

SHARMA FINANCIAL SERVICES

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Alteration of Memorandum of Association of a Company

MEANING:

The expression “**alter**” means to modify/change or vary; to make or become different in some respect.

As per Section 2(3) of the Companies Act, 2013 (the Act) “**alter**” and “**alteration**” shall include the making of additions, omissions and substitutions.

Following are the cases where a company has to alter its Memorandum of Association (MOA) as per provisions of Section 13 of the Act read with Companies (Incorporation) Rules, 2014 (the Rules)

- **Change of Name;**
- **Alteration of Authorized Capital**
- **Change in Objects, and**
- **Shift of Registered Office**

Let us consider the above mentioned cases in brief:

➔ **CHANGE IN NAME**

A company desiring to change its name may do so in accordance with the provisions of Section 13 read with Section 4 of the Act by passing **Special Resolution** and the name approved by the Ministry of Corporate Affairs (MCA) on prescribed application. The power of the Central Government under Section 13(2) to approve change in name has been delegated to Registrar of Companies (ROC).

However, if the change required is the addition thereto or deletion there-from, of the word “Private”, consequent upon conversion of a public company into a private company or vice versa, no such approval of central Government is required.

➔ **ALTERATION OF AUTHORIZED CAPITAL**

A Company seeking to issue shares by way of Private Placement or Rights Issue or by any other prescribed methods, has to check the Authorized Capital, as the issue cannot exceed the amount of Authorized Capital. Thus in the view of the above, a Company may alter its Authorized Capital i.e. Capital Clause by virtue of Section 13 read with Section 61 by passing an **Ordinary Resolution**.

The Capital Clause will be altered by prescribed process as per the applicable rules and payment of relevant stamp duty as may be applicable and levied by concerned state in which the registered office of the Company is situated.

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➔ CHANGE IN OBJECTS

A company may change its objects as enshrined in its MOA in accordance with the provisions of Section 13 of the Act. Accordingly, any alteration of MOA with respect to the objects of the company is permitted through **Special Resolution**.

However, Section 13 (8) **restricts** the change in object of a company which has raised money from public through prospectus and still has any unutilised amount out of the money so raised unless a special resolution is passed by the company and the details of such resolution shall be published in one vernacular language and one English language newspaper in circulation at the place of registered office of the company as well as on the website of the company indicating the justification for such change in the object.

➔ SHIFT IN REGISTERED OFFICE

As per Section 12 of the Act, every company shall have a registered office at all times, to which all communications and notices may be addressed.

Every company **within 30days** of its incorporation or any change in the address of its registered office shall furnish a verification of its registered office in **INC-22** prescribed under Companies (Incorporation) Rules, 2014.

A company is permitted to change its registered office from its existing location to another location-

- Within the local limits of the same city, town or village (e.g. Bandra, Mumbai to Andheri, Mumbai)
- Outside the local limits of the same city, town or village but
 - ✓ within same state under jurisdiction of same ROC (e.g. Bandra, Mumbai to Kalyan)
 - ✓ under jurisdiction of another ROC within same state (e.g. Mumbai to Pune)
- One State to another State. (e.g. Mumbai to Delhi)

Note: As per Section 13 (11) any alteration of MOA, in the case of Company Limited by Guarantee or Company not having share capital, purporting to give any person a right to participate in the divisible profits of the Company otherwise than as member shall be void.

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Disclaimer: The article has been prepared in consideration of applicable provisions of the Companies Act, 2013 and the rules made thereunder. Readers are requested to verify the same before initiating any action in order to avoid any damages or penalties. The author is not responsible for any damages caused or penalties levied by any regulator.