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Subject: Secretarial Practice

Topic: Procedure for Alteration of Memorandum of Association

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B.com. Part I Sem. II

# ALTERATION OF MEMORANDUM



# ALTERATION OF MEMORANDUM

SECTION 2(28) DEFINES MEMORANDUM AS "THE MEMORANDUM OF ASSOCIATION OF A COMPANY AS ORIGINALLY FRAMED OR AS ALTERED FROM TIME TO TIME IN PURSUANCE OF ANY PREVIOUS COMPANY LAW OR THIS ACT."

IT IS ONE OF THE DOCUMENTS WHICH HAS TO BE FILED WITH THE REGISTRAR AT THE TIME OF INCORPORATION OF A COMPANY.

- *The Clauses In The Memorandum As Regards Name, Situation, Objects, Capital, And Liability Of Members And The Undertaking Of Subscribers To Take At Least One Share Each Are Conditions.*
- *Section 16 Of The Act Provides That A Company Shall Not Alter The Conditions Contained In Its Memorandum Except In The Cases, In The Manner And To The Extent Provided In The Act.*

*For The Alteration Of The Conditions In The Memorandum Of Association A Rigid Procedure Is To Be Followed And Strict Compliance Of The Procedure Is Demanded By Law.*

## THE PROCEDURE FOR THE ALTERATION OF THE COMPULSORY CLAUSES OF THE MEMORANDUM ARE:

### CHANGE OF NAME

**BY SPECIAL RESOLUTION:** A Company Can Change Its Name. It Must First Pass A Special Resolution And Then Obtain Approval Of The Central Government In Writing. No Approval Is Necessary For Merely including Or Deleting The Word 'Private' Consequent On The Conversion Of The Public Company Into Private Company And Vice Versa.

**BY ORDINARY RESOLUTION:** If A Company Is Registered By A Name and The Name Is Of An Existing Company, It Can Change Its Name By Passing An Ordinary Resolution And With The Previous Approval Of The Central Government Signified In Writing.

# **DIRECTION FOR CHANGING NAME**

**THE CENTRAL GOVERNMENT MAY ALSO, WITHIN 12 MONTHS OF REGISTRATION, DIRECT THE COMPANY TO CHANGE ITS NAME. WITHIN 3 MONTHS OF SUCH DIRECTIONS THE COMPANY MUST CHANGE ITS NAME BY PASSING AN ORDINARY RESOLUTION AND WITH THE PREVIOUS APPROVAL OF THE CENTRAL GOVERNMENT SIGNIFIED IN WRITING. DEFAULT IN COMPLYING WITH THE DIRECTION IS PUNISHABLE WITH FINE UPTO RS.1000 FOR EVERY DAY DURING WHICH THE DEFAULT CONTINUES.**

**IN CONSIDERING APPLICATIONS FOR CHANGE OF NAME, THE GOVERNMENT CONSIDERS THE FOLLOWING POINTS:**

- a) Whether the reasons are sufficient and adequate.**
- b) Whether the proposed name reflects object of the company and with the kind or kinds of business actually carried on.**
- c) Whether the proposed name is not undesirable.**

## **NEW CERTIFICATE OF INCORPORATION**

THE REGISTRAR SHALL ENTER THE NAME ON THE REGISTER IN PLACE OF FORMER NAME AND SHALL ISSUE A FRESH CERTIFICATE OF INCORPORATION. THE CHANGE IS EFFECTIVE ONLY ON THE ISSUE OF A CERTIFICATE.

THE REGISTRAR SHALL ALSO MAKE THE NECESSARY ALTERATION IN THE MEMORANDUM OF ASSOCIATION OF THE COMPANY.

## **RIGHTS AND OBLIGATIONS TO REMAIN INEFFECTED**

THE RIGHTS AND OBLIGATIONS OF A COMPANY WILL NOT BE EFFECTED ON THE CHANGE OF ITS NAME.

EXAMPLE: A COMPANY HAD CHANGED ITS NAME FROM 'MALHATI TEA SYNDICATE LTD' TO 'MALHATI TEA INDUSTRIES LTD.' THEREAFTER IT FILED A WRIT PETITION IN ITS FORMER NAME. THE COURT DECLARED THE PETITION TO BE INCOMPETENT.

# **CHANGE OF REGISTERED OFFICE**

**THE CHANGE OF REGISTERED OFFICE MAY INVOLVE ANY OF THE FOLLOWING:**

- 1. CHANGE OF REGISTERED OFFICE FROM ONE PLACE TO ANOTHER PLACE IN THE SAME CITY, TOWN OR VILLAGE.**
- 2. CHANGE OF REGISTERED OFFICE FROM ONE TOWN TO ANOTHER TOWN IN THE SAME STATE.**
- 3. CHANGE OF REGISTERED OFFICE FROM ONE STATE TO ANOTHER STATE.**

**1. CHANGE WITHIN THE CITY: IF A COMPANY WANTS TO CHANGE ITS REGISTERED OFFICE FROM ONE PLACE TO ANOTHER WITHIN THE SAME CITY, TOWN OR VILLAGE, THE BOARD OF DIRECTORS WILL PASS A RESOLUTION AND THE REGISTRAR MUST BE INFORMED OF THE CHANGE WITHIN 30 DAYS.**

**2. CHANGE WITHIN THE STATE: THE REGISTERED OFFICE IS TO BE CHANGED OUTSIDE THE LOCAL LIMITS OF ANY CITY, TOWN OR VILLAGE IN THE SAME STATE, A SPECIAL RESOLUTION TO THAT EFFECT MUST BE PASSED.**

**3. CHANGE OF REGISTERED OFFICE FROM ONE STATE TO ANOTHER:**

**SECTION 17 DEALS WITH THE CHANGE OF PLACE OF REGISTERED OFFICE FROM ONE STATE TO ANOTHER STATE. A COMPANY MAY ALTER THE PROVISIONS OF ITS ARTICLES OF ASSOCIATION SO AS TO CHANGE THE PLACE OF ITS REGISTERED OFFICE FROM ONE STATE TO ANOTHER FOR CERTAIN PURPOSES.**

## **SPECIAL RESOLUTION:**

FOR EFFECTING THIS CHANGE A SPECIAL RESOLUTION MUST BE PASSED BY THE COMPANY AND A COPY THERE OF MUST BE FILED WITH THE REGISTRAR WITHIN 30 DAYS.

## **CONFIRMATION BY CENTRAL GOVERNMENT:**

THE ALTERATION OF THE PROVISIONS OF MEMORANDUM RELATING TO THE CHANGE OF THE REGISTERED OFFICE FROM ONE STATE TO ANOTHER STATE SHALL TAKE EFFECT ONLY WHEN IT IS CONFIRMED BY THE CENTRAL GOVERNMENT ON PETITION.

THE COMPANY SHALL FILE WITH THE REGISTRAR A CERTIFIED COPY OF THE ORDER OF THE CENTRAL GOVERNMENT CONFIRMING THE ALTERATION, WITHIN 3 MONTHS FROM THE DATE OF ORDER TOGETHER WITH A PRINTED COPY OF THE MEMORANDUM AS ALTERED AND THE REGISTRAR SHALL REGISTER THE SAME AND CERTIFY THE REGISTRATION UNDER HIS HAND WITHIN ONE MONTH FROM DATE OF FILING OF SUCH DOCUMENTS.

## **CHANGE OUTSIDE INDIA:**

A COMPANY CANNOT CHANGE ITS REGISTERED OFFICE FROM INDIA TO ANOTHER COUNTRY AND THE CENTRAL GOVERNMENT HAS NO POWER SANCTION SUCH ALTERATION OF THE MEMORANDUM.



## **CHANGE OF OBJECT CLAUSE**

A COMPANY HAS NO LIMITED RIGHT TO ALTER THE OBJECTS CLAUSE OF THE MEMORANDUM, HOWEVER, URGENT OR BENEFICIAL SUCH ALTERATION MAY BE.

THE POWER OF ALTERATION OF OBJECTS CLAUSE IS SUBJECT TO TWO LIMITS:

### **1. SUBSTANTIVE LIMITS**

A COMPANY MAY CHANGE ITS REGISTERED OFFICE FROM ONE STATE TO ANOTHER OR OBJECTS CLAUSE IN SO FAR AS IT IS NECESSARY FOR ANY OF THE FOLLOWING PURPOSES:

#### **a) TO CARRY ON ITS BUSINESS MORE ECONOMICALLY OR MORE EFFICIENTLY**

THIS CLAUSE PERMITS THE ALTERATION WHICH WILL ASSIST THE COMPANY IN THE METHOD OF CONDUCTING ITS BUSINESS AND NOT ALTERATION IN THE TYPE OF BUSINESS WHICH THE COMPANY IS CONDUCTING. WHEN A COMPANY IS NOT IN FACT CARRYING ON ANY BUSINESS, IT CANNOT ALTER ITS OBJECTS UNDER THIS CLAUSE.

**EXAMPLE: A COMPANY WAS ENGAGED IN THE BUSINESS OF POULTRY BREEDING. ITS MEMORANDUM PROHIBITED PAYMENT OF ANY REMUNERATION TO THE DIRECTORS. WHEN THE BUSINESS OF THE COMPANY INCREASED IT WAS FOUND THAT THE DIRECTORS COULD NOT PAY SUFFICIENT UNLESS SOME REMUNERATION WAS PAID TO THEM. THE COMPANY WAS ALLOWED TO ALTER ITS MEMORANDUM SO AS TO ENABLE IT TO PAY REMUNERATION TO ITS DIRECTORS, BEING**

**b) TO ATTAIN ITS MAIN PURPOSE BY NEW OR IMPROVED MEANS:**

THIS CLAUSE IS INTENDED TO ENABLE COMPANIES TO TAKE ADVANTAGE OF NEW SCIENTIFIC DISCOVERIES. THE COMPANY CANNOT ALTER ITS MAIN OBJECTS, BUT CAN MERELY ALTER ITS ANCILLARY POWERS OR PROVIDE NEW POWERS TO ASSIST IT IN ACHIEVING ITS MAIN OBJECTS.

**c) TO ENLARGE OR CHANGE THE LOCAL AREA OF ITS OPERATIONS**

THIS CLAUSE PERMITS ALTERATION TO ENLARGE OR CHANGE THE LOCAL AREA OF OPERATION BUT NO ALTERATION IN THE COMPANY'S BUSINESS IS ALLOWED.

**d) TO RESTRICT OR ABANDON ANY OBJECTS SPECIFIED IN THE MEMORANDUM**

A COMPANY MAY ALTER THE MEMORANDUM TO RESTRICT OR ABANDON ANY SPECIFIED OBJECTS. BUT NO ALTERATION WILL BE DEEMED VALID IF IT IS DONE TO GIVE EFFECT TO SPECIFIED OBJECT ON THE WINDING UP.

**e) TO SELL OR DISPOSE OF THE WHOLE OR ANY PART OF THE UNDERTAKING OF THE COMPANY**

ALTERATION MAY BE REQUIRED WHEN A COMPANY SELLS THE WHOLE OR PART OF ITS UNDERTAKING. UNDER SUCH CIRCUMSTANCES POLICY CHANGES BECOME INEVITABLE (unavoidable).

**f) TO AMALGAMATE WITH ANY OTHER COMPANY OR BODY OF PERSONS**

CHANGE OF MEMORANDUM IS REQUIRED TO INCLUDE OR EXCLUDE THE OBJECTS IN ACCORDANCE WITH THE COMMON PLAN.

## **g) TO ATTAIN ITS MAIN PURPOSE BY NEW OR IMPROVED MEANS**

**THIS CLAUSE IS INTENDED TO ENABLE COMPANIES TO TAKE ADVANTAGE OF NEW SCIENTIFIC DISCOVERIES. THE COMPANY CANNOT ALTER ITS MAIN OBJECTS, BUT CAN MERELY ALTER ITS ANCILLARY POWERS OR PROVIDE NEW POWERS TO ASSIST IT IN ACHIEVING ITS MAIN OBJECTS.**

### **RE CYCLISTS TOURING CLUB (1907)**

#### ***FACTS OF THE CASE ARE***

**THE COMPANY'S WAS TO PROMOTE, ASSIST AND PROTECT RECYCLISTS ON THE PUBLIC ROADS. THE COMPANY BY ALTERING THE OBJECT CLAUSE DESIRED TO INCLUDE AMONG THE PERSONS TO BE ASSISTED ALL TOURISTS INCLUDING MOTORISTS. HELD IT WAS IMPOSSIBLE TO COMBINE THE TWO BUSINESSES AS ONE OF THE OBJECTS OF THE COMPANY WAS TO PROTECT CYCLISTS AGAINST MOTORISTS**

#### **2. PROCEDURAL LIMITS:**

**THE FOLLOWING PROCEDURE MUST BE FOLLOWED FOR ALTERING THE OBJECTS CLAUSE**

#### **SPECIAL RESOLUTION**

**COMPANY SHALL PASS A SPECIAL RESOLUTION SANCTIONING THE ALTERATION. A SPECIAL RESOLUTION TO THAT EFFECT AND FILE IT WITH THE REGISTRAR OF COMPANIES.**

## **COPY OF THE SPECIAL RESOLUTION TO BE FILED WITH THE REGISTRAR**

THE COMPANY SHALL FILE WITH THE REGISTRAR A SPECIAL RESOLUTION PASSED BY THE COMPANY IN RELATION TO CLAUSES (a) TO (g) WITHIN ONE MONTH FROM THE DATE OF SUCH RESOLUTION TOGETHER WITH A PRINTED COPY OF THE MEMORANDUM AS ALTERED. THE REGISTRAR SHALL REGISTER THE SAME AND CERTIFY THE REGISTRATION UNDER HIS HAND WITHIN ONE MONTH FROM THE DATE OF FILING OF SUCH DOCUMENTS.

### **CONSEQUENCE OF NON FILING:**

IF THE COPY OF THE ORDER IS NOT REGISTERED WITHIN THE PRESCRIBED PERIOD, THE PROCEEDINGS CONNECTED WITH THE ORDER WILL BECOME VOID.

### **CHANGE OF LIABILITY CLAUSE**

ORDINARILY LIABILITY CLAUSE CANNOT BE ALTERED SO AS TO MAKE THE LIABILITY OF MEMBERS UNLIMITED. ANY ALTERATION IN MEMORANDUM WILL BE VOID IF THE EFFECT OF THE ALTERATION IS THE ENHANCEMENT OF THE LIABILITY OF MEMBERS.

IT DOES NOT APPLY TO A CASE WHERE THE MEMBERS AGREE IN WRITING TO BE BOUND BY THE ALTERATION.

SECTION 32 PERMITS AN UNLIMITED COMPANY TO REGISTER AS A LIMITED COMPANY.

## **CHANGE OF CAPITAL CLAUSE**

**A LIMITED COMPANY MAY ALTER BY PASSING A SPECIAL RESOLUTION IN THE GENERAL MEETING. THE CONFIRMATION OF THE COURT IS NOT REQUIRED IF THE ALTERATION IS MADE FOR ANY OF THE FOLLOWING PURPOSES:**

- 1. TO INCREASE ITS SHARECAPITAL**
- 2. TO CONSOLIDATE AND DIVIDE ITS CAPITAL INTO SHARES OF LARGER AMOUNT.**
- 3. TO CONVERT ITS FULLY PAID SHARES INTO STOCK AND RECONVERT THE STOCK INTO FULLY PAID SHARES.**
- 4. TO SUB-DIVIDE ITS SHARES INTO SHARES OF SMALLER AMOUNT.**
- 5. TO CANCEL ITS SHARES WHICH ARE NOT ISSUED.**

Thank you....