

Companies Act 1994/ Companies (Amended) Act 2020

- A legal entity, created by Law
- It is incorporated as a Juristic/Legal person.
- Under Sec 2 (1) (d) of the Companies Act, 1994/ The Companies (Amendment) Act, 2020 : “Company means a company formed and registered under this Act or an existing company.”
- **Application for incorporation:**
 - ✓ Highlighted on pursuing set objectives
 - ✓ Memorandum of Association
 - ✓ Articles of Association
 - ✓ Empowered with legal rights, such as to sue and be sued, own property, hire employees, lend and borrow money.

•Shareholders–

- ✓ A share holder is not the owner of the company or its assets.
- ✓ The company itself owns its assets.
- ✓ A share holder is only entitled to the dividends, if declared
- ✓ Shareholder can transfer his/ her share through a legal process.
- ✓ In case of winding up, after payments of its debt, a shareholder is entitled to a get a part of residual assets.

•Types of Company

•Private Company:

- ✓ Companies limited by shares
- ✓ Companies limited by guarantee (guarantee for liquidation)

•Public Company:

- ✓ Companies limited by shares
- ✓ Companies limited by guarantee : The guarantors are agreed to pay a nominal amount in the event of wound up (clubs, societies and other similar bodies)
- ✓ Unlimited companies : Its a hybrid company incorporated with or without a share capital (and similar to its Ltd. company counterpart) but where the legal liability of the members or shareholders is not limited

Classification on the Basis of Control:

- ✓ Holding Company
- ✓ Subsidiary Company

•Classification based on other characteristics

- ✓ Foreign company
- ✓ Domestic Company
- ✓ Joint venture company

•**Company Limited by Shares:** In these companies, each share has a fixed nominal value that the shareholder pays at a time or by installments. The shareholder need not pay more than the fixed value of the share, whatever may be the liability of the company.

•**Company Limited by Guarantee:** In these companies, each guarantor promises to pay a fixed sum of money in the event of liquidation of the company. This amount is called the Guarantee. Companies limited by guarantee are widely used for charities, community schemes, clubs, societies and other similar bodies.

Memorandum of Association (MoA)

- The MoA is a document, which contains the fundamental rules regarding the formation and activities of a company. It is the basic document of a company.
- The purpose of MoA is to enable the members of the company, its creditors, and the public to know what its powers are and what is the range of its activity.

Mode of forming incorporated company

For Public Ltd com any 7 or more persons, and for Private Ltd com, any 2 or more persons can be associated for any lawful purpose may form a com subscribing their names to a MoA and otherwise with the requirements of the Act-

- (a) A company limited by shares- Liability of members is ltd by the face value of the shares
- (b) A company limited by guarantee- Liability of the members is ltd by their undertakings to contribute to the assets of the com on the event of its being wound up; or
- (c) an unlimited company- Liability of the members is unlimited.

The contents of the Memorandum

According to the Company Act 1994 a MoA must contain the following particulars.

1. Name Clause
2. Situation Clause/ Address Clause
3. Objects Clause
4. Liability Clause
5. Capital Clause
6. The Association/ Subscription Clause

The contents of the Memorandum

1. Name Clause

2. Situation Clause/
Address Clause

3. Objects Clause

4. Liability Clause

5. Capital Clause

6. The Association/
Subscription Clause

- The name of the com. with the word “limited” at the end of the name of a public com. and the words “Private Limited” at the end of the name of a Private com.
- Com. can’t take a name or close to any name of an existing com.

The contents of the Memorandum

1. Name Clause
 2. **Situation Clause/
Address Clause**
 3. Objects Clause
 4. Liability Clause
 5. Capital Clause
 6. The Association/
Subscription Clause
- Com. must confirm the name of the State in which the registered office of the com. is to be situated. It will fix up the domicile/ residence of the com.
 - Every com. must have a **registered office** either from the day it begins to carry on business or within 30 days of its incorporation, whichever is earlier.

The contents of the Memorandum

1. Name Clause
2. Situation / Address Clause
- 3. Objects Clause**
4. Liability Clause
5. Capital Clause
6. The Association/
Subscription Clause

- It defines and limits the scope of operations.
- The outside public dealing with the com. is informed of the extent of the company's powers and operations.
- A transaction deviating the main objects will not be valid and binding upon the com.
- The objects must be lawful and well defined and must not go against the provisions of the Companies Act.

The contents of the Memorandum

1. Name Clause
2. Situation Clause/ Address Clause
3. Objects Clause
- 4. Liability Clause**
5. *Capital Clause*
6. The Association/ Subscription Clause

- The nature of the liability of the members i.e. whether limited by shares or by guarantee or unlimited.
- In a Ltd com, however, the liability of the directors or any director or manager may be unlimited, if so provided by the memorandum (Sec. 322).
- The MoA shall state the amount of authorized capital and the division of capital as shares.

The contents of the Memorandum

1. Name Clause
2. Situation Clause/
Address Clause
3. Objects Clause
4. Liability Clause
- 5. Capital Clause**
6. The Association/
Subscription Clause

- MoA of a com. limited by shares or by guarantee having (share capital) must also state the amount of share capital with which the com. is to be registered that is called authorized or nominal capital.
- Each subscriber must take at least one share.

The contents of the Memorandum

1. Name Clause

2. Situation Clause/ Address
Clause

3. Objects Clause

4. Liability Clause

5. Capital Clause

**6. The Association/
Subscription Clause**

- This clause states that the persons subscribing their signatures at the end of the MoA are desirous of forming themselves into an association.
- MoA and AoA must be signed by **at least 7 subscribers** for a public company and **by 2** for a private company.
- Full address, occupation, etc. of the subscribers and witnesses must be written.
- Each subscriber have to take at **least 1 share** for a com. having share capital. Subscribers to the MoA should be competent to contract.

Articles of Association

- The AoA is a document, which contains rules, regulations and bye-laws regarding the internal management of the company.
- AoA must not violate any provisions of the Companies Act.
- The rules laid down in the AoA must always be read subject to the rules contained in the memorandum.

Articles usually contain provisions relating to the following matters-

- **Share capital including sub division thereof, rights of various shareholders, the relationship of these rights, share certificates**
- **Lien of shares**
- **Calls on shares**
- **Transfer of shares**
- **Transmission of shares**
- **Forfeiture of shares**

- **Surrender of shares:** Shareholder in this case voluntarily abandons all his shares in favor of the company

- **Conversion of shares into stock:** When the shares of a member are converted into one fund is known as **stock**. A public company limited by shares can convert its fully paid-up shares into stock. However, the original issue of stock is not possible.

- **Share warrant:** A warrant is an instrument that gives the holder the right to purchase a particular security (usually ordinary shares) from the issuer at a specific price within a certain period of time. A **warrant will have an exercise price** to convert it into an ordinary share.

- **Alteration of capital**

- **Annual General meetings and proceedings thereof**

- **Voting rights of members, voting by poll, proxies**

- **Directors, including first directors or directors for life, their appointment, remuneration, qualifications, powers and proceedings of Board of directors' meetings**

- **Dividends and reserves**

- **Accounts and audits**

- **Borrowing powers**

- **Winding up**

- Articles of association is the secondary document of the company.
- It is used for internal guideline of the company. So it is also called the internal document.
- In the case of an unlimited com or a com limited by guarantee, if the company has a share capital, the articles shall state the **amount of share capital** with which the com proposes to be registered.
- In the case of an unlimited com or a com limited by guarantee, if the company has not a share capital, the articles shall state the **no. of members** with which the com proposes to be registered; and on the basis of such no. the Registrar shall determine the fees payable on registration.

•Form and signature of articles.

Articles shall

- be printed;
- be divided into paragraphs & numbered consecutively;
- be signed by each subscriber of the memorandum, who shall add his address and description in the presence of at least two witness who shall attest the signature.

Alteration of articles by special resolution: Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may **by special resolution alter, exclude from or add to its articles.**

Difference between MA and AA

MOA	AoA
MoA is the external document of a company.	AOA is the internal document of a company. Articles of a company are its by-laws or rules and regulations which govern the mgt of its internal affairs and the conduct of its business.
It is the primary document of a company.	It is the secondary document of a company.
A company must have MA.	A com can take alternative of AoA. There are 3 possible alternatives: It may adopt Table A in full or, It may wholly exclude Table A and set out its regulations in full, or It may set out its articles and adopt a part of Table A.

Difference between MoA and AoA

MoA	AoA
There must be 6 clauses – Name, Situation, Objects, Liability, Capital and Subscription.	There can be as many clauses as the company thinks need to manage the company.

Difference between MoA and AoA

MoA	AoA
MoA is regulated by the companies act 1994/ Amended 2020.	AoA is regulated by MoA and the companies act 1994/ Amended 2020.
There may be any clauses, which is not mentioned in AoA.	There cannot be any clause, which is not mentioned in MoA.

Difference between MoA and AOA

MoA	AOA
It relates the company to the external world.	It deals with the relationship of internal affairs of the company.
It cannot be easily changed.	Articles are easily changeable.

Formation of a Private Ltd Co. (Process)

Most Bangladeshi companies are registered as private Ltd. Any local or foreign person above 18 years of age and not convicted for any offence or not bankrupt can be a shareholder.

Pre-Registration: Main facts

- **Company Name:** must be cleared with the RJSC before incorporation.
- **Directors:** Minimum 2 for a private ltd. A director must own qualification shares stated in the AoA. A shareholder, which is not a natural person (i.e. company), can select a nominee director on its behalf.
- **Shareholders:** A private limited 2 to 50 shareholders. A shareholder can be a person or a legal entity (company/ trust). 100% local or foreign shareholding is allowed.
- **Authorized Capital:** It is the maximum amount of share capital that the company is authorized to issue (allocate) to shareholders and stated in MoA and AoA. There is no minimum or maximum limit.
- **Paid-up Capital:** Minimum Taka 1 for local and USD 50,000 for foreign owned company.
- **Registered Address:** A local address has to be provided as the registered address of the com. It must be a physical address and cannot be a P.O. Box.
- **MoA and AoA:** The company to be incorporated must have its own MoA and AoA.

Documents for Company Registration in Bangladesh

For the purpose of company incorporation in Bangladesh, the following information is required by the RJSC:

- **Company Name:** A name clearance must be obtained from RJSC.
- **MoA and AoA:** The object clause in the MoA must **be within 400 words and 7 clauses**.
- **Shareholders Particulars:** Copy of the National ID/ Passport is required if the shareholder is a Bangladeshi citizen.
- **Particulars of the directors**, including the Tax Identification Numbers (**TIN**) are required.
- **Registered Address** of a director.
- **Signed Form IX and Subscriber Page:** Signed and scanned copy in pdf are required.
- **For foreigners:** Copies of passports of shareholders and directors are required.

Registration Procedure of Company in Bangladesh

- In Bangladesh, registration is partially computerized.
- Three steps involved.

Step 1: Name Clearance

One has to visit www.roc.gov.bd and create a username first and then apply for the name clearance. After the application for name clearance is made, a bank payment slip will be received, with which **a fee** will have to be deposited to the designated bank to get the name clearance from the RJSC website.

Step 2: Bank account opening and bringing in the paid up capital

This step is only applicable if the proposed company has foreign shareholding.

A bank account to be opened in the proposed company name with any scheduled bank in Bangladesh. Then money equal to the shares to be owned by the foreign shareholders from outside of Bangladesh has to be remitted into the account. The Bank will issue an Encashment Certificate, which will be required by the RJSC for incorporation.

Step 3: Registration of the Company

Submit all the required document and information in the RJSC's website. After submission, one will get a bank payment slip for paying the registration fees along with stamp duty.

If he is satisfied, he will issue a Certificate of Incorporation.

Post-Registration Formalities

The following documents are issued after the registration formalities are over.

- **Certificate of Incorporation** will be RJSC with registration number, name of the company and the date of incorporation.
- **Form XII** contains the list of directors of the incorporated company.
- **Certified copies of MoA and AoA.**
- **Applying for Trade License, TIN, VAT registration and other licenses**

After the registration, the company should either purchase a commercial space or rent some space in any commercial area. Subsequently, it will have to apply for a Trade License, VAT registration and a Tax Identification Number.

Registration: Optional Registration with any Chamber of Commerce & Industry (optional but

Import Registration Certificate – IRC or Export Registration Certificate – ERC is required.

Other Licenses and Permits as per needs.

Company Meetings

Statutory Meeting: Every com ltd by shares or ltd by guarantee and having a **share capital** shall, within **not less than 1 month and not more than 6 months** from the date at which the com is entitled to **commence a business**, hold the 'statutory meeting' of the members of the company. It is the 1st meeting of the shareholders of a public company and is held only once in the lifetime of a company.

Statutory report: The Board of directors shall, at **least 21 days** (based on Companies Act) before the day on which the meeting is to be held, **forward a report, called the 'statutory report,'** to every member of the company.

Procedure at the meeting:

- List of members,
- Discussion of matters relating to a formational aspect,
- Adjournment.

Objects of the meeting and report:

- To put the members all the important facts relating to the company.
- To provide the members an opportunity of meeting and discussing the mgt, methods, and prospects of the company.
- To approve the modification of the terms of any contract named in the prospectus.

- **Annual General Meeting (AGM)** is held annually in order to deal with matters such as adopting the previous year's financial statements, setting of dividend and its payment, and appointing Directors and the Auditor(s).
- There shall not be more **than 15 months** between one AGM and the other. But the **first AGM should be held within 18 months** from the date of its incorporation.
- The Registrar may, for any special reason, **extend the time not exceeding 3 months**. But no extension of time is granted for holding the first AGM.
- Every **AGM shall be called during business hours on a day that is not a public holiday**.
- It shall be held **either at the registered office or at some other place within the city where the registered office of the company is situated**.
- As regards holding of the **AGM, no difference is made between public and private companies**.
- AGM may be called by giving not less **than 14 days'** notice in writing.

AGM is a statutory requirement: It has to be called even during the year the company did not function.

Canceling or postponing of convened meeting: Where an AGM is convened for a particular date, and notice is issued to the members, the BODs can cancel or postpone the meeting on that date provided power is exercised for bona fide reasons.

Canceling of failure to hold an annual general meeting: If a company fails to hold an AGM, any member can apply to the court for calling the meeting.

Penalty for default: If a company makes the default in holding a meeting by Company Law or in complying with any direction of the Court in calling a meeting, the company, and every officer of the company who is in default, shall be punishable with fine.

Extraordinary General Meeting

- A statutory meeting and an AGM of a company are called ordinary meetings.
- Any meeting other than these meetings is called an **EGM**. It is called for transacting some urgent or special business which cannot be postponed till the next AGM.
- It may be convened.
 - (1) By the BODs on its own; or
 - (2) On the requisition of the members
 - (3) By the requisitionists themselves on the failure of the BODs to call the meeting.
 - (4) If the BODs do not, within **21 days** from the date of deposit of the requisition, proceed duly to call a meeting on a day **not later than 45 days from the date of the deposit of the requisition**, then the requisitioned may themselves call the meeting, but any meeting so called shall be held **before the expiration of 3 months** from the date of the deposit of the requisition.

