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Memorandum of Association

1.0 What is a Memorandum of Association?

Memorandum of Association is the most important document of a company. It states the objects for which the company is formed. It contains the rights, privileges and powers of the company. Hence it is called a charter of the company. It is treated as the constitution of the company. It determines the relationship between the company and the outsiders. The whole business of the company is built up according to Memorandum of Association. A company cannot undertake any business or activity not stated in the Memorandum. It can exercise only those powers which are clearly stated in the Memorandum.

Definition of Memorandum of Association

Lord Cairns:

"The memorandum of association of a company is the charter and defines the limitation of the power of the company established under the Act".

Thus, a Memorandum of Association is a document which sets out the constitution of the company. It clearly displays the company's relationship with outside world. It also defines the scope of its activities. MoA enables the shareholders, creditors and people who has dealing with the company in one form or another to know the range of activities.

2.0 Contents of Memorandum of Association

According to the Companies Act, the Memorandum of Association of a company must contain the following clauses:

(i) Name Clause of Memorandum of Association

The name of the company should be stated in this clause. A company is free to select any name it likes. But the name should not be identical or similar to that of a company already registered. It should not also use words like King, Queen, Emperor, Government Bodies and names of World Bodies like U.N.O., W.H.O., World Bank etc. If it is a Public Limited Company, the name of the company should end with the word 'Limited' and if it is a Private Limited Company, the name should end with the words 'Private Limited'.

(ii) Situation Clause of Memorandum of Association

In this clause, the name of the State where the Company's registered office is located should be mentioned. Registered office means a place where the common seal, statutory books etc., of the company are kept. The company should intimate the location of registered office to the registrar within thirty days from the date of incorporation or commencement of business.

(iii) The registered office of a company can be shifted from one place to another within the town with a simple intimation to the Registrar. But in some situation, the company may want to shift its registered office to another town within the state. Under such circumstance, a special resolution should be passed. Whereas, to shift the registered office to other state, Memorandum should be altered accordingly.

(iv) **Objects Clause of Memorandum of Association**

This clause specifies the objects for which the company is formed. It is difficult to alter the objects clause later on. Hence, it is necessary that the promoters should draft this clause carefully. This clause mentions all possible types of business in which a company may engage in future.

The objects clause must contain the important objectives of the company and the other objectives not included above.

(v) **Liability Clause of Memorandum of Association**

This clause states the liability of the members of the company. The liability may be limited by shares or by guarantee. This clause may be omitted in case of unlimited liability.

(vi) **Capital Clause of Memorandum of Association**

This clause mentions the maximum amount of capital that can be raised by the company. The division of capital into shares is also mentioned in this clause. The company cannot secure more capital than mentioned in this clause. If some special rights and privileges are conferred on any type of shareholders mention may also be made in this clause.

(vii) **Subscription Clause of Memorandum of Association**

It contains the names and addresses of the first subscribers. The subscribers to the Memorandum must take at least one share. The minimum number of members is two in case of a private company and seven in case of a public company.

Thus the Memorandum of Association of the company is the most important document. It is the foundation of the company

3.0 Process of Alteration in Memorandum of Association (Section 13 of Companies Act, 2013) Date: 10th February, 2020

(i) Short summary:

Memorandum of association defines the relation of the company with the rights of the members of the company interest and also establishes the relationship of the company with the members.

This section corresponds to sections 17 and 21 of the Companies Act, 1956 and section 11(4) of the Indian Companies Act, 1913 and section 18(1) of the English Companies Act, 1948. It has been made effective from 1-4-2014 vide **Notification No. SO 902(E), dated 26-3-2014.**

(ii) Introduction:

Any Company which intended to make any change to the Memorandum of Association (MOA) of its company, will have to comply with the provisions of Section- 13 of **Companies Act, 2013** and any other applicable provisions of the Act and applicable rules.

Company can alter its Memorandum by way of alteration in following clause of Memorandum of Association:

Name Clause	Registered Office Clause
Object Clause	Liability Clause
Capital Clause	Subscription Clause

Note: * Every alteration made in the memorandum of a company shall be noted in every copy of the memorandum or articles, as the case may be.

A company may alter any contents of its memorandum by a special resolution and complying with the procedure specified in this section. However section 61 will be complied with for alteration of the capital clause of the memorandum.

"Alteration". The expression 'alter' means to modify, change or vary; to make or become different; to change in character, appearance, etc; to change in some respect.

(III) Steps for Alteration in Memorandum of Association:

STEP – I: Convey Board Meeting of Directors: (As per section 173 and SS-1)

- Issue Notice of Board Meeting to all the directors of company at least 7 days before the date of Board Meeting.
- Attach Agenda
- Notes to Agenda
- Draft Resolution

STEP –II: Held Board Meeting: (As per section 173 and SS-1)

- At the Board meeting, the given resolutions in respect of alteration in MOA must be passed.
- Get Approval to Alteration in Memorandum of Association and recommending the proposal for members' consideration by way of special resolution.
- Fixing the date, time, and venue of the general meeting and authorizing a director or any other person to send the notice for the same to the members.

STEP- III: Issue Notice of General Meeting: (Section 101)

Notice of EGM **shall** be given at least 21 days before the actual date of EGM. EGM can be called on Shorter Notice with the consent of atleast majority in number and ninety five percent of such part of the paid up share capital of the company giving a right to vote at such a meeting:

- All the Directors.
- Members
- Auditors of Company

The notice shall specify the place, date, day and time of the meeting and contain a statement on the business to be transacted at the EGM.

STEP- IV: Hold General Meeting: (Section 101)

- Check the Quorum.
- Check whether auditor is present, if not. Then Leave of absence is Granted or Not. (As per Section- 146).
- Pass Special Resolution [Section-114(2)]
- Approval of Alteration in MOA.

STEP- V: Filing of form with ROC: (Section 117)

File Form MGT-14 (Filing of Resolutions and agreements to the Registrar under section 117) with the Registrar along with the requisite filing within 30 days of passing the special resolution, along with given documents:-

- Certified True Copies of the Special Resolutions along with explanatory statement;
 - Copy of the Notice of meeting send to members along with all the annexure;
 - A printed copy of the Altered **Memorandum of Associations**.
- Whether Stamp Duty required to pain on Alteration in Memorandum of Association (MOA)?
The Act does not contemplate new memorandum of association, and where it purports to be so, it is nothing more than a special resolution and as such does not require to be stamped.
- Whether Company can alter its 'Subscription Clause'?
A Company in its life span can't alter the 'Subscription Clause' or can't alter the 'Subscriber Sheet'. Subscriber Sheet use at the time of Incorporation of Company shall be used for the life span of the Company.

(iv) Alteration of Name Clause in Memorandum of Association

A company may by passing a special resolution alter its name with the approval of the Central Government. If the alteration involves change of the name to private limited or public limited, permission of Central Government is not required.

In case a company has been registered with a name which resembles a name of an existing company, the Central Government may ask it to change its name. In such case ordinary resolution is sufficient.

The intimation of name change should be given to the Registrar who will issue a fresh certificate of incorporation. Alteration of Situation clause

- a) In case registered office has to be shifted within the same city, town or village, a notice has to be given to the Registrar within thirty days of the change.
- b) In case registered office has to be shifted from one town to another town or one village to another village, a special resolution has to be passed.
- c) A company can change its registered office from one State to another State for the following reasons:
 - to carry on business more efficiently and economically;
 - to achieve the important purpose of the company by sophisticated means;
 - to expand its operations in the current location;
 - to control any of the existing objects;
 - to sell whole or part of the business undertaking;
 - to amalgamate with other business or person.

In case, registered office has to be shifted from one State to another State, a special resolution has to be passed and approval from the Company Law Board has to be obtained by the company. The altered memorandum should be filed with the Registrar

of the State from which the company is shifting and also to the Registrar of the State to which the company is shifted.

(v) Alteration of Objects Clause in Memorandum of Association

A company can alter its objects clause by passing a special resolution. Alteration of objects clause can be done for the following reasons:

1. For the purpose of carrying on its business more economically and efficiently.
2. For the purpose of obtaining the main business of the company by new and improved means
3. For the purpose of enlarging or changing the local area of its operations.
4. For the purpose of carrying on some business, which may be conveniently or advantageously combined with the existing business.
5. For the purpose of abandoning any of the objects specified in the memorandum.
6. For the purpose of selling the whole or any part of the undertaking.
7. For the purpose of amalgamating with any other company.

(vi) Alteration of Liability Clause in Memorandum of Association

The liability clause can be altered only when a public company is converted to a private company.

(vii) Alteration of Capital Clause in Memorandum of Association

A company can alter its capital clause by passing an ordinary resolution in a general meeting. Alteration of capital may relate to:

- Sub division of shares
- consolidation of shares
- conversion of shares into stock and cancellation of unsubscribed capital.

Within thirty days of passing a resolution, the altered Articles and Memorandum have to be submitted to the Registrar.

(viii) Alteration of subscription clause in Memorandum of Association

The company can alter its subscription clause to make the liability of the directors appointed subsequent to the alteration as unlimited.