

## **Alteration of Memorandum of Association (Section 13 of Companies Act, 2013)**

“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.

### **What are the steps required for Alteration in MOA?**

1. A Notice of Board meeting is issued at least 7 days before the date of Board meeting.
2. In the board meeting, a board resolution is being passed for the alteration in MOA subject to approval of shareholder meeting.
3. Fix the date, time and venue for convening the shareholder meeting.
4. A notice of Shareholder meeting is issued at least 21 days before the date of shareholder meeting.
5. After the shareholder’s resolution is being passed, Form MGT-14 is filed within 30 days from passing of the special resolution along with the Explanatory statement, altered copy of MOA.

### **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

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:-

1. Certified True Copies of the Special Resolutions along with explanatory statement;
2. Copy of the Notice of meeting send to members along with all the annexure;
3. A printed copy of the Altered Memorandum of Associations.

### **Name clause**

1. If the company itself wants to change its name, then this alteration in the name clause of Memorandum will come under clause Section 13.
2. Whereas for any kind of rectification in the name of the company, then the alteration will come under clause section 16 which requires approval from the Central Government.

### **A company can change its name at any time by any of the following procedures:**

1. By passing a special resolution.
2. By obtaining the approval of the Central Government.

### **What are the Conditions for any such Alteration in the Name?**

1. The change of name shall not be allowed to a company which has defaulted in filing its
2. Annual returns
3. Financial Statements
4. Any document due for filing with Registrar
5. repayment of matured deposits or debentures or interest on deposits or debentures

## **Registered Office**

1. In case, the company wants to change its registered office, then this alteration in the registered office clause of Memorandum will come under clause Section 12.
2. Here, the Registrar will register any alteration in the Memorandum with respect to the objects of the company and then certify the registration within a period of 30 days. Any such change in the Memorandum results in the transfer of the registered office of a company from one state to another.

## **Shifting of the registered office from one state or UT to another state –**

For the change in the registered office from one state to another state, an application under sub-section (4) of section 13 is filed with the Central Government in Form No. INC.23 along with the fee. The application must be accompanied by the following documents:

1. Copy of MOA (Memorandum of Association) with proposed alterations.
2. A copy of the details of the general meeting at which the resolution authorizing such alteration was passed. These details give the number of votes cast in the favor or against the resolution.
3. A copy of Board Resolution or Power of Attorney.
4. A list of creditors and debenture holders is attached to the application, drawn up to the latest date prior to the date of filing of an application by not more than one month. It must include:
  5. The name and address of the credit and debenture holder of the company.
  6. The nature and amounts due to them in respect of debts, claims, or liabilities.

**The company Secretary has a certain task to look into the company's matter.**

**These are:**

1. To make a complete inquiry into the affairs of the company and decide that the list of creditors is true.
2. No employee of the company shall be retrenched as a result of the transfer of the registered office from one state to another.
3. Authenticated copy of the list of creditors shall be kept at the registered office of the company and any person who desires to inspect the list of creditors can do so at any time during the working hours of business.

**A company may alter the capital clause only if it is authorized by its articles.**

**Alteration can be for any of the following purposes:**

### **Capital Clause**

1. An increase of its share capital by issue of new shares.
2. Consolidation of existing shares into shares of larger amounts.
3. Conversion of fully paid shares into stock or vice versa.
4. Cancellation of unissued shares.

### **Liability Clause**

The alteration of the Liability Clause restricts the liability of the Directors. The liability clause can be unlimited by passing a special resolution which should be filed with the Registrar within a period of 30 days.

## **Alteration of Name Clause**

Alteration of the name of a company can be effected by two methods.

By special Resolutions and Permission of the government: The Law regarding the change of name of a company is laid down under section 21 of CA.

## **Alteration of Registered Office Clause**

A company may change the situation of its registered office for the smooth running of its business and the realization of its objects. Such change in the situation can be: (a) from one place to another in the same city or town (b) from one town to another in the same state and (c) from one state to another.

## **Alteration of Object Clause**

Plainly speaking, it is very difficult to alter the objects clause because the law has laid down strict limitations on such alteration. Section 17 of the CA defines the limitations and any alteration must necessarily be within these limitations.

The limits imposed upon the power of alteration are of two kinds, namely substantive and procedural. The former defines the physical limits of alteration and the latter the procedure by which it can be effected.

*The alteration of object clause involves:*

Special Resolution: In the first place, the company has to call a general meeting of its members and pass a special resolution and file a certified copy of the resolution with the central government.

Ratification by the central government: After this, the application for proposed alteration is filed with the central government. The application shall be scrutinized by the government before confirming the alteration.

Registration of alteration: A certified copy of the order of the central government shall be filed by the company with the RoC along with the printed copy of the altered memorandum within three months from the date of the order. The registrar shall register the same and certify the registration under his hand within one month of the date of filing such documents

### **Doctrine of Ultra Vires**

It is the function of the Memorandum of Association to delimit and identify the objects in such plain and unambiguous manner as that the reader can identify the field of industry within which the corporate activities are to be confined. And it is the function of the courts to see that the company does not move in a direction away from the field. That is where the doctrine of ultra vires comes into play in relation to joint stock companies.

The doctrine has been affirmed by the Supreme Court in India in the case of *Lakshmanaswami Mudaliar v. Life Insurance Corporation of India* wherein the court held that the directors of a company were authorized to make payment towards any charitable or any benevolent object or for any general public, general useful object. The payment made towards the same was held by the court as ultra vires. The court said that the directors could not spend the company's money on any charitable institutions or any general object they choose. They could spend for the promotion of only such charitable objects as would be useful for the attainment of the company's own objects.

