

What is Memorandum of Association (MOA)??

As per the provisions contained in Section 2 (56) of 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 law or of this Act."

In general parlance, we can say that a Memorandum of Association is the '**charter of the company**'. It is the document which governs the relationship between the Company and outsiders. It contains the scope of activities of a Company. Hence, MOA is very important document.

Key Clauses of Memorandum:

- Name Clause
- Registered Office Clause
- Object Clause
- Liability Clause
- Share Capital Clause
- Subscription Clause

Alteration of various clauses of Memorandum of Association

- **Alteration with respect to the Name of a Company**
 - Change of name shall be subject to the provisions of Section 4 (2) & (3) of the CA, 2013.
 - Change of Name shall be allowed upon filing of Annual Returns or Financial Statements due to ROC or payment or repayment of matured deposits or debentures or interest thereon.
 - Special Resolution of Members would be required
 - Filing of Special Resolution in MGT-14
 - *Any change in the Name of a company will require approval of Central Government (powers are delegated to ROC) in **Form No. INC.24**.
 - Change in Name shall be effective only on issue of a fresh certificate of incorporation by ROC in **Form No. INC.25**.

**Not applicable for companies where the only change in the name of the company is the deletion/addition thereof, of the word "Private" consequent on the conversion of any one class of companies to another class.*

- **Alteration with respect to the registered office of a Company from one State to another State**
 - 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.
 - Special Resolution of Members is required.
 - Filing of Special Resolution in Form **MGT-14**
 - An advertisement **in 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 wide circulation** in the state in which the registered office of the company is situated and copy would be served:
 - on the Central Government immediately on its publication.
 - serve, by registered post with acknowledgement due, individual notice, on each debenture-holder and creditor of the company; and
 - 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.
 - An application with complete annexures shall be filed with chief secretary of the State Government or Union Territory where the registered office is situated at the time of filing of application.
 - Within 30 days from the date of publication of advertisement, Approval of Central Government is required (powers are delegated to RD at New Delhi, Mumbai, Kolkata, Chennai, Ahmedabad, Hyderabad and Shillong).
 - An application in **Form No. INC.23** along with the accompanied following documents shall be filed seeking approval of Central Government:
 - Copy of MOA, with proposed alterations
 - Resolution authorizing such alteration, giving details of the number of votes cast in favour or against the resolution

- A copy of BR or POA or executed vakalatnama, as the case may be.
- Particulars of a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than 1 month, setting forth the following details in the application, namely:
 - (a) the names and address of every creditor and debenture holder of the company;
 - (b) the nature and respective amounts due to them in respect of debts, claims or liabilities:
- The list of creditors and debenture holders shall be accompanied by declaration signed by the Company Secretary of the company, if any, and not less than two directors of the company, one of whom shall be a managing director, where there is one, stating that:
 - (i) they have made a full enquiry into the affairs of the company and, having done so, have concluded that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that there are no other debts of or claims against the company to their knowledge, and
 - (ii) no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state and also there shall be an application filed by the company to the Chief secretary of the concerned State Government or the Union territory.
- a copy of the acknowledgment of service of a copy of the application with complete annexures to the Chief Secretary of the State Government or Union territory.
- a duly authenticated copy of the advertisement and other notices issued, 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 other notices issued.

- **Alteration with respect to the objects of a Company**
 - Special Resolution would be required
 - Filing of Form MGT-14 with ROC with following attachments:
 - Copy of notice sent to all the members along with explanatory statement
 - Certified true copy of the special resolution
 - Amended copy of MOA
 - Consent for shorter notice, if any.
 - Printing of new copies of Memorandum of Association
 - Change of name of Company on other documents like PAN, other Certificates issued by the various regulatory bodies.
- **Alteration of Liability Clause**

Changing the liability clause can have significant implications for the company and its members. It can affect the financial obligations of the members, the company's risk profile, and its attractiveness to investors and creditors.

Conversion of an unlimited liability company with or without share capital into a limited liability company by shares or guarantee:

Rule 37 of the Companies (Incorporation) Rules, 2014, deals with such type of conversion. The procedure is as under:

- Special resolution in General meeting
- Within 7 days from the passing of SR, publish a notice in Form No. INC-27A of such proposed conversion in two newspapers (one in English and one in vernacular language) in the district in which the registered office of the company is situate
- Such notice shall also be placed on the website of the Company indicating clearly the said proposal of conversion and seeking objections if any, from the persons interested in its affairs to such conversion

- A copy of such notice to be dispatched to its creditors and debentures holders (as on the date of notice of the general meeting) by registered post or by speed post or through courier with proof of dispatch.
- The notice shall also state that the objections, if any, may be intimated to the Registrar and to the company within 21 days of the date of publication of the notice, duly indicating nature of interest and grounds of opposition.
- Within 45 days of passing the SR, an application in INC-27 be filed accompanied by necessary documents such as:
 - ✓ notice of the general meeting along with explanatory statement.
 - ✓ copy of the SR
 - ✓ copy of the newspaper publication;
 - ✓ altered e- MOA & e-AOA duly certified by any one of the Directors duly authorised in this behalf or CS of the Company
 - ✓ declaration signed by not less 2 Directors of the Company, including MD, if any, that such conversion shall not affect any debts, liabilities, obligations or contracts incurred or entered into by or on behalf of the Company before conversion (except to the extent that the liability of the members shall become limited).
 - ✓ a complete list of creditors and debenture holders, to whom individual notices have been sent under sub-rule (2) setting forth the following details, namely:
 - the names and address of every creditor and debenture holder of the Company;
 - the nature and respective amounts due to them in respect of debts, claims or liabilities;
 - declaration by a Director of the Company that notice as required was dispatched
 - ✓ a declaration signed by not less than 2 Directors of the Company, including MD, if any, to the effect that they have made a full enquiry into the affairs of the Company and, having done so, have formed an opinion that:
 - the list of creditors is correct, and

- that the estimated value as given in the list of the debts or claims payable on a contingency are proper estimates of the values of such debts and claims and that there are no other debts or claims against the company to their knowledge.
- ✓ a declaration of solvency signed by at least two Directors of the Company, including MD, if any, to the effect that the Board of Directors of the Company have made a full inquiry into the affairs of the company, as a result of which they have formed an opinion that:
 - it is capable of meeting its liabilities and
 - will not be rendered insolvent within a period of one year from the date of declaration, through a resolution, passed in a duly convened meeting or by circulation.
- ✓ a certificate of Auditors certifying that the company is solvent and that it is a going concern as on the date of passing of resolution by the Board certifying solvency as per clause above.
- ✓ A Declaration signed by not less than 2 Directors including MD, if any, that no complaints are pending against the company from the members or investors and no inquiry, inspection or investigation is pending against the company or its directors or officers.
- ✓ No Objection Certificate from sectoral regulator, if applicable.
- ✓ No Objection Certificate from all secured creditors, if any.

Conversion of a Company Limited by Guarantee into a Company Limited by Shares

Rule 39 of the Companies (Incorporation) Rules, 2014, deals with the conversion of a company limited by guarantee into a company limited by shares. The key points are as under:

- The company must have a share capital equivalent to the guarantee amount
- A special resolution of members is required

- Filing of SR in Form MGT-14
- Within 30 days of passing of SR, an application in form INC-27 with Registrar of Companies shall be filed alongwith:
 - Altered e-MOA and e-AOA
 - List of Members with the number of shares held aggregating to a minimum paid up capital which is equivalent to the amount of guarantee hitherto provided by its members
 - The Registrar will decide on the application within 30 days
 - If application is approved, new COI shall be issued in form INC 11B.
- **Alteration of Capital Clause by a Limited Company**
 - Provisions enunciated in Section 61 of Companies Act, 2013 deal with Alteration of Capital Clause
 - Authorization by Articles of Association is required to alter the Authorized Share Capital of the Company
 - Special Resolution of Members is required.
 - Filing of Form MGT-14 with ROC with following attachments:
 - Copy of notice sent to all the members along with explanatory statement
 - Certified true copy of the special resolution
 - Amended copy of MOA
 - Consent for shorter notice, if any.
 - Printing of new copies of Memorandum of Association
 - Change of name of Company on other documents like PAN, other Certificates issued by the various regulatory bodies.

- **Alteration of Subscription Clause**

A Company can never alter the 'Subscription Clause' or 'Subscriber Sheet'. Subscriber Sheet used at the time of Incorporation of a Company shall be used for the entire life span of a Company.

Please note that every alteration made in the memorandum of a company shall be noted in every copy of the memorandum or articles, as the case may be.