

ARTICLE ON ADOPTION OF MOA & AOA

AMENDMENT IN MAIN OBJECTS, IF THE COMPANY IS CARRYING ANY
BUSINESS COVERED UNDER OTHER OBJECTS IN THE MEMORANDUM
OF ASSOCIATION.



SERIES

NO- 29

1. PROVISIONS FOR OBJECT CLAUSE UNDER COMPANIES ACT - 1956

As per Section 13 of the Companies Act, 1956 the Object Clause of a company shall be divided into three categories:—

1. (i) Main Objects;
- (ii) Objects incidental or ancillary to the attainment of the main objects; and
2. Other objects.

✚ A Company can carry on the business mentioned in the Main Object Clause and Incidental object clause in general course of business. There is no need to pass any Board Resolution and General Meeting resolution. HOWEVER;

✚ If a Company want to carry on business mentioned in Other object of Company then; As per provisions of sub section 2A of Section 149 of Companies Act, 1956:—

- A. An existing PUBLIC LIMITED COMPANY which proposes to take up a new business, which is covered in the "other objects" of the Memorandum, can do so only after the proposal is approved by the members by a special resolution.

PROCEDURE FOR STARTING NEW BUSINESS ACTIVITIES COVERED UNDER THE OTHER OBJECT CLAUSES For the purpose of obtaining approval by way of special resolution the following steps have to be taken by the company:—

- (i) Hold a Board meeting to consider and approving the proposal for carrying specified business activities being mentioned in "Other Objects".

- (ii) The Board shall also fix the date, time and place for holding a general meeting, approve the notice of the general meeting and explanatory statement and authorize to any director or secretary for issuance of notice to the members as per the requirement of the Act.
- (iii) The proposal to start the new business will have to be approved by the members by way of a Special Resolution.
- Where the special resolution could not be passed at the general meeting, the company is required to be approved the proposal by passing an ordinary resolution and shall require to make an application to the Central Government requesting for according permission to the commencement of new business.
 - In the absence of any Form for such purposes, the company may apply on simple paper stating with full ground and justification along with the fees. After receipt of the approval of the Government, the company is required to file the declaration in e-Form 20A with ROC
- (iv) File e-Form 23 as desired by section 192 with the certified copy of the special resolution with explanatory statement.
- (v) File a declaration in e-Form 20A electronically and a stamped copy be submitted simultaneously to the Registrar of Companies on the stamp paper to the effect that the provisions of section 149(2A) sub-clause (i) have been complied with.
- B. ****** An existing PRIVATE LIMITED COMPANY which proposes to take up a new business, which is covered in the "other objects" of the Memorandum, can do so only after PASSING OF BOARD RESOLUTION in the Board meeting of Company. Because section 149 of Companies Act, 1956 does not apply on Private Limited Company.

As per above discussion:

A Public Limited Company after passing the Special Resolution can carry on the business mentioned in the Other Objects Clause of MOA without addition of Object in the Main Objects Clause of the MOA.

A Private Limited Company after passing of Board Resolution can carry on the business mentioned in the Other Objects Clause of MOA without addition of Object in Main Objects Clause of the MOA.

2. PROVISIONS FOR OBJECT CLAUSE UNDER COMPANIES ACT – 2013:-

As per Section 4 of the Companies Act, 2013 the Object Clause of a company shall be divided into two categories:—

1. Main Objects;
2. Objects considered necessary in furtherance of the main objects; and

There is nothing like “Other Object Clause” in Companies Act, 2013. At present companies can only have above given two types of Objects. One for which company will incorporate and second one are for attaining the main objects.

Sample of objects clause in the MOA under Companies Act, 2013:

III. The objects for which the Company is established are :-

(A) THE OBJECTS TO BE PURSUED BY THE COMPANY ON ITS INCORPORATION ARE:-

1. -----

(B) MATTERS WHICH ARE NECESSARY FOR FURTHERANCE OF THE OBJECTS SPECIFIED IN CLAUSE III (A) ARE:-

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As per Section 6 of the Companies Act, 2013: Save as otherwise expressly provided in this Act—

(b) any provision contained in the memorandum, articles, agreement or resolution shall, to the extent to which it is repugnant to the provisions of this Act, become or be void, as the case may be.

Meaning of Repugnant: - Logic Contradictory; inconsistent or incompatible

Therefore, if we read Section-4 along with Section 6 of Companies Act, 2013;

As per Section 4 of Companies Act, 2013, there are no provisions of "Other Object Clause" in Memorandum of Company.

As per Section 6 any provision contained in the memorandum to the extent to which it is repugnant to the provisions of this Act, become or be void.

Conclusion: Other Object Clause mentioned in the Memorandum of Association of Company Incorporated under Companies Act, 1956 is repugnant to the provision of Memorandum of Association of Created under Companies Act, 2013. Therefore as per my understanding at present Other object is not in existence even mentioned in the Memorandum of Association of the Company.

Question: If an Existing Company (Company Incorporated before 31st March, 2014) carrying any business as given in Other Object clause of company as per provisions of Companies Act, 1956 then how can it continue with that object in present situation?

3. ACTION TO BE TAKEN BY COMPANIES UNDER COMPANIES ACT- 2013:-

Main Object of Memorandum of Association of the Company to be amended to
ADD:

- A. All the business is carried on by company, being adopted from Other Object of MOA.
 - B. Objects to be purposed to be carried in Future.
- A. To Add Activity of Other Object clause into Main Object clause of company:
To continue with the Activities mentioned under Other Object Clause of Company at present, there is need to follow procedure as per Section- 13 of Companies Act, 2013 to alter the Memorandum of Association of company by ADDITION of other objects into Main objects of company.

- B. if Company planning to start new business along with present business in coming future, then company can follow procedure as per Section- 13 of Companies Act, 2013 to alter the Memorandum of Association of company by ADDITION of new objects into Main objects of company.

Example:

1. If a Company have Main Object of Trading of garments and company planning to start business of dealing in paper product along with trading of garments for growth and any other purpose, than company can make ADDITION of objects of dealing in paper along with trading of garments, by following procedure of Section 13 of Companies Act, 2013.

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If a Company going to Alter Main Object Clause of Memorandum of Association as per given above. Company should do following things also:

- C. To amend the title of incidental object Clause of the Memorandum Of Association:

- Clause III (B) of the objects that are incidental or ancillary to the attainment of the main objects of the Memorandum of Association be and hereby replaced with the title "MATTERS WHICH ARE NECESSARY FOR FURTHERANCE OF THE OBJECTS SPECIFIED IN CLAUSE III (A) ARE:-"

- D. Deletion of the other objects clause of the Memorandum Of Association:

Pursuant to the provisions of Section 4, 13 and all other applicable provisions, if any, of the Companies Act, 2013, (including any amendment thereto or re-enactment thereof), and subject to necessary approval(s) if any, from the competent authorities, the Other Objects Clause of the Memorandum of Association of the Company be removed by completely deleting the clause III (C).

E. Amendment of the liability clause of the Memorandum Of Association:

IV. "The liability of members is limited and this liability is limited to the amount unpaid on shares held by them."

ADVISABLE: If a Company going to Alter Memorandum of Association then it is advisable to adopt new sets of Article of Association also under Companies Act, 2013.

F. ADOPTION OF NEW SET OF ARTICLES OF ASSOCIATION

Pursuant to the provisions of Section 14 and other applicable provisions, if any, of the Companies Act, 2013, (including any amendment thereto or re-enactment thereof), the Articles of Association of the Company should be altered hereby replacing all the existing regulations with the new regulations.

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To be continued.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

(Author - CS Divesh Goyal, GOYAL DIVESH & ASSOCIATES is a Company Secretary in Practice from Delhi and can be contacted at csdiveshgoyal@gmail.com) Disclaimer: The entire contents of this document have been prepared on the basis of relevant provisions and as per the information existing at the time of the preparation. Though utmost efforts has made to provide authentic information, it is suggested that to have better understanding kindly cross-check the relevant sections, rules under the Companies Act, 2013. The observations of the author are personal view and the authors do not take responsibility of the same and this cannot be quoted before any authority without the written

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