Chapter 4
Memorandum of Association

Memorandum of Association [Sec. 2 (56)]- It means memorandum of association of a company as originally formed or as alter from time to time in pursuance of the Companies act,2013 or any previous company law.

Features/ Provisions:-

- It is the fundamental document or charter of the company.
- It is originally framed i.e. cannot be adopted.
- It is a document which contains the fundamental conditions upon which a company is allowed to be incorporated.
- It lays down the object and scope of activities and limitations beyond which a company cannot go.
- It is a public document i.e. any person can inspect it.
- It must be stamped and dated.
- It should be in a prescribed form.
- It shall be printed.
- It should be divided into paragraph and numbers consequently. Requirements U/S 15
- It must be signed by each subscriber to MOA.
- It must include the name of at least one witness.

Form of MOA [Section 14]

Table B	Company limited by Shares
Table C	Company limited by guarantee & having no share capital
Table D	Company limited by guarantee & having share capital
Table E	Unlimited Co

Contents / Conditions of MOA [Section 13]:-

1. **Name clause [Section 20]**: - No company shall be registered by a name which, in the opinion of central government is undesirable.

A name is deemed to be undesirable if the name is identical with or too nearly resembles

Name of the existing company

Or

A registered trademark

Rules regarding name:-

- Mandatory use of the word [section 13]
  Limited for Public company AND Private Limited for Private Company
- It should not be against any public policy.
- It should not produce any misleading impression.
- It should not include the word 'Cooperative' or 'Corporation'.
- It should not be similar to the name of famous person except when he is the director of that company.
- The words bank, banking, investment, insurance finance, trust, may be used only if such are justified.

- It should not be prohibited under Emblems and Name Act, 1950.

2. **Situation Clause**:-

It states NAME of the STATE in which the registered office of the company is situated.
The company shall have a registered office and communicated its full address to ROC

Within 30 days of incorporation
Or
From the date of commencement of business.
(Whichever is earlier)

Every company must have its registered office due to the following reasons:-

- It decides the domicile (place of business) of the company.
- It decides the jurisdiction of the registrar, police station and the court.
- It provides the official place to which all communication and notice is addressed.
- It is a place where all the statutory registers and books of accounts are kept.

3. **Object Clause** :-

- Main objects
- Object incidental or ancillary for the attainment of main objects
- Other objects

Factors to be considered while setting objective :-

- It must be certain.
- It must be complete.
- It must be stated in the prescribed manner.
- It must not be against public policy.
- It must not be against provisions of the companies act, 2013.

4. **Liability Clause:-** It states the nature and extent of liability of the members.

- Limited by Shares - The liability of the member is limited. No member is required to pay more than the unpaid amount on the shares held by them.
- Limited by Guarantee - Every member is liable to contribute to the assets of the company in the event of winding up.
- BOTH i.e. Limited by Share and Limited by Guarantee

5. **Capital Clause**:- It states

- Number of shares
- Nominal value/ face value of each share
- The total capital with which the company is to be registered.

Note: It is non-mandatory for

- A company limited by guarantee having no share capital.
- Unlimited company.

6. **Subscription Clause**:-

- Minimum no of subscribers
  7 – Public Co and 2 – Private Co.
- Each subscriber shall state his name address, occupation and description.
- Each subscriber shall sign the MOA in the presence of witness.
- Each subscriber shall agree to take at least one share.
- Each subscriber shall mention the number of shares subscribed by them.

Alteration of Memorandum:-

1. **Alteration in Name clause**:-A company may change its name
   By passing special resolution AND obtaining prior approval of CG.

Rectification of name:-
A company may rectify its name only, if central government is of the opinion that a company is registered with undesirable name

1) By Suo Motu (itself) –
   By passing Ordinary Resolution
   AND
   Obtaining previous approval of CG

2) On the direction of central government
- CG is empowered to direct company to rectify its name within 12 month of registration of company.
- Such direction should be complied within 3 months.
- Obtaining previous approval of CG.
- By passing Ordinary Resolution

Effects of alteration of name:-
- The registrar shall enter the new name in the register of company.
- A fresh certificate of incorporation is issued by the registrar with the new name.
- The registrar shall alter the memorandum with the new name of the company.
- The rights and obligations of the company shall not be affected by the alteration of name.
- Existing legal proceedings shall be continued against the company in new name.
- A new common seal is to be made with the new name.

Note:- No CG approval is required to insert or delete the word “Private limited”.

2. **Alteration of object clause**:-
- Pass a special resolution
- Such alteration shall be valid only if it is made for special purpose U/S 17.
- No approval of CG, CLB or any other authority is required.
- The company shall file with the registrar.

a copy of special resolution | a copy of memorandum as altered

within one month + Extension by CG

- The registrar shall register the alteration within 1 month & issues a certificate of registration of alteration.

3. **Alteration of liability clause**:-

A company limited by shares or by guarantee cannot alter its memorandum in any way, which increases the liability of its member.

EXECPTION

If the member agrees in writing & give their consent either before or after the alteration

if the co. is a club or association then, it may Increase the liability to pay periodical subscription or charges.

4. **Alteration of Capital Clause**:-

- It must be authorized by articles of association
- Pass ordinary resolution
- Give a notice of change to ROC within 30 days of passing OR.

Nature of alteration in capital clause:-

- Increase the share capital by issuing new shares.
- Consolidation of share capital.
- Conversion of shares into stock or vice- versa
- Sub- division of shares.
- Cancellation of shares which have not been take or agree to be taken by any person.

Effect of cancellation:-

- Cancellation of shares is not considered as reduction of share capital
- No confirmation is required from CLB or court or any other authority.

Special purpose U/s 17 :-

- To carry on its business more economically or efficiently.
- To attain its main purpose by new or improved means.
- To enlarge the local area of its operations.
- To carry on some business under existing circumstances more conveniently.
- To restrict or abandon any of the objects specified in the memorandum.
- To sell or dispose off the whole or any part of the undertaking.
- To amalgamate with any other company or body of person.

5. **Alteration of situation clause**:-

1) Change of place within the same city.

- Pass the Board Resolution
- Give a notice of change to the registrar within 30 days of such change.

2) Change of place within the same state under the jurisdiction of same registrar.

- Pass the special resolution
- File a copy of the resolution to the registrar within 30 days.
- Give a notice of change to the ROC within 30 days of change of registered place.

3) **Change of place within the same state from the jurisdiction of one registrar to another**:-

- Pass a special resolution.
- An application is to be made to regional director (RD).
- Regional director shall confirm the alteration within 4 weeks of the receipt of application.
- A company shall fill with the registrar.

A certified copy of the confirmation | a copy of the memorandum altered

Within 2 months

- The registrar shall register the change and give a certificate of registration of change of registered office within one month.
- The Co shall change the registered office.
- Give a notice of change to the ROC within 30 days of change of registered place.

4) Change of place from one state to another

- Pass the special resolution
- Such alteration must be made for special purpose only U/s 17.
- An application / petition is to be made to the CLB / CG.
- A notice of the petition is to be made to the registrar also.
- CLB / CG shall consider the interest of the affected parties (Creditors, debenture holders, members), before confirming the change.
- CLB / CG may grant the approval if it is satisfied that-
  a. Sufficient notice has been given to every debenture holder, creditor or every other person whose interest may be affected by the alteration.
  b. every creditor who object to the alteration
     - has given his consent
     - his debt has been discharged.
     - his debt has been secured.
- CLB / CG may confirm the alteration on any terms which it thinks fit.
- A copy of MOA as altered and an order CLB / CG shall be field with the registrar of each state within 3 months (from the date of order) + extended period by CG i.e. 3 months under reasonable ground.

- The registrar of new state shall register the change and give a certificate of registration of alteration of registered office.
- The company shall file a notice of change with the registrar within 30 days of such change.
- A company is required to give a public notice in respect of change in registered office.