51)

18/09/2009

# ADVISING AS A COMPANY SECRETARY

## ❖ FORMATION OF A COMPANY - ARTICLES

REMEMBER



A NUMBER OF THE PROVISIONS OF THE ACT

SUBJECT TO THE ARTICLES.

TO SAFEGUARD WHOSE INTERESTS?

MAJORITY SHAREHOLDERS

DIRECTORS ?

JOINT VENTURE PARTNERS?

75 + % ?

50 + % ?

- 50% ?

- ❖ COMPANY NAMES AND CHANGES THEREOF.
- ❖ MEETINGS / RESOLUTIONS.
- ❖ MINUTES.
- ❖ STATUTORY FORMS AND RETURNS.
- ❖ STATUTORY BOOKS AND REGISTERS.