

3

CHAPTER

Charter Documents of Companies

PART I - CHARTER DOCUMENTS OF COMPANIES

Chapter Coverage

S. No.	Topic
3A.1	Memorandum of Association
3A.2	Forms of Memorandum of Association
3A.3	Contents of Memorandum of Association
3A.4	Articles of Association
3A.5	Contents of Articles of Association
3A.6	Doctrine of Ultra Vires
3A.7	Doctrine of Indoor Management and Exceptions to Doctrine of Indoor Management
3A.8	Constructive Notice of Memorandum and Articles
3A.9	Doctrine of Alter Ego
3A.10	Distinction between Memorandum and Articles

Regulatory Framework Coverage

The Companies Act, 2013

Section 2(56)	Definition of Memorandum
Section 2(5)	Definition of Articles
Section 4	Memorandum
Section 5	Articles
Section 7	Incorporation of Company

The Companies (Incorporation) Rules, 2014

3A.1 Memorandum of Association

- ◆ Memorandum of Association is a document
- ◆ It sets out the constitution of a company and is therefore the foundation on which the structure of the company is built.
- ◆ It defines the scope of the company's activities and its relations with the outside world.

3A.2 Forms of Memorandum of Association

- ◆ Form in Table A is applicable in the case of companies limited by shares.
- ◆ Form in Table B is applicable to companies limited by guarantee not having a share capital.
- ◆ Form in Table C is applicable to the companies limited by guarantee having a share capital.
- ◆ Form in Table D is applicable to unlimited companies not having a share capital.
- ◆ Form in Table E is applicable to unlimited companies having a share capital.

Question For Practice

Ques 1: Discuss Forms of Memorandum of Association?

Hint: Refer Topic 3A. 2 Forms of Memorandum of Association.

3A.3 Contents of Memorandum of Association

- ◆ **Name Clause:** Name of the company should indicate whether the company is private or public. No undesirable name as specified in Rule 8 of Companies (Incorporation) Rules, 2014. No identical name that resembles the name of an existing company.
- ◆ **Situation Clause:** This specifies the state in which the registered office is situated. Companies are required to have registered office within 15 days of its incorporation. Registrar to be intimated about the details of registered office within 30 days of incorporation or 15 days of change if any as the case may be in Form INC-22.
- ◆ **Object Clause:** Memorandum to state the object of the company to be pursued on the incorporation of the company and the matters which are necessary for the furtherance of the objects as stated above. The bifurcation of main, ancillary and other objects as required under Companies Act, 1956 has been dispensed with in Companies Act, 2013.
- ◆ **Liability Clause:** This states that liability of the members is limited or unlimited. In case of a company limited by shares, that liability of its members is limited to the amount unpaid, if any, on the shares held by them (including premium if any) as against Companies Act, 1956 where in it was limited to the amount unpaid on the face value of the share.
- ◆ **Capital Clause:** This states the amount of the capital with which the company is registered. The shares into which the capital is divided must be of fixed amount and the No. of shares which the subscribers to the memorandum agree to subscribe to subscribers to which shall not be less than one share. The capital is variously described as "Nominal" or "Authorised".
- ◆ **Subscription Clause (Stated In Schedule I):** Subscribers agree to subscribe the prescribed No. of shares stated against their name in the memorandum. The statutory requirements regarding subscription of memorandum are that:
 - Each subscriber must take at least 1 share,
 - Each subscriber must write opposite his name the No. of shares which he agrees to take.

Question For Practice

Ques 1: Discuss Contents of Memorandum of Association?

Hint: Refer Topic 3A.3 Contents of Memorandum of Association.

3A.4 Articles of Association

The articles must be printed, divided into paragraphs, numbered consecutively, stamped adequately signed by each subscriber to the memorandum and duly witnessed and filed along with the memorandum. The articles must not contain anything illegal or *ultra vires* the memorandum, nor should it be contrary to the provisions of the Companies Act, 2013.

3A.5 Contents of Articles of Association

(Points mentioned above is inclusive not exclusive)

The articles set out the rules and regulations framed by the company for its own working. The articles should contain generally the following matters:

- ◆ Exclusion wholly or in part of Table F.
- ◆ Adoption of preliminary contracts.
- ◆ Share Capital, variation of rights, Number and value of shares.
- ◆ Issue of preference shares.
- ◆ Allotment of shares.
- ◆ Calls on shares.
- ◆ Lien on shares.

- ◆ Transfer and transmission of shares.
- ◆ Nomination.
- ◆ Forfeiture of shares.
- ◆ Alteration of capital.
- ◆ Buy back.
- ◆ Share certificates.
- ◆ Dematerialisation.
- ◆ Conversion of shares into stock.
- ◆ Voting rights and proxies.
- ◆ Meetings and rules regarding committees of the Board.
- ◆ Directors, their appointment and delegations of powers.

Question For Practice

Ques 1: List contents of Articles of Association?

Hint: Refer Topic 3A.5 Contents of Articles of Association.

3A.6 Doctrine of Ultra Vires

- ◆ In the case of a company whatever is not stated in the memorandum as the objects or powers is prohibited by the doctrine of *ultra vires*.
- ◆ As a result, an act which is *ultra vires* is void, and does not bind the company. Neither the company nor the contracting party can sue on it. Also, as stated earlier, the company cannot make it valid, even if every member assents to it.
- ◆ *The rule is meant to protect shareholders and the creditors of the company. If the act is ultra vires (beyond the powers of) the directors only the shareholders can ratify it. If it is ultra vires the articles of association, the company can alter its articles in the proper way and thereby such acts can be duly ratified.*
- ◆ *The general rule is that an act which is ultra vires the company is incapable of ratification. An act which is intra vires the company but outside the authority of the directors may be ratified by the company in proper form [Rajendra Nath Dutta v. Shilendra Nath Mukherjee, (1982) 52 Com Cases 293 (Cal.)].*

Case law:

- ◆ *The doctrine of ultra vires was first enunciated by the House of Lords in a classic case, Ashbury Railway Carriage and Iron Co. Ltd. v. Riche, (1878) L.R. 7 H.L. 653.*
- ◆ *The memorandum of the company in the said case defined its objects thus: "The objects for which the company is established are to make and sell, or lend or hire, railway plants to carry on the business of mechanical engineers and general contractors."*

Loans, Borrowings, Guarantees and Ultra Vires Rule:

- ◆ An *ultra vires* borrowing does not create a relationship of a debtor and creditor.
- ◆ In a case, a company had accepted deposits from outsiders which was outside the scope of the Memorandum.
- ◆ When the company was ordered to be wound up, a question was raised whether the depositors were creditors of the company and whether the contributors could be asked to contribute towards payment of deposits.
- ◆ The Court held that the relationship between the company and the depositors was not that of debtor and creditor. But if the lender had lent the amount for discharging lawful expenses he may recover the amount.
- ◆ Whether a transaction is *ultra vires* the company can be decided on the basis of the following:
 - if a transaction entered into by a company falls within the objects, it is not *ultra vires* and hence not void.

- if a transaction is outside the capacity (objects) of the company, it is *ultra vires*.
- if a transaction is in excess or abuse of the company's powers, it is *ultra vires* and such transaction will be set aside by the shareholders or even ratification by the shareholders would not validate the acts done beyond the authority of the company itself.

Implied powers:

- ◆ The powers exercisable by a company are to be confined to the objects specified in the memorandum. While the objects are to be specified, the powers exercisable in respect of them may be express or implied and need not be specified.
- ◆ Every company may necessarily possess certain powers which are implied, such as a power to appoint and act through agents, and where it is a trading company, a power to borrow and give security for the purposes of its business, and also a power to sell.
- ◆ Such powers are incidental and can be inferred from the powers expressed in the memorandum. [Oakbank Oil Co. v. Crum (1882) 8 App Cas 65].
- ◆ The principle underlying the exercise of such powers is that a company, in carrying on the business for which it is constituted, must be able to pursue those things which may be regarded as incidental to or consequential upon that business. [See Egyptian Salt and Soda Co. v. Port Said Salt Association].

Not Implied Power:

The following powers have been held not to be implied and it is, therefore, prudent to include them expressly in the objects clauses:

- ◆ acquiring any business similar to the company's own business.
- ◆ entering into an agreement with other persons or companies for carrying on business in partnership or for sharing profit, joint venture or other arrangements. Very clear powers are necessary to justify such transactions .
- ◆ taking shares in other companies having similar objects.
- ◆ taking shares of other companies where such investment authorizes the doing indirectly that which will not be *intra vires* if done directly.
- ◆ promoting other companies or helping them financially.
- ◆ a power to sell and dispose of the whole of a company's undertaking.
- ◆ a power to use funds for political purposes.
- ◆ a power to give gifts and make donations or contribution for charities not relating to the objects stated in the memorandum.
- ◆ acting as a surety or as a guarantor.

Effects of *ultra vires* Transactions:

- ◆ ***Void ab initio*** : The *ultra vires* acts are null and *void ab initio*. The company is not bound by these acts. Even the company cannot sue or be sued upon. *Ultra vires* contracts are *void ab initio* and hence cannot become *intra vires* by reason of estoppel or ratification.
- ◆ ***Injunction***: The members can get an injunction to restrain a company wherein *ultra vires* act has been or is about to be undertaken.
- ◆ ***Personal liability of Directors***: It is one of the duties of directors to ensure that the corporate capital is used only for the legitimate business of the company and hence if such capital is diverted to purposes alien to the company's memorandum, the directors will be personally liable to replace it.
- ◆ Where a company's money has been used *ultra vires* to acquire some property, the company's right over such property is held secure and the company will be the right party to protect the property. This is because the property has been acquired for some *ultra vires* object; it represents the money of the company.
- ◆ *Ultra vires* borrowing does not create the relationship of creditor and debtor.

QUESTIONS

Ques 1: State any six powers which are prudent to be included in the objects clause of Memorandum of Association of a company as general and ancillary objects.

Hint: Refer Topic 3A.6 Doctrine of Ultra Vires.

Ques 2: Write a short note on : Doctrine of Ultra Vires

Hint: Refer Topic 3A.6 Doctrine of Ultra Vires.

Ques 3: In the case of a company whatever is not stated in the memorandum of association as objects of the company is prohibited by the doctrine of ultra vires. Discuss with relevant case law.

Hint: Refer Topic 3A.6 Doctrine of Ultra Vires.

Ques 4: Surprise Ltd. was incorporated under the Companies Act, 2013. The memorandum of association of the company in its objects clause stated that the company was established to make and sell or to carry on the business of mechanical engineers and general contractors. The company entered into a contract with Prominent Ltd., a firm of railway contractors to finance the construction of a railway line in Mumbai. The contract was ratified by the shareholders in general meeting. Subsequently, the contract was repudiated by the company on the ground that the contract was ultra vires the objects clause. Prominent Ltd. filed a suit claiming damages for the breach of contract. Explaining the meaning of doctrine of ultra vires, decide whether Prominent Ltd. will succeed.

Hint: Refer Topic 3A.6 Doctrine of Ultra Vires.

3A.7 Doctrine of Indoor Management and Exceptions to Doctrine of Indoor Management

While the doctrine of "constructive notice" seeks to protect the company against the outsiders, the principle of indoor management operates to protect the outsiders against the company.

Case Law:

In *Royal British Bank v. Turquand*, the directors of a banking company were authorized by the articles to borrow on bonds such sums of money as should from time to time, by resolution of the company in general meeting, be authorized to borrow. The directors gave a bond to Turquand without the authority of any such resolution. It was held that Turquand could sue the company on the strength of the bond, as he was entitled to assume that the necessary resolution had been passed. Lord Hatherly observed: "Outsiders are bound to know the external position of the company but are not bound to know its indoor management"

EXCEPTIONS TO THE DOCTRINE OF INDOOR MANAGEMENT

- ◆ **Where the outsider had knowledge of irregularity :** The rule does not protect any person who has actual or even an implied notice of the lack of authority of the person acting on behalf of the company. If a person knowing fully that directors do not have the authority to make the transaction but still enters into it cannot seek protection under the rule of indoor management.
- ◆ **No knowledge of memorandum and articles:** The rule cannot be invoked in favour of a person who did not consult the memorandum and articles. Thus, did not rely on them.
- ◆ **Forgery:** The rule of indoor management does not extend to transactions involving forgery or to transactions which are otherwise void or illegal *ab initio*. In the case of Forgery it is not that there is absence of free consent but there is no consent at all.
- ◆ **Negligence:** 'doctrine of indoor management', in no way, rewards those who behave negligently. Where an officer of a company does something which shall not ordinarily be within his powers, the person dealing with him must make proper enquiries and satisfy himself as to the officer's authority.

QUESTION

Ques 1: While the doctrine of constructive notice seeks to protect the company against the outsider, the doctrine of indoor management operates to protect the outsiders against the company. Elucidate.

Hint: Refer Topic 3A. 7 Doctrine of Indoor Management and Exceptions to Doctrine of Indoor Management

3A.8 Constructive Notice of Memorandum and Articles

- ◆ The memorandum and articles, when registered, become public documents and can be inspected by anyone on payment of nominal fee. So every person who contemplates entering into a contract with a company has the means of ascertaining and is consequently presumed to know, not only the exact powers of the company but also the extent to which these powers have been delegated to the directors and of any limitations placed upon the exercise of these powers.
- ◆ In other words, every person dealing with the company is deemed to have a "constructive notice" of the contents of its memorandum and articles.
- ◆ In fact he is regarded not only as having read those documents but also as having understood them according to their proper meaning. Consequently, if a person enters into a contract which is beyond the powers of the company as defined in the memorandum or outside the limits set on the authority of the directors. As a general rule; he cannot acquire any rights under the contract against the company.
- ◆ Outsiders dealing with incorporated bodies are bound to take notice of limits imposed on the corporation by the memorandum or other documents of constitution. Nevertheless, they are entitled to assume that the directors or other persons exercising authority on behalf of the company are doing so in accordance with the internal regulations as set out in the Memorandum & Articles of Association.
- ◆ The impact of this doctrine on practical relations is thus stated in HALSBURY: "A company is subject to the rule that, where the conduct of a party charged with a notice shows that he had suspicions of a state of facts the knowledge of which would affect his legal rights but that he deliberately refrained from making inquiries, he will be treated as having had notice though he is not entitled to claim for his own advantage."
- ◆ *In case of Kotla Venkataswamy v. Rammurthy; the articles required that all documents should be signed by the managing director, secretary and the working director on behalf of the company. A deed of mortgage was executed by the secretary and the working director only and the Court held that no claim would lie under such a deed. The Court said that the mortgagee should have consulted the articles before the deed was executed. Therefore, even though the mortgagee may have acted in good faith and the money borrowed applied for the purpose of the company, the mortgage was nevertheless invalid.*
- ◆ If the articles provide that a bill of exchange to be effective must be signed by two directors, a person dealing with the company must see that it is so signed otherwise he cannot claim under it.

QUESTION

Ques 1: The majority of the shareholders of Kasi Textiles Ltd., passed a special resolution to alter its Articles of Association and gave the directors a power to require any shareholder who is doing competing business with that of company's business to transfer his shares. Swaroop, who is carrying on a competing business, challenged the validity of the alteration. Decide whether Swaroop will succeed in the light of the provisions of the Companies Act, 2013 and decided case law.

Hint: Refer Topic 3A. 8 Constructive Notice of Memorandum and Articles.

3A.9 Doctrine of Alter Ego

It is used by the courts to ignore the status of shareholders, officers, and directors of a company in reference to their liability in their respective capacity so that they may be held personally liable for their actions when they have acted fraudulently or unjustly.

In *Lennards Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd.* [1915] AC 705, Viscount Haldane propounded the "alter ego" theory and distinguished it from vicarious liability. The House of Lords stated that the default of the managing director who is the "directing mind and will" of the company would be attributed to him and he be held for the wrong doing of the company.

QUESTIONS

Ques 1: Write a short note on : Doctrine of Alter Ego

Hint: Refer Topic 3A.9 Doctrine of Alter Ego.

Ques 2: Explain the doctrine of 'ALTER EGO' with suitable case law.

Hint: Refer Topic 3A.9 Doctrine of Alter Ego.

3A.10 Distinction between Memorandum and Articles

1. **Memorandum of association** is the charter of the company and defines the fundamental conditions and objects for which the company is granted incorporation.

Articles of association are the rules and regulations framed to govern this internal management of the company

2. **Clauses of the memorandum** cannot be easily altered. They can only be altered in accordance with the mode prescribed by the Act. In some of the cases, alteration requires the permission of the Central Government or the Court.

In the case of **articles of association**, members have a right to alter the articles by a special resolution. Generally, there is no need to obtain the permission of the Court or the Central Government for alteration of the articles.

3. **Memorandum of association** cannot include any clause contrary to the provisions of the Companies Act. **Articles of association** are subsidiary both to the Companies Act and the memorandum of association.

4. **Memorandum** generally defines the relation between the company and the outsiders.

Articles regulate the relationship between the company and its members and between the members *inter se*.

5. Acts done by a company beyond the scope of the **memorandum** are absolutely void and ultra vires and cannot be ratified even by unanimous vote of all the shareholders.

On the other hand, **acts of the directors beyond the articles can be ratified by the shareholders.**

Question For Practice

Ques 1: Distinguish between : Memorandum of Association & Articles of Association

Hint: Refer Topic 3A.10 Distinction between Memorandum and Articles.

PART II - ALTERATION OF CHARTER DOCUMENTS

Chapter Coverage

S. No.	Topic
3B.1	Introduction
3B.2	Alteration of Memorandum of Association
3B.3	Alteration of Articles of Association and Procedure of alteration of Articles of Association
3B.4	Effect of altered article
3B.5	Sample Resolutions
3B.6	Sample Notice

Regulatory Framework Coverage	
The Companies Act, 2013	
Section 2(56)	Definition of Memorandum
Section 2(5)	Definition of Articles
Section 4	Memorandum
Section 5	Articles
Section 7	Incorporation of Company
The Companies (Incorporation) Rules, 2014	
Rule 27	Notice and Verification of Change of Situation of the Registered Office.
Rule 28	Shifting of registered office within the same State
Rule 29	Alteration of Memorandum by Change of Name.
Rule 30	Shifting of Registered office from one State or Union Territory to another state .
Rule 31	Certified Copy of Central Government's Order.
Rule 32	Change of Objects for Which Money is Raised Through Prospectus.
The SEBI (LODR) Regulations, 2015	
3B.1 Introduction	
Memorandum of Association (MOA)	
<ul style="list-style-type: none"> ◆ Memorandum of association (MOA) is the charter of the company and defines the scope of its activities. ◆ As per section 4(6) of the Act, the Memorandum of a company shall be in respective forms specified in Tables A, B, C, D and E in Schedule I as may be applicable to such company. ◆ As per section 4(1) Memorandum contains following important clauses: <ol style="list-style-type: none"> 1. Name Clause which contains name of the Company; 2. Registered Office Clause which contains State of India where registered office of the company is situated; 3. Objects Clause of the Company and matters considered necessary in furtherance thereof; 4. Liability Clause which defines liability of members of the company; and 5. Share Capital Clause which defines Authorized share capital of the company; 6. Subscription clause which prescribes the number of shares which the subscribers to the memorandum agree to subscribe which shall not be less than one share 	
Articles of Association (AOA)	
<ul style="list-style-type: none"> ◆ An article of Association (AOA) of the company is a document which regulates the internal management of the company. It shall not prevent a company from including such additional matters in its articles as may be considered necessary for its management provided such matters are not inconsistent with the provisions of the Companies Act, 2013. ◆ The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with. ◆ The AOA shall be in respective forms specified in Tables F, G, H, I and J as may be applicable to such company. 	
Important Terms	
<ul style="list-style-type: none"> ◆ "Alter" or "Alteration": As per section 2(3) of the Companies Act, 2013 "Alter" or "alteration" includes the making of additions, omissions and substitutions. ◆ Articles: As per section 2(5) of the Companies Act, 2013 "articles" means the articles of association of a company as originally framed or as altered from time to time or applied in pursuance of any previous company law or of this Act. 	

◆ **Memorandum:** As per section 2(56) of the Companies Act, 2013 "memorandum" means 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 of this Act.

3B.2 Alteration of Memorandum of Association

The memorandum of association of a company may be altered in the following respects:

- ◆ Alteration in the Name clause [Section 13(2) and (3)]
- ◆ Alteration in the Registered Office Clause [Section 13(4) (5) and (7)]
- ◆ Alteration in the Object clause [Section 13(8) and (9)]
- ◆ Alteration in the Capital clause [Section 61 read with section 64]

3B.3 Alteration of Memorandum of Association

Alteration of MOA Due To Change in Name Clause [Section 13 (2) and (3)]

Methods of changing the name	<p>After incorporation, a company can change their name through following methods:</p> <ul style="list-style-type: none"> (a) Conversion of private limited company into public limited company and thereby change in the name from private to public, or (b) Conversion of public limited company into private limited company and thereby change in the name from public to private, or (c) Change of name from ABC limited to XYZ limited. <p>As per Section 13 of the Companies Act, 2013, the name of the company can be changed by passing a Special Resolution by the members of the company in their general meeting and with the approval of the Central Government. But on the other hand, if the change relates to the addition/deletion of the words "private" to the name, then approval of Central Government is not required.</p>
Procedure for Alteration in Name Clause of Memorandum	<p>1. Calling of Board Meeting:</p> <ul style="list-style-type: none"> ◆ Issue notice in accordance with the provisions of section 173(3) of the Companies Act, 2013, for convening a meeting of the Board of Directors to consider the reason for changing name of the company and get its approval for change in name of the Company. ◆ Pass a Board resolution authorizing the Company Secretary/ Director to make the required application to the Registrar of Companies. <p>2. Seeking name availability for proposed new name from the ROC :</p> <ul style="list-style-type: none"> (a) As per section 4(4) of the Act read with Rule 9 of Companies (Incorporation) Rules, 2014, application for the reservation/availability of name shall be in RUN along with prescribed fee of Rs.1,000/- In selection of a Company name, it should be in accordance with name guidelines given in Rule 8 of Companies (Incorporation) Rules, 2014. <p>However, as per the Rule-9 substituted by the Companies (Incorporation) Amendment Rules, 2014, An application for reservation of name shall be made through the web service available at www.mca.gov.in by using RUN (Reserve Unique Name) along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014, which may either be approved or rejected, as the case may be, by the Registrar, Central Registration Centre.</p> <ul style="list-style-type: none"> (b) The application in Form –RUN to the ROC with required attachment. <p>3. Obtaining ROC Approval and Name Availability Letter: After approval of name, ROC will issue a name availability letter w.r.t. approval for availability of name for a proposed company. As per section 4(5), upon receipt of an application for reservation of name, the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of twenty days from the date of approval or such other period as may be</p>

	<p>prescribed. However, in case of an application for reservation of name or for change of its name by an existing company, the Registrar may reserve the name for a period of sixty days from the date of approval.</p> <p>On receipt of approval of name, the Company Secretary/Director shall convene another Board meeting:</p> <ul style="list-style-type: none"> (a) To take note of the name approval received from ROC. (b) To fix date, time and place for holding Extraordinary General meeting (EGM) to get approval of shareholders, by way of Special Resolution, for amendment in Name clause of Memorandum. This amendment in Name clause of Memorandum shall be in accordance with the requirement of section 13 of the Companies Act, 2013. (c) To approve notice of EGM along with Agenda and explanatory statement pursuant to section 102 of the Companies Act, 2013 to be annexed to the notice of General Meeting as per section 102(1) of the Companies Act, 2013. (d) To authorize the Director or Company Secretary to issue Notice of the Extraordinary General meeting (EGM) as approved by the board. <p>4.Issue of Notice of Extraordinary General Meeting (EGM):</p> <ul style="list-style-type: none"> (a) Issue Notice of the EGM to all the Members, Legal Representatives of any deceased member or assignee of an insolvent member, Directors and the Auditors of the company in accordance with the provisions of Section 101 of the Companies Act, 2013; (b) In the case of listed companies, the provisions of SEBI (LODR) Regulations shall be applicable; (c) A general notice of the proposed general meeting may also be published in newspapers. <p>5. Holding of Extraordinary General Meeting: Hold the Extraordinary General meeting on the fixed date and pass the necessary Special Resolution under section 13(1) of the Companies Act, 2013, for change in the Name clause of Memorandum.</p> <p>6. ROC filings: File Form MGT -14 (certified by a Practicing Professional i.e. CS/CA/CWA) within 30 days of passing the resolution with prescribed fees and along with following attachments:</p> <ul style="list-style-type: none"> ◆ Certified True copy of Special Resolution along with explanatory statement pursuant to Section 102 ◆ Altered Memorandum of Association ◆ Certified True copy of Special Resolution along with explanatory statement pursuant to Section 102 for the Alteration of Articles pursuant to alteration in the name clause of the Memorandum of Association of the company ◆ Altered Articles of Association. <p>Also, the application for the fresh certificate of incorporation in the new name of the company be made in form INC-24 to the Registrar within the 30 days along with the prescribed fees and the following document should be attached along with such application:-</p> <ul style="list-style-type: none"> ◆ Minutes of the member's meeting ◆ The copy of the Certificate of Incorporation along with the copy of the Altered MOA and AOA of the company may be attached to the form INC-24 as an optional attachment. <p>7. After scrutiny of the documents filed, the ROC shall issue a fresh certificate of incorporation digitally signed in Form INC-25.</p> <p>8. Intimate all concerned persons/authorities about the changed name of the Company, particularly the Stock Exchanges, National Securities Depository Ltd., Central Depository Services (India) Ltd., statutory and other authorities like Inspector of Factories, Regional Provident Fund Commissioner, suppliers of raw materials, customers, banks etc.</p>
--	---

	<p>9. Arrange for a new Common Seal and have the same adopted at a meeting of the Board of directors and keep it under safe custody and get stationery printed with the new name and/or affix rubber stamp of the new name on all the existing documents. However, it is also to be noted that having the common seal is no longer mandatory requirement.</p> <p>10. Get the new name of the Company painted on all the signboards or name boards wherever they are displayed.</p> <p>11. Correct all records, registers including the Register of Members, every copy of Memorandum and Articles of Association, other books and documents pertaining to the company's business and affairs to display the new name.</p> <p>12. It is also to be noted that in every document as above-mentioned the company shall paint, affix or print as the may be the former name or names so changed during the period of last two years. (First proviso to Section 12(3)).</p>
Name change requirement under regulation 45 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015	<p>All listed companies which decide to change their names shall be required to comply with the following conditions:</p> <ol style="list-style-type: none"> 1. A time period of at least 1 year should have elapsed from the last name change; 2. At least 50% of its total revenue in the preceding 1 year period should have been accounted for by the new activity suggested by the new name; or, 3. The amount invested in the new activity/project (Fixed Assets + Advances + Work in Progress + Inventories + Investments+ Trade Receivables + Cash & Cash equivalents) is at least 50% of the assets of the company. The 'advances' shall include only those extended to contractors and suppliers towards execution of project, specific to new activity as reflected in the new name; 4. To confirm the compliance, the company would have to submit auditor's certificate to the stock exchange; 5. The new name along with the old name shall be disclosed through the web sites of the respective stock exchange/s where the company is listed for a continuous period of one year, from the date of the last name change (Regulation 46). <p>If any listed entity has changed its activities which are not reflected in its name, it shall change its name in line with the activities within a period of six months from the change of activities in compliance of provisions as prescribed in the Companies Act, 2013 (Regulation 45)</p>
Effect of Change	<ul style="list-style-type: none"> ◆ The change of name shall not affect any rights or obligations of the company or render defective any legal proceedings by or against it, and any legal proceedings which might have been continued or commenced by or against the company in its former name may be continued by or against the company in its new name. ◆ However, where a company changes its name and the new name has been registered by the Registrar, the commencing of legal proceedings in the former name is not valid [<i>Malhati Tea Syndicate Ltd. v. Revenue Officer, (1973) 43 Com Cases 337</i>]. ◆ In spite of a change in name the entity of the company continues. The company is not dissolved nor does any new company come into existence. If any legal proceeding is commenced, after change in the name, against the company in its old name, the company should be treated as if it is not in existence. It is not an incurable defect and the plaint can be amended to substitute the new name [<i>Pioneer Protective Glass Fibre (P) Ltd. v. Fibre Glass Pilkington Ltd., (1986) 60 Com Cases 707 (Cal.)</i>].
Rule 33A. Allotment of a new name to the existing company under section 16(3)	<ul style="list-style-type: none"> ◆ In case a company fails to change its name or new name, as the case may be, in accordance with the direction issued under sub-section (1) of section 16 of the Act within a period of three months from the date of issue of such direction, the letters "ORDNC" (which is an abbreviation of the words "Order of Regional Director Not Complied"), the year of passing of the direction, the serial number and the existing Corporate Identity Number

of the Companies Act, 2013	<p>(CIN) of the company shall become the new name of the company without any further act or deed by the company, and the Registrar shall accordingly make entry of the new name in the register of companies and issue a fresh certificate of incorporation in Form No.INC-11C:</p> <p>Provided that nothing contained in sub-rule (1) shall apply in case e-form INC-24 filed by the company is pending for disposal at the expiry of three months from the date of issue of direction by Regional Director, unless the said e-form is subsequently rejected.</p> <ul style="list-style-type: none"> ◆ A company whose name has been changed under sub-rule (1) shall at once make necessary compliance with the provisions of section 12 of the Act and the statement, "Order of Regional Director Not Complied (under section 16 of the Companies Act, 2013)" shall be mentioned in brackets below the name of company, wherever its name is printed, affixed or engraved: <p>Provided that no such statement shall be required to be mentioned in case the company subsequently changes its name in accordance with the provisions of section 13 of the Act.</p>
---	---

ALTERATION OF SITUATION OF REGISTERED OFFICE CLAUSE IN THE MOA

[SECTION 13(4), (5) AND (7)]

Shifting of Registered Office within the local limits of city, town or village	No alteration required
Shifting of Registered Office outside the local limits of the city, town or village (within the same state) and within the jurisdiction of the same ROC	No alteration required
Shifting of Registered Office Outside the local limits of the city, town or village (within the same state) but from the jurisdiction of one ROC to another	No alteration required
Shifting of Registered Office from one state to another	MOA to be altered

(i) Change within the local limits of same town:

- ◆ The change of registered office of the company within the local limits can be implemented by the Board of Directors.
- ◆ A company by passing Board Resolution can change the situation of its registered office within the limits of same city, town or village. An intimation of the change of registered office and verification of registered address shall be given to the registrar in e-form INC-22, within 30 days of such change.
- ◆ This does not involve alteration of memorandum.

(ii) Change outside the local limits of any city, town or village:

According to Section 12(5) of the Act except on the authority of a special resolution passed by a company, the registered office of the company shall not be changed:

- (i) in the case of an existing company, outside the local limits of any city, town or village where such office is situated at the commencement of this Act or where it may be situated later by virtue of a special resolution passed by the company; and
- (ii) in the case of any other company, outside the local limits of any city, town or village where such office is first situated or where it may be situated later by virtue of a special resolution passed by the company.

In case the company is eligible for conducting business through postal ballot any change in place of registered office outside the local limits of any city, town or village the same shall be transacted only by means of voting through a Postal Ballot [Rule 22 of Companies (Management and Administration) Rules, 2014].

(iii) Change within the same State from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies:

No company shall change the place of its registered office from the jurisdiction of one Registrar to the jurisdiction of another Registrar within the same State unless such change is confirmed by the Regional Director. Proviso to Section 12(5) of the Act provides that confirmation by the Regional Director will be necessary for changing

registered office of a company from one place to another if the change of registered office is from the jurisdiction of one Registrar to the jurisdiction of another within the same State.

Rule 28 of Companies (Incorporation) Rules 2014 states that an application seeking confirmation from the Regional Director for shifting the registered office within the same State from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies, shall be filed by the company with the Regional Director in Form No.INC.23 along with the fee and following documents-

- (a) Board Resolution for shifting of registered office;
- (b) Special Resolution of the members of the company approving the shifting of registered office;
- (c) a declaration given by the Key Managerial Personnel or any two directors authorised by the Board, that the company has not defaulted in payment of dues to its workmen and has either the consent of its creditors for the proposed shifting or has made necessary provision for the payment thereof ;
- (d) a declaration not to seek change in the jurisdiction of the Court where cases for prosecution are pending;
- (e) acknowledged copy of intimation to the Chief Secretary of the state as to the proposed shifting and that the employees interest is not adversely affected consequent to proposed shifting.

The Regional Director shall examine the application and the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within fifteen days of the receipt of application complete in all respects.

The certified copy of order of the Regional Director, approving the alteration of memorandum for transfer of registered office company within the same State, shall be filed in Form No.INC-28 along with fee with the Registrar of State within thirty days from the date of receipt of certified copy of the order.

(iv) Change of Registered office from one State to another:

- ◆ The change of registered office from one State to another State involves alteration of memorandum, and the change can be effected by a special resolution passed by the company which must be confirmed by the Central Government on an application made to it [Section 13(4)].
- ◆ Further, the alteration of the provisions of the memorandum relating to the change of the place of its registered office from one State to another shall not take effect unless it is confirmed by the Central Government on an application made to it in the prescribed form and manner [Section 13(4)].
- ◆ 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 a 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. [Section 13(5)].
- ◆ A company shall, in relation to any alteration of its memorandum involving change of registered office from one State to another, file with the Registrar the special resolution passed by it in MGT- 14 [Section 13(6)].
- ◆ Where an alteration of the memorandum results in the shifting 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 30 days time from the receipt of the certified copy of the order and in INC-28, 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. [Section 13(7) read with Rule 31 of the Companies (Incorporation) Rules, 2014].

Procedure is to be followed for alteration of objects clause of MOA

1. Send notice of Board Meeting at least seven days before the date of Board Meeting for:
 - ◆ Shifting of Registered office form one state to another state.
 - ◆ Approval of Notice for Calling of Extraordinary General Meeting (EGM) for passing special resolution for altering the memorandum.

- ◆ Authorization to Director/ Company Secretary to sign the documents.
 - ◆ Engagement of Company Secretary to represent the company before Regional Director (RD).
2. In Case of Listed Company, at least 7 days before of the Board Meeting, publish notice of the board meeting in the newspaper. Simultaneously, send the copies of said publication to the Stock exchanges.
3. Hold the Board Meeting and approve the :
- ◆ Resolution Shifting of Registered office from one state to another state.
 - ◆ Notice for Calling of EGM for passing special resolution for shifting of registered office.
 - ◆ Authorization to Director/ Company Secretary to sign the documents.
 - ◆ Engagement of Company Secretary to represent the company before RD.
4. Intimate the Stock Exchanges about passing of resolution in the board meeting at the earliest within 24 hours of the occurrence of such event or information and in case of any delay the disclosure should be made along with an explanation for such delay [Regulation 30(6) of SEBI(LODR)Regulations, 2015].
5. Send Notice of the EGM to at least 21 days clear days before the members of the company. Send copies of the notice to the stock exchanges simultaneously. Also, an intimation to be sent to the concerned stock exchanges that the notice of the extraordinary general meeting was sent to the shareholders of the company at the earliest within 24 hours of the occurrence of such event or information and in case of any delay the disclosure should be made along with an explanation for such delay. [Regulation 30(6) of SEBI (LODR) Regulations, 2015].
6. Publish the notice of EGM in newspaper and send the copy of such publication to the stock exchanges.
7. Hold EGM of the company and pass the special resolution for shifting of registered office from one state to another state and authorize Director/ Company Secretary to sign/ file/ deal with department.
8. Intimate about the proceedings of the EGM and the amendments to the memorandum and articles of association to the stock exchanges at the earliest within 24 hours of the conclusion of such extraordinary general meeting and in case of any delay the disclosure should be made along with an explanation for such delay. [Regulation 30(6) of SEBI (LODR) Regulations, 2015].
9. File e-form MGT-14 with ROC for registering special resolution passed in the EGM within 30 days from the date of passing such resolution.
10. Prepare the application for shifting of registered office to be filed to RD. File a copy of the application along with all annexures to ROC in form INC-23 along with attachment.
11. The company shall, not more than thirty days before the date of filing the application in Form No. INC-23 —
- (a) advertise in the Form No.INC-26 in the vernacular newspaper in the principal vernacular language in the district and in English language in an English newspaper with the widest circulation in the State in which the registered office of the company is situated and a copy of advertisement shall be served on the Central Government immediately on its publication.
 - (b) serve, by registered post with acknowledgement due, individual notice, to the effect set out in clause (a) on each debenture-holder and creditor of the company; and
 - (c) serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar and to the Securities and Exchange Board of India, in the case of listed companies and to the regulatory body, if the company is regulated under any special Act or law for the time being in force.
12. Here shall be attached to the application a duly authenticated copy of the advertisement and notices issued under sub-rule (5), a copy each of the objection received by the applicant, and tabulated details of responses along with the counter response from the company received either in the electronic mode or in physical mode in response to the advertisements and notices issued under sub-rule (5).

13. Here no objection has been received from any person in response to the advertisement or notice under sub-rule (5) or otherwise, the application may be put up for orders without hearing and the order either approving or rejecting the application shall be passed within fifteen days of the receipt of the application.
14. Here an objection has been received-
 - (i) the Central Government shall hold a hearing or hearings, as required and direct the company to file an affidavit to record the consensus reached at the hearing, upon executing which, the Central Government shall pass an order approving the shifting, within sixty days of filing the application.
 - (ii) where no consensus is reached at the hearings the company shall file an affidavit specifying the manner in which objection is to be resolved within a definite time frame, duly reserving the original jurisdiction to the objector for pursuing its legal remedies, even after the registered office is shifted, upon execution of which the Central Government shall pass an order confirming or rejecting the alteration within sixty days of the filing of application.
15. The order passed by the Central Government confirming the alteration may be on such terms and conditions, if any, as it thinks fit, and may include such order as to costs as it thinks proper. However, the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.
16. On completion of such inquiry, inspection or investigation as a consequence of which no prosecution is envisaged or no prosecution is pending, shifting of registered office shall be allowed.
17. The change of address of the registered office shall be effective from the date of issue of registration certificate by the ROC of the State to which the registered office is shifted.
18. Once the order is passed by the RD, approving shifting of the registered office, file form INC- 22 with the ROC along with supportive documents –
 - ◆ the registered document of the title of the premises of the registered office in the name of the company; or
 - ◆ the notarized copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;
 - ◆ the authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office; and
 - ◆ the proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months;
 - ◆ Copy of order passed by the competent Authority.

If the documents are in order, Registrars of both states will approve the forms and the change in registered office will be updated in register of companies with the Registrar and new Certificate of Incorporation will be issued by the Registrar of the State within 30 days, where the company's registered office is going to be shifted.
19. The certified copy of the order of the Central Government, approving the alteration of the memorandum for transfer of registered office of the company from one State to another, shall be filed in Form No. INC-28 along with the fee as with the Registrar of the State within thirty days from the date of receipt of certified copy of the order.

Steps after obtaining new certificate from ROC:

- ◆ Make alteration in the MOA with respect to the state in every copy of Memorandum.
- ◆ Each stationery, banner, signboard, bills, invoice etc. should show the new address and necessary advice should be sent to shareholders, debenture holders, and other concerned parties.
- ◆ Necessary changes are required to be made in the letterheads, books, records etc. of the company. The necessary changes are required to be made in PAN, TAN or various returns under the GST etc. and inform all the Government departments, banks, customers and others wherever required.
- ◆ Cases under the erstwhile Companies Act 1956.
- ◆ No notice of the petition is required to be served on the State, but in view of the wider language of Section 17 [Corresponds to section 13 of the Companies Act, 2013] Central Government may direct notice to be served on the State if it is of the view that the interest of the State will be affected by the alteration. Where the alteration is affected by changing the registered office from one State to another State, the loss of revenue in one State would be accompanied by increase in revenue in the other and in such a case the interest of a particular State ought not to be considered but it is the interest of the country as a whole which should be considered. The decision to shift the registered office of the company to another state being a domestic matter rests with shareholders and the company is the best judge of how to run its business more economically, efficiently or conveniently, even though it would result in loss of revenue to the State. [*Satyashree Balaji Wires & Cables (P) Ltd., In re (2006) 71 CLA 231 (CLB)*].
- ◆ A company was allowed to shift its registered office from Bihar to West Bengal in spite of the fact that Bihar Government had granted lease of land for the company's factory on the condition that it would not shift its registered office. The CLB also held that interest free loans, sales tax, electricity and other subsidies would have no bearing on the shifting [*Usha Beltron Re, (2000) 27 SCL 124*].

Employees' right to object in case of shifting of registered office from one state to another -

Some legal cases:

- ◆ In the case of *Bharat Commerce and Industries Ltd., Re, (1973) 43 Com Cases 162 (Cal.)*, it was held that employees' union, which was a registered body and which represented quite a number of the employees at the registered office of the company, would have the legal standing to appear before the court and oppose the application on the ground that their interests are likely to be prejudicially affected if the resolution for shifting the registered office of the company from one state to another is confirmed by the court. However, it was held that the employees' union cannot oppose on the ground that there would be loss of revenue or unemployment in the State or that the meeting at which the special resolution was passed was itself not valid.
- ◆ In the case of *Metal Box India Ltd. Re, (2000) 37 CLA 15*, it was held that where the shifting of the registered office was in accordance with a scheme approved by the BIFR, it was held that the workers had no right of objection because their continuation in the company's employment was ensured unless, of course, a worker preferred voluntary retirement.
- ◆ A different dimension to the employees' right can be seen in the case of *Kwality Ice Creams (India) P Ltd., Re, (2009) 91 SCL 231 : (2009) 148 Com Cases 631 : (2010) 98 CLA 218 (CLB)*. In that case, the company's petition for shifting its registered office from West Bengal to Delhi was opposed by two employees of the head office on the ground that their action against the company would be prejudiced.
- ◆ The CLB said that the facility for litigation is not a valid ground to stall shifting. There was no restraint order from any Court against the proposed shifting. The Company Law Board allowed shifting subject to the condition that the interest of none of the employees at the registered office would be prejudiced by retrenchment or otherwise.

ALTERATION OF MOA DUE TO CHANGE IN OBJECT CLAUSE [SECTION 13(8) AND (9)]

Procedure is to be followed for alteration of objects clause of MOA under section 13 read with Rule No.32 of Companies (Incorporation) Rules, 2014 and Rule No. 22 (Postal Ballot, if applicable) of Companies (Management and Administration) Rules, 2014:

1. Issue not less than 7 days' notice and agenda of Board meeting, or a shorter notice in case of urgent business, in writing to every director of the company at his address registered with the company and call a Board Meeting to consider the proposal of alteration of objects clause of memorandum of association of company. [Section 173(3)]. Also follow the procedure prescribed for issuing and signing of notice of Board Meeting.
2. Hold a meeting of Board of Directors-
 - ◆ To pass the Board Resolution for approving the proposed amendments to the objects clause of MOA of the company subject to the approval of shareholders in General meeting.
 - ◆ To delegate authority to any one director of the company to sign, certify and file the requisite forms with ROC and to do all such acts and deeds as may be necessary to give effect to the proposed alteration.
 - ◆ To fix day, date, time and venue for holding the general meeting of the Company for passing a special resolution as required by section 13.
 - ◆ To approve the draft notice of general meeting along with explanatory statement annexed to the notice as per requirement of the Section 102.
 - ◆ To authorize the Director or Company Secretary to sign and issue notice of the general meeting.
3. If the company has raised money from public through prospectus and has any unutilized amount out of the money so raised, it shall follow the following additional steps for altering the objects clause of MOA of the Company:
 - (a) Pass special resolution for alteration of Object clause of Memorandum of Association by means of Postal Ballot only.
 - (b) Notice of the resolution for altering the objects shall contain the following particulars: total money received;
 - ◆ total money utilized for the objects stated in the prospectus;
 - ◆ unutilized amount out of the money so raised through prospectus,
 - ◆ particulars of proposed alteration/ change in the objects;
 - ◆ justification for the alteration/change;
 - ◆ amount proposed to be utilized for the new objects;
 - ◆ estimated financial impact of the proposed alteration on the earnings and cash flow of the company;
 - ◆ other relevant information which is necessary for the members to take an informed decision on the proposed resolution;
 - ◆ Place from where any interested person may obtain a copy of the notice of the resolution to be passed.
 - (c) Publish an advertisement, giving above mentioned details of special resolution to be passed, which shall be published simultaneously with the dispatch of postal ballot notices to shareholder at least once in a vernacular newspaper in the principal vernacular language and in English language in an English newspaper circulating at the place where the registered office of the company is situated and place it on the website of the Company if any, along with the justification for such change.

- (d) Give an opportunity to the dissenting shareholders to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.
4. Send notice of the General meeting proposing the aforementioned special resolution to all the shareholders, directors, auditors and other persons entitled to receive it, by giving not less than clear 21 days' notice or shorter notice, if consent for shorter notice is given by at least 95% of members entitled to vote at such meeting, either in writing or through electronic mode in accordance with Section 101 of the Act.
5. Hold a shareholders meeting on the date for the meeting and pass the Special Resolution for altering the object clause of Memorandum of Association by 3/4th majority in accordance with Section 114 (2) of the Act.
- Special Resolution shall be passed by means of Postal ballot, if company has more than 200 members or the company has raised money from public through prospectus and still has any unutilized amount out of the money so raised.
6. Follow the procedure prescribed for preparing, signing and compiling of minutes of General Meeting.
7. After passing special resolution, file a certified copy of special resolution with the Registrar in form MGT- 14 under section 117 of the Act within 30 days of passing Special Resolution in general meeting along with the following attachments:
- (a) Copy of Special Resolution passed along with explanatory statement.
 - (b) Notice for convening the General Meeting of the Company.
 - (c) Altered Memorandum of Association.
 - (d) Shorter Notice Consent Letters from the members in case the General Meeting was convened and held at a shorter notice.
 - (e) Any other attachment as may be considered as necessary in this regard.
 - (f) The Registrar shall register the alteration of objects in Memorandum and certify the registration within a period of 30 days from the date of filing of the special resolution. [Section 13(9)]
 - (g) Every Alteration made in the memorandum of the company shall be noted in every copy of the Memorandum of Association. [Section 15(1)].

Notes:

1. *No alteration of object clause of Memorandum of Association shall have any effect until it has been registered in accordance with the provisions of this section. [Section 13(10)]*
2. *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. [Section 13(11)]*

ALTERATION OF LIABILITY CLAUSE

According to section 13(1) of the Act, a company may, by a special resolution and after complying with the procedure specified in this section, alter the provisions of its memorandum. It means that a company can change the liability clause of its memorandum of association by passing a special resolution. Further section 13(6)(a) provides that a company shall, in relation to any alteration of its memorandum, file with the Registrar the special resolution passed by the company under section 13(1).

ALTERATION OF CAPITAL CLAUSE IN MOA [SECTION 61 READ WITH SECTION 64]

Types of alteration of capital clause in the general meeting of a company limited by shares as per section 61(1) of the Companies Act, 2013 can be enumerated as below:-

- (a) increase its authorised share capital by such amount as it thinks expedient;
- (b) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares;

Provided that no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;

- (c) convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;
- (d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

All the above alterations do not require the confirmation by the Tribunal except that alteration relating to consolidation and division which results in changes in the voting percentage of shareholders shall not take effect unless it is approved by the Tribunal on an application made in the prescribed manner.

These alterations are, however, required to be notified and a copy of the resolution should be filed with the Registrar within 30 days of the passing of the resolution along with an altered memorandum. [Section 64(1)]

Note: *The cancellation of shares under section 61(1) of the Act shall not be deemed to be a reduction of share capital. Section 64(1) provides that a notice is required to be given to the Registrar for alteration for share capital.*

Procedure for altering the Memorandum of Association for increasing the Authorised Capital of the Company under sections 61 and 64 of the Companies Act, 2013 read with Rule No. 15 of Companies (Share Capital and Debentures) Rules, 2014

1. Check for Authorization in Articles: Section 61 of the Companies Act, 2013, mandates that for increasing the Authorised share capital, authorization in Articles of Association is a pre-condition.

If there is no such provision then the company has to take steps for alteration of its Articles of Association in accordance with the provision of Section 14 of the Companies Act, 2013, so as to insert the clause enabling increase in the authorised share capital.

2. Calling of Board Meeting: Issue notice in accordance with the provisions of section 173(3) for convening a meeting of the Board of Directors. Main agenda for this Board meeting would be:

- (a) To get in-principal approval of Directors for Increase in authorised share Capital;
- (b) Fix date, time and place for holding Extraordinary General meeting (EGM) to get approval of shareholders, by way of Ordinary Resolution, for amendment in authorised share Capital clause of Memorandum of Association. This amendment in authorised share Capital clause of Memorandum of Association shall be in accordance with the requirement of section 61 of the Companies Act, 2013;
- (c) To approve notice of EGM along with Agenda and explanatory statement pursuant to be annexed to the notice of General Meeting as per section 102(1) of the Companies Act, 2013;
- (d) To authorize the Director or Company Secretary to issue Notice of the Extraordinary General meeting (EGM) as approved by the board under clause 2(c) mentioned above.

3. Issue Notice of the EGM to all members, legal representative of deceased member, assignee of an insolvent member if any, directors and the auditors of the company in accordance with the provisions of Section 101.

4. Holding of general meeting: To hold the EGM on fixed date and pass the necessary ordinary resolution under section 61(1)(a) for increase in the authorized share capital of the Company.

5. ROC Form filing: File Form SH-7 within 30 days of passing of Ordinary Resolution with the concerned ROC, with prescribed fees and along with following attachments as desired by section 64 read with Rule 15 of the Companies (Share Capital and Debentures) Rules, 2014:
- (a) Notice of EGM;
 - (b) Certified True copy of Ordinary Resolution along with the explanatory statement pursuant to Section 102 of the Act;
 - (c) Altered Memorandum of Association.
6. Concerned ROC will check the e-form and attached documents and will approve the increase in authorized share capital.
7. The company shall file a notice in the prescribed form with the Registrar within a period of 30 days of alteration to its share capital along with a copy of altered Memorandum. [Section 64].
8. No need to pass Special Resolution for increase in authorised share capital. However, in case the alteration of capital clause of the Memorandum of Association of the company requires the alteration of the Articles of Association of the company then, the special resolution for the alteration of articles of association of the company be passed and form MGT-14 should also be filed for the filing of copy of such special resolution with the concerned Registrar within 30 days from the date of passing of such resolution along with the prescribed fees.

ALTERATION OF ARTICLES OF ASSOCIATION OF A COMPANY

- ◆ Every alteration of the articles under this section and a copy of the order of the Central Government approving the alteration as per section 14(1) shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same. [Section 14(2)].
- ◆ Any alteration of the articles registered under section 14(2) shall, subject to the provisions of this Act, be valid as if it were originally in the articles. [Section 14(3)].
- ◆ The right to alter the articles is so important that a company cannot in any manner, either by express provisions in the articles or by independent contract, deprive itself of the powers to alter its articles [*Walker v. London Tramway Co. (1879) 12 Ch. D. 705*].
- ◆ However, in spite of the power to alter its articles, a company can exercise this power subject only to certain limitations. These are:
 - I. The alteration must not exceed the powers given by the memorandum. In the event of conflict between the memorandum and the articles, it is the memorandum that will prevail.
 - II. The alteration must not be inconsistent with any provisions of the Companies Act or any other statute. Similarly, where a resolution was passed expelling a member and authorizing the director to register the transfer of his shares without an instrument of transfer, the resolution was held to be invalid as being against the provisions of the Act [*Madhava Ramachandra Kamath v. Canara Banking Corporation [1941] 11 Com Cases 78 (Mad)*].

On the other hand, articles may impose on the company conditions stricter than those provided under the law; for example, they may provide that a matter should be passed by a special resolution when the Act requires it to be passed by an ordinary resolution.

 - III. The Articles must not include anything which is illegal or opposed to public policy.
 - IV. The alteration must be *bona fide* for the benefit of the company as a whole.
 - V. The alteration must not constitute a fraud on the minority by a majority. If the alteration is not for the benefit of the company as a whole, but for majority of shareholders, then the alteration would be bad. In other words, an alteration to the articles must not discriminate between the majority shareholders and the minority shareholders so as to give the former an advantage over the latter. [*All India Railway Mens Benefit Fund v. Jamadar Baheshwarnath Bali (1945) 15 Com Cases 142 (Nag.)*]

In *Mathrubhumi Printing & Publishing Co. Ltd. v. Vardhaman Publishers Ltd.* [1992] 73 Com Cases 80 (Ker.), the Hon'ble Kerala High Court held that no majority of shareholders can, by altering the article retrospectively, affect, the prejudice of the consenting owners of shares, the right already existing under a contract nor take away the right accrued, e.g., after a transfer of share is lodged, the company cannot have a right of lien so as to defeat the transfer.

- VI.** Articles cannot be altered so as to compel an existing member to take or subscribe for more shares or in any way increase his liability to contribute to the share capital, unless he gives his consent in writing (Section 38 of the Companies Act, 1956).
- VII.** By effecting alteration in its articles, a company cannot defeat escape from its contractual obligation with any person. The company will always be liable in such a case.
- VIII.** The Articles of Association cannot be altered so as to have retrospective effects. The articles only operate from the date of the amendment [*Pyare Lal Sharma v. Managing Director, J.K. Industries Ltd.* (1989) 3 Comp LJ (SL) 70].
- IX.** The alteration must not be inconsistent with an order of the Court under section 397 or 398 and 404 of the Companies Act, 1956.

Subject to the foregoing conditions, the Articles in a company can be altered and no clause can be included in the Articles that it is not alterable. Persons who become members of a company have no right to assume that the Articles will always remain in a particular form.

Manner of Altering AOA

A Company may alter its Articles in accordance with the above provisions in any of the following manner:

- (a) by adoption of new set of articles;
- (b) by addition/insertion of a new Clause/s;
- (c) by deletion of a Clause/s ;
- (d) by amendment of a specific Clause/s ;
- (e) by substitution of a specific Clause/s.

Procedure for alteration of AOA under section 14

1. Issue not less than 7 days' notice and agenda of Board meeting, or a shorter notice in case of urgent business, in writing to every director of the company at his address registered with the company and call a Board Meeting to consider the proposal of alteration of articles of association of a company. (Section 173(3). Also follow the procedure prescribed for issuing and signing of notice of Board Meeting.)
 - ◆ To consider and decide the articles required to be changed/alter.
 - ◆ To pass the necessary Board Resolution for approving proposal of alteration of articles of association of a company subject to the approval of Shareholders.
 - ◆ To delegate authority to any one director of the company to sign, certify and file the requisite forms with Registrar of Companies or any statutory authority to do all such acts, deeds as may be necessary to give effect to the proposed alteration.
 - ◆ To fix day, date, time and venue for holding general meeting of the Company for passing a special resolution as required by section 14(1) of the Companies Act, 2013.
 - ◆ To approve the draft notice of general meeting along with Explanatory Statement
 - ◆ To authorize the Director or Company Secretary to sign and issue notice of the general meeting.
2. Hold a meeting of Board of Directors-
3. Prepare and circulate draft minutes within 15 days from the date of the conclusion of the Board Meeting, by hand/speed post/registered post/courier/e-mail to all the Directors for their comments. Follow the procedure prescribed for preparing, circulation, signing and compiling of Board Minutes. (Revised Secretarial Standards-1 w.e.f. 1st October, 2017).

4. Send notice of the General meeting proposing the aforementioned special resolution to all the shareholders, directors, auditors and other persons entitled to receive it, by giving not less than clear 21 days' notice or shorter notice, if consent for shorter notice is given by at least 95% of members entitled to vote at such meeting, either in writing or through electronic mode in accordance with the Section 101 of the Act. Also follow the procedure prescribed for issuing and Signing of notice and convening of General Meeting. (Revised Secretarial Standards-2)
5. Hold a shareholders meeting on the date fixed for the meeting and pass the Special Resolution for altering the Articles of Association by 3/4th majority or unanimously, in case of insertion of provisions of entrenchment by a private company in accordance with Section 114 (2) of the Act read with Section 5(4) and Section 14 of the Companies Act, 2013.
6. After passing special resolution, file a certified copy of special resolution with the Registrar in e-Form MGT- 14 under section 117 of the Act within 30 days of passing Special Resolution in general meeting along with the following attachments:
 - (a) Copy of Special Resolution passed along with explanatory statement
 - (b) Notice for convening the General Meeting of the Company along with explanatory statement as an optional attachment.
 - (c) Certified True copy of the Altered Articles including the provisions of entrenchment inserted in the articles, if any.
 - (d) Shorter Notice Consent Letters from at least 95% of the members in case the General Meeting was convened at a shorter notice.
 - (e) Any other attachment as may be required/applicable.
7. Follow the procedure prescribed for preparing, signing and compiling of minutes of General Meeting. (Revised Secretarial Standards-2).
8. Make necessary amendments in all the copies of Articles of association of the Company. [Section 15(1)]

Note:

- 1. Where a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, the company shall, as from the date of such alteration, cease to be a private company. [First proviso to Section 14(1)]**
- 2. Any alteration having the effect of conversion of a public company into a private company shall not take effect except with the approval of the Tribunal which shall make such order as it may deem fit. [Second proviso to Section 14(1)]**
- 3. For effecting the conversion of a private company into a public company or vice versa, company shall file the application in Form No.INC -27 along with the prescribed fee. [Section 14 and Rule 33 of Companies (Incorporation) Rules, 2014].**

QUESTIONS

Ques 1: Can employee have right to object in case of shifting of registered office from one state to another? Decide with case law.

Hint: Refer Topic Employees' right to object in case of shifting of registered office from one state to another.

Ques 2: Abha Ltd. was incorporated on 15th March, 2012. A company with identical name and similar objects was incorporated on 5th August, 2013. On account of similarity of name, Abha Ltd., i.e., the company which was previously registered, filed a petition on 15th April, 2014 with the Central Government seeking issue of direction for change of name by the later company so that its business interest is protected. On 16th August, 2014, the Central Government sent an order to the later company to change its name. Examine the aforesaid case and the validity of the order of the Central Government.

Hint: Abha Ltd. (first registered company) can make an application to Central Government to direct second company to change its name. Second company shall change its name within a period of 3 months from the issue of the above direction by passing an ordinary resolution.

Ques 3: ABC Ltd. has altered its name from BCD Ltd. to ABC Ltd. However, the fact of alteration of name of the company was not brought to the notice of NCLT. Please advise the company ABC Ltd. whether it has a right to execute a decree in its new name after the change of name.

Hint: Effect of change in name of the company : The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against it, and any legal proceedings which might have been continued or commenced by or against the company in its former name may be continued by or against the company in its new name.

Important case laws ◆ Where a company changes its name and the new name has been registered by the ROC, the commencing of legal proceedings in the former name is not valid. [Malhati Tea Syndicate Ltd. v. Revenue Officer]

- ◆ In spite of a change in name the entity of the company continues. The company is not dissolved nor does any new company come into existence. If any legal proceeding is commenced, after change in the name, against the company in its old name, the company should be treated as if it is not in existence. It is not an incurable defect and the plaint can be amended to substitute the new name. [Pioneer Protective Glass Fibre (P.) Ltd. v. Fibre Glass Pilkington Ltd.]
- ◆ Courts have held that proceedings commenced by the company in its former name can be continued under its new name. [Solvex Oils and Fertilizers v. Bhandari Cross-Fields]
- ◆ By change of name, the constitution of the company is not changed, only the name changes. It is not similar to the reconstitution of a partnership which means creation of a new legal entity altogether. [Economic Investment Corporation Ltd. v. CIT (WB)]
- ◆ If a company has power to execute a decree in its old name, it has right to execute the decree in its new name, even if fact of change of name was not brought to notice of court. [D Srinivasaiah v. Vellore Varulakshmi Bank]

Ques 4: Can a listed company change its name as and when necessary? Give reasons in support of your answer.

Or

A listed entity shall not be allowed to change its name more than once. Comment.

Hint: Change in name of the listed entity [Regulation 45 of the SEBI (LODR) Regulation, 2015] : The listed entity shall be allowed to change its name subject to compliance with the following conditions:

- (a) A time period of at least one year has elapsed from the last name change.
- (b) At least 50% of the total revenue in the preceding one year period has been accounted for by the new activity suggested by the new name.
- (c) The amount invested in the new activity/project is at least 50% of the assets of the listed entity. However, if any listed entity has changed its activities which are not reflected in its name, it shall change its name in line with its activities within a period of 6 months from the change of activities in compliance of provisions as applicable to change of name prescribed under the Companies Act, 2013.

On satisfaction of above conditions, the listed entity shall file an application for name availability with ROC.

On receipt of confirmation regarding name availability from ROC, before filing the request for change of name with the ROC, the listed entity shall seek approval from Stock Exchange by submitting a certificate from CA stating compliance with required conditions.

Ques 5: Alteration of Capital Clause in Memorandum of Association is a precondition to restructuring

the Capital structure of the Company' — Elaborate the statement mentioning re Companies Act, 2013 on types of alterations of Capital Clause.

Hint: Refer Topic ALTERATION OF CAPITAL CLAUSE IN MOA [SECTION 61 READ WITH SECTION 64]

Ques 6: X, an employee of BG Ltd., is aggrieved by the decision of shifting of the registered office of the Company from the State of Uttar Pradesh to Haryana. He has filed a Public Interest Litigation (PIL) regarding the same, considering that the business of the company will be severely affected by the said decision of shifting of registered office. In the light of decided case laws, examine the strength of argument raised in the PIL.

Hint: The facts are similar to the case of Bharat Commerce and Industries Ltd., Re, (1973) 43 Com Cases 162 (Cal.). So long as interest of none of the employee at the registered office is prejudiced by retrenchment or otherwise, the argument of X is not tenable. The victim will however be free to approach the Court for higher compensation

Ques 7: A Company does not have unlimited powers to alter its articles of association. Comment.

Hint: Refer Topic alteration of articles of association of a company.

3B.4 Effect of altered article

Alteration binds members in the same way as original articles. The altered articles shall bind the company and the members to the same extent as if they had been signed by the company and by each member, means the articles as originally framed, or as they may from time to time stand altered are valid under the provisions of the Act. There is clear power to alter the articles, and as altered, they bind members just in the same way as did the original articles.

ALTERATIONS OF MEMORANDUM OR ARTICLES TO BE NOTED IN EVERY COPY

- ◆ Every alteration made in the memorandum or articles of a company shall be noted in every copy of the memorandum or articles, as the case may be. [Section 15(1)]
- ◆ If a company makes any default in complying with the provisions of section 15(1), the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the memorandum or articles issued without such alteration. [Section 15(2)]

Note: Alteration Not Possible in case of Section 8 Company: Section 8 Companies cannot alter Articles except with the prior approval of Central Government. Section 8(4)(i) provides that a company registered under section 8 i.e. companies with charitable objects shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.

Question For Practice

Ques 1: Write Short Note On: Effect of altered article.

Hint: Refer Topic 3B. 4 Effect of altered article.

3B.5 Sample Resolutions

(i) Sample Board Resolution for Change in the Name of the Company

"RESOLVED THAT pursuant to the provisions of section 13 and other applicable provisions of the Companies Act, 2013 if any and the rules framed thereunder, and subject to the approval of the Registrar of Companies, Central Registration Center, Ministry of Corporate Affairs and the approval of the members, the consent of the board be and is hereby accorded to change the name of the company from to—or—or as may be approved by the Registrar.

FURTHER RESOLVED THAT for the purpose of giving effect to this resolution, Director of the Company be and is hereby authorized, on behalf of the Company, to make an application to the MCA for ascertaining availability of proposed name and to do all acts, deeds, and things as may be necessary, proper or desirable and to sign and execute all necessary documents, applications and returns, e-forms for the purpose of giving effect to the aforesaid resolution."

(ii) Sample Shareholder's Resolution to be Passed in the General Meetings for Change in the Name Clause of MOA

"RESOLVED THAT pursuant to section 13(2) and other applicable provisions of the Companies Act, 2013 if any and the rules framed thereunder, the consent of members be and is hereby accorded to change the name of the company from PRIVATE LIMITED to PRIVATE LIMITED".

RESOLVED FURTHER THAT Clause I of the Memorandum of Association of the Company be substituted by the following: "The Name of the company is.....PRIVATE LIMITED".

RESOLVED FURTHER THAT Clause..... of the Articles of Association of the Company be substituted by the following:

The company means.....PRIVATE LIMITED.

(iii) Sample Board Resolution for Changing the Situation of Registered Office Clause in MOA

"RESOLVED THAT pursuant to the provisions of Sections 12 and 13 of the Companies Act, 2013 and the rules made thereunder (including any statutory modifications or re-enactment thereof for the time being in force) and subject to the confirmation of the Central Government and subject to the confirmation of the members, approval of the Board of Directors of the company be and is hereby accorded for shifting of the registered office of the company from the State of Maharashtra to the State of Gujarat".

"RESOLVED FURTHER THAT Shri and Shri....., the Company Secretary and Director of the company respectively, be and are hereby jointly and severally authorised –

- (i) to sign and file, the petition under sub-section (4) of Section 13 of the Act to the Regional Director for securing confirmation to the alteration to the memorandum of association of the company so as to change the place of the Registered office of the company from the State of Maharashtra to the State of Gujarat;
- (ii) to represent the company in all hearings concerning the petition of the company; and
- (iii) to appoint, on behalf of the company, Company Secretaries in whole-time practice, Advocates, lawyers, counsels and other consultants, if and when required, to represent the company and plead on its behalf before the concerned Regional Director and or any other agency in all matters connected with the petition of the company".

"RESOLVED FURTHER THAT Shri....., Director of the Company be & is hereby authorised on behalf of the Company, including to prepare, sign, execute Power of Attorney in favour of Shri., and Shri....., the Company secretary and the Director of the company respectively in this regard but not limited to file & submit necessary E-forms, applications, documents & returns with Registrar of Companies, Ministry of Corporate of Affairs & to do all acts, deeds & things as may deem necessary, proper or desirable for the purpose of giving effect to above resolution".

(iv) Sample Shareholder's Resolution to be Passed in the General Meeting for Shifting of Registered Office of the Company from One State to Another

"RESOLVED THAT pursuant to the provisions of section 13 read with section 12 and other applicable provisions, if any, of the Companies Act, 2013 and rules made thereunder, and subject to the approval of the Regional Director, Region or any other Government Authority, the consent of the members of the Company be and is hereby accorded to shift the registered office of the Company from the State of(State) to(State)".

"RESOLVED FURTHER THAT Clause No. II of the Memorandum of Association of the Company be and is hereby substituted by the following clause:

II. The Registered Office of the Company shall be situated in the State'.....".

"RESOLVED FURTHER THAT Mr. and Mr., the director and the company secretary of the Company respectively, be and are hereby severally authorized for and on behalf of the Company to do all such acts, deeds and things as may be necessary or desirable in this regard for the purpose of giving effect to this resolution."

Explanatory Statement Pursuant to Section 102 of the Companies Act 2013:

Item No.

When the company was incorporated it was decided that the main manufacturing unit of the company would be located in the State of Maharashtra and in the memorandum of association it was stated that the registered office of the company would be situated in that State.

Subsequently it was found that the location of the main manufacturing unit in the State of Gujarat would be more advantageous to the company. At present, all the factories of the company are located in the State of Gujarat.

for better management and control, the Head Office of the company has already been shifted to Ahmedabad, Gujarat. The directors, therefore, consider that the memorandum of association of the company should be altered so as to change the place of its registered office from its present situation at in the State of Maharashtra to a place situated in the State of Gujarat. After the proposal is approved by the shareholders, a petition is required to be made, under section 13(4) of the Companies Act, 2013, to the Regional Director for confirmation of the alteration to the memorandum of association of the company so as to shift the company's registered office from the State of Maharashtra to the State of Gujarat. It is also proposed to authorize severally to Mr. and Mr., the Director and Company Secretary of the company respectively to sign and file the petition and appear before the Regional Director in connection with the petition. An enabling clause has also been provided authorizing the Director and Company Secretary of the company to appoint any other authorized representative such as the company secretary in the whole-time practice, Advocate, counsel etc., as they consider necessary in connection with the petition.

The Board recommends the resolution to the members for their consideration and approval.

None of the directors of the company or KMP or their relatives are concerned or interested in the proposed resolution.

(v) Sample Board Resolution for Alteration of Object Clause in MOA

"RESOLVED THAT pursuant to the provisions of sections 13, 15 and other applicable provisions, if any, of the Companies Act, 2013 (Act) read with rule No. 32 (to be mentioned if applicable), of the Companies (Incorporation) Rules, 2014 (including any statutory modification(s) or re-enactment thereof for the time being in force) and subject to the consent of the members in General meeting and approval from the Registrar of Companies Maharashtra Mumbai and or any other statutory or regulatory authority, as may be necessary, Clause III (Objects Clause) of the Memorandum of Association of the Company, be and is hereby altered by inserting the following sub-clause under Part - A of Clause III, after the existing sub-clause 3 and the remaining sub-clauses be re-numbered accordingly:

"4. To render services as brokers or commission agents and to carry on the business of retail and institutional distribution of Insurance Policies or any other products issued by the Insurance Companies, on the basis of a commission, remuneration or a fee."

"RESOLVED FURTHER THAT any of the Directors, and the Company Secretary of the company, be and are hereby severally authorized to file, sign, verify, execute and submit all such e-forms, papers or documents, as may be required and do all such acts, deeds and things as may be necessary and incidental for giving effect to this Resolution".

(vi) Sample Shareholder's Resolution to be Passed in the General Meeting for Alteration of Object Clause in MOA

"RESOLVED THAT pursuant to the provisions of sections 13, 15 and other applicable provisions, if any, of the Companies Act, 2013 (Act) read with rule No. 32 (to be mentioned if applicable), of Companies (Incorporation) Rules, 2014 (including any statutory modification(s) or re-enactment thereof for the time being in force) consent of the members in General meeting be and is hereby given for re-structuring of the Object clause of the memorandum of association of the company subject to the approval from the Registrar of Companies Maharashtra, Mumbai and or any other statutory or regulatory authority, as may be necessary, Clause III (Objects Clause) of the Memorandum of Association of the Company, be and is hereby altered by inserting the following sub-clause under Part - A of Clause III, after the existing sub-clause 3 and the remaining sub-clauses be re-numbered accordingly:

"4. To render services as brokers or commission agents and to carry on the business of retail and institutional distribution of Insurance Policies or any other products issued by the Insurance Companies, on the basis of a commission, remuneration or a fee."

"RESOLVED FURTHER THAT any Director, the Chief Financial Officer and the Company Secretary of the Company, be and are hereby severally authorized to file, sign, verify, execute and submit all such e-forms, papers or documents, as may be required and do all such acts, deeds, matters and things as may be necessary and incidental for giving effect to this Resolution, including agreeing to any change to the aforesaid sub-Clause 4 under Clause III of the Memorandum of Association of the Company which pertains to the Objects of the company , as may be required by the ROC and/or any statutory/regulatory authority."

Explanatory Statement Pursuant to Section 102 of the Companies Act, 2013:

Item No.

The principal business of the Company is providing long term finance to any person or persons, company or corporation, society or association of persons with or without interest and with or without any security, to construct/purchase any houses, buildings or flats, furnished or otherwise. The Company proposes to undertake the activity of distribution of life insurance products of PQR Life Insurance Company Limited with no risk participation.

To enable the Company to commence the aforesaid business, it is proposed to amend the Main Objects under the Objects Clause of the Memorandum of Association of the Company, by the insertion of sub-clause 4 after the existing sub-clause 3 as stated in the Resolution in the annexed notice. The above amendment would be subject to the approval of the Registrar of Companies, Maharashtra, Mumbai and any other Statutory or Regulatory Authority, as may be necessary in this regard.

A copy of the Memorandum and Articles of Association of the Company together with the proposed alterations is available for inspection by the Members of the Company at its Registered Office during normal business hours on all working days up to the date of the Meeting and is also attached to the annexed notice, The Directors recommend the passing of the Draft Resolution placed under Item No. 1 of the accompanying Notice for the approval of the Members of the Company.

None of the other Directors of the Company or the Key Managerial Persons of the Company or their relatives are concerned or interested in the passing of the above resolution.

(vii) Sample Board Resolution for Alteration of Capital Clause in MOA**Increase in Authorised Share Capital**

"RESOLVED THAT pursuant to the provisions of Sections 61 and 64 and other applicable provisions, if any, of the Companies Act, 2013 (including any amendment thereto or re-enactment thereof) and the rules framed thereunder, the consent of the Board of Directors of the Company be and is hereby accorded, subject to the approvals of shareholders in the General meeting, to increase the Authorized Share Capital of the Company from existing Rs. 40,00,000 (Rupees Forty Lacs) divided into 4,00,000 (Four Lacs) Equity Shares of Rs. 10/- each to Rs. 75,00,000 (Rupees Seventy Five Lacs) divided into 7,50,000 (Seven Lacs Fifty Thousand) Equity Shares of Rs. 10/- each by creation of additional 3,50,000 (Three Lacs Fifty Thousand) Equity Shares of Rs. 10/- each ranking *pari passu* in all respect with the existing Equity Shares of the Company."

Alteration in the Capital Clause of Memorandum of Association of the company

"RESOLVED THAT pursuant to the provisions of Sections 13, 61 and 64 and other applicable provisions of the Companies Act, 2013 (including any amendment thereto or re-enactment thereof) and the rules framed thereunder, the consent of the Board of Directors of the Company be and is hereby accorded, subject to the approvals of shareholders in the General meeting, for substituting Clause V of the Memorandum of Association of the Company with the following clause.

"V. The Authorised Share Capital of the Company is Rs. 75,00,000/- (Rupees Seventy Five Lacs Only) divided into 7,50,000 (Seven Lacs Fifty Thousand) Equity Shares of face value of Rs. 10/- (Rupees Ten Only) each."

(viii) Sample Shareholders' Resolution to be Passed in the General Meeting for Increase in Authorised Share Capital**Special Business:**

To consider, and if thought fit, to pass with or without modification(s), the following resolution as an Ordinary Resolution:

"RESOLVED THAT pursuant to the provisions of Section 61 read with Section 64 and other applicable provisions, if any, of the Companies Act, 2013 (including any amendment thereto or re-enactment thereof) and the rules framed thereunder, the consent of the members of the Company be and is hereby accorded to increase the Authorized Share Capital of the Company from existing ₹50,00,000/- (Rupees Fifty Lacs Only) divided into 5,00,000 (Five Lacs) Equity Shares of ₹10/- each to ₹75,00,000/- (Rupees Seventy Five Lacs Only) divided into 7,50,000 (Seven Lacs Fifty Thousand) Equity Shares of ₹10/- (Rupees Ten Only) each by creation of additional 2,50,000 (Two Lacs Fifty Thousand) Equity Shares of ₹10/- each ranking *pari passu* in all respect with the existing Equity Shares of the Company."

"RESOLVED FURTHER THAT the Memorandum of Association of the Company be altered in the following manner i.e. existing Clause V of the Memorandum of Association of the company be deleted and the same be substituted with the following new clause as Clause V:

"V. The Authorised Share Capital of the Company is ₹ 75,00,000/- (Rupees Seventy Five Lacs) divided into 7,50,000 (Seven Lacs Fifty Thousand) Equity Shares of face value of ₹ 10/- (Rupees Ten Only) each."

"RESOLVED FURTHER THAT for the purpose of giving effect to this resolution, the Board of Directors of the Company (hereinafter referred to as "Board" which term shall include a Committee thereof authorized for the purpose) be and is hereby authorized to take all such steps and actions and give such directions as may be in its absolute discretion deemed necessary and to settle any question that may arise in this regard, without being required to seek any further consent or approval of the shareholders or otherwise and that the shareholders shall be deemed to have given their approval thereto expressly by the authority of this resolution."

(ix) Sample Board Resolution for Alteration of Articles of Association of the Company

Adoption of new set of Articles of Association of the Company:

"RESOLVED THAT pursuant to Sections 5 and 14 and other applicable provisions, if any, of Companies Act, 2013, (including any statutory modifications or re-enactment thereof, for the time being in force), and the rules framed thereunder, consent of the Board of Directors of the Company be and is hereby accorded, subject to the approval of the Registrar of Companies, and subject to the approval of Shareholders in General Meeting, to adopt new set of Articles of Association of Company."

"FURTHER RESOLVED THAT for the purpose of giving effect to this resolution, Mr. ABC, Director of the Company be and is hereby authorised, on behalf of the Company, to do all acts, deeds and things as may be deemed to be necessary, proper or desirable and to sign and execute all necessary documents, applications and returns for the purpose of giving effect to the aforesaid resolution along with filing of necessary E-forms with the Registrar of Companies..."

(x) Sample Shareholders Resolution for Alteration of Articles

Adoption of new set of Article of Association of the Company:

"RESOLVED THAT 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 be and are hereby altered by replacing all the existing regulations 1 to 49 with the new regulations 1 to 93, a copy of which is annexed to the EXPLANATORY STATEMENT PURSUANT TO SECTION 102 OF THE COMPANIES ACT 2013, be and is hereby adopted as new regulations of the Articles of Association of the Company."

"FURTHER RESOLVED THAT for the purpose of giving effect to this resolution, Mr. (DIN:.....), Director of the Company be and is hereby authorized, on behalf of the Company, to do all acts, deeds and things as may be deemed to be necessary, proper or desirable and to sign and execute all the necessary documents, applications and returns for the purpose of giving effect to the aforesaid Resolution along with filing of necessary E-forms with the Registrar of Companies."

Explanatory Statement pursuant to Section 102 of the Companies Act, 2013:

The Existing regulations 1 to 49 of the Articles of Association of the company are being replaced by the new set of Articles containing regulations 1 to 93 and adopted as new set of Articles of Association of the company. The modification in the Articles of Association of the company is carried out to give effect to the provisions of the Companies Act, 2013. Consent of the shareholders by passing a Special Resolution is required in this regard. New set of regulations forming 1 to 93 articles of Articles of Association of the company is attached herewith separately as Annexure A.

Copy of the Articles of Association of the Company together with the proposed alterations is available for inspection by the Members of the Company at its Registered Office during normal business hours on all working days up to the date of the Meeting and is also attached to the accompanying notice.

The Directors recommend the passing of the Resolution under Item No. 1 of the accompanying Notice for the approval of the Members of the Company by way of Special Resolution.

None of the Directors of the Company or the Key Managerial Persons of the Company or their relatives are concerned or interested in the passing of the above resolution.

QUESTIONS

Ques 1: Ria Technologies Ltd. was incorporated 10 years back. The Board of directors now wants to change its name to Ria Systems Ltd. Draft a notice and the explanatory statement for calling an extraordinary general meeting of the company for change of its name, assuming relevant data.

Hint: Refer Sample Shareholder's Resolution to be Passed in the General Meetings for Change in the Name Clause of MOA.

Ques 2: Board of Directors of Day Night Prakashani Ltd. decide to shift its registered office of the company from Mumbai to National Capital Region (NCR). The Board has approved the change. The Board has to seek the approval of the members of the company for going ahead with the legal formalities as required under the Companies Act, 2013, for which the extraordinary general meeting of the members is scheduled to be held on 17th June, 2017. In this connection you are required to draft notice of the EGM for shifting of office outside the state and give explanatory statement in this regard.

Hint: Refer Sample Shareholder's Resolution to be Passed in the General Meeting for Shifting of Registered Office of the Company from One State to Another.

3B.6 Specimen of Notice for the Board Meeting for Convening General Meeting for Alteration of Articles to Convert a Public Company into a Private Company

Shri Managing Director
 Shri Whole-time Director
 Shri Director
 Shri Director
 Shri Director
 Shri Director

Dear Sirs,

Notice is hereby given that the next meeting of the Board of directors of the company will be held at
Hrs. on (day), (month) 20. at the Corporate Office of the company at
 to transact the following business:

1. To grant requests from directors for leave of absence, if any.
2. To confirm the minutes of the previous Board Meeting held on and the chairman to sign the same.
3. Directors to make disclosure of their interest, or changes thereof, if any.
4. To discuss and approve financial results for the quarter ended and to authorise the chairman to sign the same on behalf of the Board of directors of the company.
5. To authorise the company secretary to arrange for the publication of the approved financial results in the English daily newspaper and the Hindi daily newspaper in their earliest available editions and also to send the same to the stock exchanges where the securities of the company are listed within forty-eight hours of the close of the Board meeting.
6. To fix time, date and venue for holding an extraordinary general meeting of the company to transact the business as detailed in the agenda including an item for conversion of the company into a private company the draft whereof would be placed before the meeting as initialled by the chairman as a mark of identification.
7. To authorise the company secretary or any director to issue notice for the general meeting on behalf of the Board in accordance with the provisions of Section 101 of the Companies Act, 2013 along with the Explanatory Statement as required under section 102 of the Act.

8. Any other business with the permission of the chair. Please make it convenient to attend the meeting.

Thanking you,

Yours faithfully,

(.....)

Company Secretary

Question For Practice

Ques 1: Draft Specimen Notice for the Board Meeting for Convening General Meeting for Alteration of Articles to convert a XYZ Limited into XYZ Private Ltd. ?

Hint: Refer Topic 3B. 6 Specimen of Notice for the Board Meeting for Convening General Meeting for Alteration of Articles to Convert a Public Company into a Private Company