

- **Explain the Procedure for Alteration of Memorandum of Association**

Alteration of name (sec 21) (refer sec 4 of companies act 2013) --

A company may change its name at any time by passing a special resolution and with the prior approval of the Central Government. Where a company has been registered with a name which is undesirable, the same may be changed by an ordinary resolution and with the prior approval of the Central Government. In such a case the central government may also within 12 months of registration direct the company to rectify its name and the company must change the name within 3 months from the date of direction unless the time is extended. The new name would also require the prior approval of the Central Govt. The British Diabetic Society was compelled to change its name to something that would not impinge the goodwill of the British Diabetic Association (British Diabetic Association v. The Diabetic Society).

When a company changes its name, the Registrar of Companies has to enter the new name in the register and a new certificate of incorporation must be issued with necessary alterations.

However, it should be noted that no approval will be required if the change consists merely addition or deletion of the word “private” consequent on the conversion of a public company into a private company or vice versa.

Effect of such change: The old name of the company will stand abolished and the new name will come into existence from the date of passing such resolution. However, it does not affect the rights and obligations of the company (sec 23).

Alteration of registered office clause (sec 17)--

Shifting of registered office from one State to another is a complicated affair. For this purpose, sec 17 requires

- a) A special resolution of the company.
- b) The sanction of the Company Law Board.

The Board can confirm the alteration only if the shifting of the registered office from one state to another is necessary for any purposes detailed in sec 17(1).

Alteration of objects (sec 17)—

A company may alter its objects with the passing of a special resolution. The confirmation of the Company Law Board is not required for this purpose. An alteration of the objects is allowed only for the purposes mentioned in sec 17(1).

Registration of alteration (sec 18)—

In case of alteration of objects, a copy of the resolution should be filed with the Registrar of Companies within one month from the date of resolution. In the case of inter-state shifting of the registered office a certified copy of the Board's order and a printed copy of the altered memorandum must be filed with the Registrar within three months of the Board's order. Within one month the Registrar will certify the registration. Alteration takes effect when it is so registered.

As per companies act 2013---

Alteration of memorandum.(section 13)--- (1) Save as provided in section 61, a company may, by a special resolution and after complying with the procedure specified in this section, alter the provisions of its memorandum.

(2) Any change in the name of a company shall be subject to the provisions of subsections (2) and (3) of section 4 and shall not have effect except with the approval of the Central Government in writing:

Provided that no such approval shall be necessary where the only change in the name of the company is the deletion therefrom, or addition thereto, of the word “Private”, consequent on the conversion of any one class of companies to another class in accordance with the provisions of this Act.

(3) When any change in the name of a company is made under sub-section (2), the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.

(4) The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government on an application in such form and manner as may be prescribed.

(5) The Central Government shall dispose of the application under sub-section (4) within a period of sixty days and before passing its order may satisfy itself that the alteration has the consent of the creditors, debenture-holders and other persons concerned with the company or that the sufficient provision has been made by the company either for the due discharge of all its debts and obligations or that adequate security has been provided for such discharge.

(6) Save as provided in section 64, a company shall, in relation to any alteration of its memorandum, file with the Registrar— (a) the special resolution passed by the company under sub-section (1); (b) the approval of the Central Government under sub-section (2), if the alteration involves any change in the name of the company.

(7) Where an alteration of the memorandum results in the transfer of the registered office of a company from one State to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the Registrar of each of the States within such time and in such manner as may be prescribed, who shall register the same, and the Registrar of the State where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration

(8) A company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and— (i) the details, as may be prescribed, in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change; (ii) the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.

(9) The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution in accordance with clause (a) of sub-section (6) of this section.

(10) No alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.

(11) Any alteration of the memorandum, in the case of a company limited by guarantee and not having a share capital, purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member, shall be void.

Rectification of name of company.(Section 16 of companies act 2013)—

(1) If, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which,— (a) in the opinion of the Central Government, is identical with or too nearly resembles the name by which a company in existence had been previously registered, whether under this Act or any previous company law, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within

a period of three months from the issue of such direction, after adopting an ordinary resolution for the purpose; (b) on an application by a registered proprietor of a trade mark that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999, made to the Central Government within three years of incorporation or registration or change of name of the company, whether under this Act or any previous company law, in the opinion of the Central Government, is identical with or too nearly resembles to an existing trade mark, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of six months from the issue of such direction, after adopting an ordinary resolution for the purpose.

(2) Where a company changes its name or obtains a new name under sub-section (1), it shall within a period of fifteen days from the date of such change, give notice of the change to the Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and the memorandum.

(3) If a company makes default in complying with any direction given under sub-section (1), the company shall be punishable with fine of one thousand rupees for every day during which the default continues and every officer who is in default shall be punishable with fine which shall not be less than five thousand rupees but which may extend to one lakh rupees.