

4. MEMORANDUM OF ASSOCIATION

ANALYSIS OF PAST EXAM PAPERS OF IPCC AND CA INTER

Q NO.	N-14	M-15	N-15	M-16	N-16	M-17	N-17	M-18 (O)	M-18 (N)	N-18 (O)	N-18 (N)	M-19 (O)	M-19 (N)	N-19 (O)	N-19 (N)	N-20 (O)	N-20 (N)
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ANALYSIS OF PAST EXAM PAPERS OF IPCC AND CA INTER FOR PRACTICAL QUESTIONS

Q NO.	N-14	M-15	N-15	M-16	N-16	M-17	N-17	M-18 (O)	M-18 (N)	N-18 (O)	N-18 (N)	M-19 (O)	M-19 (N)	N-19 (O)	N-19 (N)	N-20 (O)	N-20 (N)
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CHAPTER OVERVIEW

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SECTION 1: THEORY FOR CLASSROOM DISCUSSION

Q.No.1. Explain the meaning and purpose of Memorandum of Association (MOA) (B) (NEW SM)

- 1) **DEFINITION [SEC. 2(56)]:** Memorandum means “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”.
- 2) **IMPORTANCE OF MOA:**
 - a) MOA is the base document for the formation of the company. MOA & AOA is regarded as the Constitution of the Company.
 - b) The contents of MOA and AOA shall be in compliance with companies act, 2013 and all other applicable laws and regulations.

3) PURPOSE OF MOA:

- a) It contains the objects for which the company is formed.
- b) It also determines the possible scope of its operations beyond which it cannot act.
- c) **For Third Parties:** With the help of MOA third parties can know 'whether the contract which they want to enter into with the company is within the scope of objects clause of the company or not?'
- d) **For Shareholders:** It enables shareholders to know the purpose for which their money can be used by the company. They can also know the risk involved in it.

4) ULTRAVIRES:

- a) A company cannot depart from the provisions contained in the memorandum whatever may be the necessity for the departure.
- b) It cannot enter into a contract or engage in any trade or business, which is beyond the power given to the company by the memorandum. If it does so, it would be ultra vires the company and void.

NOTE:

- **Every Company must have its own Memorandum:** A Company can't be registered without a MOA. It is one of the main documents that are required to be filed with the Registrar at the time of registration of the company.
- Memorandum is a public document. Any person can inspect it with the Registrar of Companies (whether a member of the company or not) (Section 399)¹.
- Since MOA is a public document, every person entering into a contract with the company is presumed to have the knowledge of the conditions stated in it.

Q.No.2. Elaborate the contents of the Memorandum**(B) (NEW SM, OLD SM)***First briefly write what is MOA.***CONTENTS OF MOA² (Sec.4):****1. NAME CLAUSE:**

- a) MOA must state the name of the company.
 - In case of public company the name shall end with the words "Limited"; and
 - In case of a private company the name shall end with the words "Private Limited"
- b) **Exception:** Section 8 Company (Association not for profit) is not required to use the words 'Private Limited' or 'Limited' after its name.

1) **MOA vs Companies Act, 2013:** Act to override MOA. If there is contrary between contents in MOA and the provisions of the Companies Act then Companies Act will prevail. Therefore, all the contents of MOA need to comply with the provisions of Companies Act 2013 and other applicable legislations. In other words, a company can't state anything in MOA which is against to the provisions of the Companies Act.

2) FORMS AND SCHEDULE RELATED TO MEMORANDUM:

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.

The MOA and AOA shall be in respective forms as provided in Schedule I to the Companies Act, 2013:

	Table	CONTAINS
MOA	A	Memorandum of association of a company limited by shares
	B	Memorandum of association of a company limited by guarantee and not having a share capital
	C	Memorandum of association of a company limited by guarantee and having a share capital
	D	Memorandum of association of an unlimited company and not having share capital
	E	Memorandum of association of an unlimited company and having share capital

Any provision in the memorandum or articles, in the case of a company limited by guarantee and not having a share capital, shall not give any person a right to participate in the divisible profits of the company otherwise than as a member. If the contrary is done, it shall be void.

2. DOMICILE CLAUSE/SITUATION CLAUSE:

- a) This clause contains the name of the Federal State in which the registered office of the company is to be situated.
- b) Registered office is the permanent address of the company. It is residence of company.
(E.g., a company registered in Vijayawada, it has to mention – Andhra Pradesh in the Domicile Clause.)

3. OBJECTS CLAUSE: This clause contains

- a) The objects for which the company is proposed to be incorporated; and
- b) Any matter considered necessary in furtherance thereof.
- c) **Importance of this clause:**
 - i) This is the most important clause in the Memorandum.
 - ii) A company cannot do anything, which is not mentioned in the Objects clause.
 - iii) Objects must not be unlawful or against the provisions of the Companies Act or against the public policy.

4. LIABILITY CLAUSE: MOA shall state the nature of liability of the members. Liability of members can be either limited or unlimited.

- a) **In case of a company limited by shares:** Liability of its members is limited to the extent of amount unpaid (if any) on the shares, held by them.
- b) **In case of a company limited by guarantee:** Liability of its members is limited to the extent of amount undertaken to be contributed by them, in the event of winding up of the company.
 - i) Liability of member shall arise only if the company is wound up while he is a member or within 1 year after he ceases to be a member.
 - ii) Liability of member shall be limited to
 - Payment of the debts that are incurred by the company before he ceased to be a member;
 - Payment of Expenses of winding up of the company; and
 - Adjustment of the rights of the contributories among themselves.

5. CAPITAL CLAUSE: The capital clause states

- a) The amount of share capital with which the company is to be registered;
- b) The number of shares; and
- c) The Nominal value of each share.

6. ASSOCIATION CLAUSE OR SUBSCRIPTION CLAUSE:

- a) In this clause subscribers declare that they desire to form a company and agree to take shares stated against their names.
- b) Each subscriber must sign in the presence of at least one witness who shall attest his signature.
- c) Every subscriber must take at least one share.
- d) In case of a public company, Memorandum must be signed by at least 7 subscribers. In case of a private company at least two subscribers must sign.

7. NOMINEE CLAUSE: It states the name of the person who becomes the member of the company in the event of death of the subscriber. This clause applies to OPC only.

(IMMEDIATELY REFER PRACTICAL QUESTION CRD 1)

SIMILAR QUESTION:

1. The Memorandum of Association of a company provided that the nominal capital of the company was Rs 10 lacs divided into 10,000 equity shares of Rs 100 each. The company wanted to issue preference shares. But there was no express

provision either in the memorandum or in the articles regarding the issue of preference shares. The company, by a special resolution, altered its articles and added a clause authorizing the directors to issue preference shares. Thereafter, the preference shares were issued. Is the issue of Preference shares Valid?

Alteration and issue of preference shares was valid. In this case, the issue of preference shares was not expressly forbidden by the memorandum.

Q.No.3. Explain the Provisions regarding Name Clause of MOA. [Sec.4 (2)]

(B) (NEW SM)

A company can choose any name of its wish subject to the following conditions:

PROVISIONS REGARDING NAME CLAUSE OF MOA:

1) SPECIAL WORDS:

- a) Name of the company must end with the word "limited" in case of Public Company and "private limited" in case of Private Company, except in case of Sec 8 Companies.
- b) For Section 8 Companies, the name shall include the words like 'foundation', 'forum', 'federation', 'chamber', 'confederation', 'association', 'council' etc.
- c) Nidhi Company shall have last words 'Nidhi Limited' as part of its name.
- d) The name of Government Company shall always end with the word "Limited" even if it is incorporated as a private company.

2) RESTRICTION ON SELECTION OF NAMES:

- a) The name of the company should not be identical or similar to any other existing company registered under this Act or any previous company law or similar to LLP or Registered Trade Mark.³
- b) The name stated in the memorandum shall not be such that its use by the company-
 - i) will constitute an offence under any law for the time being in force; or
 - ii) is undesirable in the opinion of the Central Government.

3) UNDESIRABLE NAMES:

- a) A company shall not be registered with a name which contains –
 - i) any word or expression which is likely to give the impression that the company is in any way connected with or having the patronage the CG, any SG, or any local authority, corporation or body constituted by the Central Government or any State Government under any law for the time being in force
 - ii) Such word or expression, as may be prescribed, without prior approval of the Central Government.
- b) The following words and combinations thereof shall not be used in the name of a company unless the previous approval of the Central Government has been obtained for the use of any such word or expression-*Board; Commission; Authority; Undertaking; National; Union; Central; Federal; Republic; President etc.*
- c) If the proposed name include words such as 'Insurance', 'Bank', 'Stock Exchange', 'Venture Capital', 'Asset Management', 'Nidhi', 'Mutual fund' etc., unless a declaration is submitted by the applicant that the requirements mandated by the respective regulator, such as IRDA, RBI, SEBI, MCA etc. have been complied with by the applicant⁴.

SIMILAR QUESTIONS:

1. Can a Company choose whatever name it likes to have? Or are there any restrictions on the same? If yes what are those restrictions?

A. Refer above answer

3) Name of the company may be similar to the name of sole proprietor who is carrying business with an unregistered trade mark.

4) EMBLEMS AND NAMES ACT: As per the General Circular No.29/2014, dated 11th of July, 2014, Government directed that while allotting names to Companies/Limited Liability Partnerships, the Registrar of Companies should exercise due care that the names are not in contravention of the provisions of the EMBLEMS AND NAMES (PREVENTION OF IMPROPER USE) ACT,1950.

2. A Company can't choose whatever the name it likes just like any Sole Trading Concern. Comment.
- A. Refer above answer
3. After Qualifying CA course Mr. Abhishek is planning to start his business of manufacturing mobile cases in the form of a company. Can Abhishek select a name of his own choice or are there any rules governing the same? Guide him to choose a name for his company?
- A. Refer above answer
4. You have been approached by a client Mr. Pawan who is entering into construction business. He intends to incorporate a company with name 'Andhra Pradesh state capital Developers Limited'. Advice your client with respect to the fixation of name.
- A. A company shall not be registered with a name which contains –
 - a) any word or expression which is likely to give the impression that the company is in any way connected with the CG, any SG, or any local authority;
 - b) Such word or expression, as may be prescribed, without previous approval of the Central Government.

In the given case, the proposed name of the company consists the name of the state 'Andhra Pradesh' which is not acceptable, unless specifically approved by CG.

So, the proposed name is not acceptable as per the provisions of the Companies Act.

(IMMEDIATELY REFER PRACTICAL QUESTION CRD 2)

Q.No.4. Write a short note on Publication of Name. [Sec 12]

(C) (NEW SM)

1) LABELING OF COMPANY:

- a) **Name Board:** Every company shall Paint or affix its name, and the address of its registered office, and keep the same painted or affixed, on the outside of every office or place in which its business is carried on, in a conspicuous position, in legible letters, and in Local language. (i.e., Both English and Vernacular language)
- b) **Common Seal:** The name of the Company shall be engraved in legible characters on its seal, if any;
- c) **Official Documents:** The following particulars shall be printed on all its business letters, billheads, letter papers and in all its notices and other official publications
 - i) Name of the company.
 - ii) Address of its registered office
 - iii) Corporate Identity Number
 - iv) Telephone number
 - v) fax number, if any,
 - vi) e-mail and
 - vii) website addresses, if any
- d) **Instruments:** Every Company shall have its name printed on hundis', promissory notes, bills of exchange and such other documents.
- e) **In case of OPC:** The words "One Person Company" shall be mentioned in brackets below the name of such company, wherever its name is printed, affixed or engraved.

Q.No.5. Explain the procedure for change of name of a company as per the Companies Act, 2013. [Sec 13(2)]

(A) (NEW SM, OLD PM, M12 - 8M)

A company, which is desirous of changing its name, needs to follow the below stated procedure:

CHANGE IN THE NAME CLAUSE (VOLUNTARILY BY MEMBERS) [SEC 13(2)]: The steps to be followed are

1) APPROVAL OF CENTRAL GOVERNMENT:

- a) Any change in the name of a company shall be affected only with the approval of the Central Government (Delegated to ROC).

b) However, no such approval shall be necessary where the change in the name of the company is only the addition/deletion of the word "Private", on the conversion of any one class of companies to another class in accordance with the provisions of the Act.

2) PROHIBITION ON CHANGE OF NAME:

a) Change of name shall not be allowed, if company has defaulted in:

- i) Filing its Annual returns or Financial Statements with ROC; or
- ii) Repayment of deposits or debentures or payment of interest thereon.

b) Of course, change of name will be allowed after the defaults are cleared.

3) SPECIAL RESOLUTION: Pass special resolution at General meeting in order to change the Company's name.

4) FILING WITH ROC: In relation to alteration of Name clause of MOA, the company shall file with the ROC:

- a) A copy of Special Resolution passed by the Company and
- b) A copy of Central Government approval.

5) EFFECT OF NAME CHANGE:

- a) ROC shall replace old name with new name in the register of companies.
- b) ROC shall issue fresh certificate of incorporation with the new name.
- c) The change in name is complete and effective only on the issue of fresh certificate of incorporation by ROC.

6) DISCLOSURE OF FORMER NAME: Company shall paint or affix the former (*old*) name or names so changed along with its new name for a period of 2 years after every change of name.

SIMILAR QUESTIONS:

1. Where a public company has been converted into private company, is the approval of CG necessary for change of name. Comment.
 - A. Approval of CG is not necessary to add or delete the word 'Private' upon conversion of public company to private and vice versa.
2. M/s Anitha Ltd. has not filed annual returns for the past 2 years. The company intends to change the name. As a Chartered Accountant advise M/s Anitha Ltd regarding change of name as per provisions of companies act.
 - A. No. Anitha Ltd. cannot change the name of the company as it has defaulted in filing its annual returns. However, name change will be allowed after the defaults are cleared.
3. Can the company still display its old name even after its change of name is certified by ROC?
 - A. Yes. The Company shall paint or affix or print, along with its name, the former name or names so changed during the last 2 years.

Q.No.6. Explain the procedure for rectification of name of the company. (Sec 16)

(A) (NEW SM, OLD SM)

RECTIFICATION OF NAME

1. UPON THE DIRECTIONS OF "CG" - WHEN TRADEMARK IS INFRINGED:

a) **Application to CG:**

- i) If a company is registered with a name which is identical or similar to the name of a registered trademark (*under the Trade Marks Act, 1999*) then the owner of such registered trade mark may apply to the CG⁵.
- ii) The owner of such registered trademark may file an application within 3 years from the date of incorporation of such company.

⁵ Right now such power is delegated to Regional Director.

- b) **Order by CG:** On receipt of such application, if CG is also of same opinion then it may direct the company to change its name.
- c) **Change of Name:** The Company shall rectify its name within 6 months from the date of issue of such direction, by passing an 'Ordinary Resolution'.

2. UPON THE DIRECTIONS OF "CG" – OTHER CASES:

- a) If a company is registered with a name which is identical or similar to the name of an existing Company then the CG may direct such company to rectify its name.
- b) The company shall rectify its name within 3 months from the date of issue of such direction, by passing an 'Ordinary Resolution'.

PROCEDURE FOR RECTIFYING THE NAME IN THE ABOVE SITUATIONS U/S 16:

- 1) Pass Board Resolution and file application for reservation of name with ROC.
- 2) Obtain approval for new name from ROC (Reserve name).
- 3) Pass Ordinary Resolution at General Meeting.
- 4) Amend MOA and AOA.
- 5) Company is required to give notice of change in name to the ROC within 15 days from the date of change by filing with ROC, a copy of altered MOA and AOA, Copy of Ordinary Resolution & CG order.
- 6) ROC will issue a fresh Certificate of Incorporation pursuant to rectification of name.

CONSEQUENCES OF DEFAULT: If a company makes default in complying with any of the above directions:

WHO IS LIABLE?	PENALTY
Company	Fine of Rs. 1,000 for every day during which the default <u>continues</u>
Every officer of the company who is in default	Fine varying from Rs. 5,000 to Rs. 1 Lakh.

DISCLOSURE OF FORMER NAME: Company shall paint or affix or print the former (*old*) name or names so changed along with its new name for a period of 2 years after every change of name.

SIMILAR QUESTIONS:

1. Explain the procedure for compulsory change of name of the company u/s 16 of the companies Act, 2013?
 - A. Hint: Write the 1st and 2nd points in the above answer.
2. When CG may give directions for rectification of name of the company? How such directions could vary towards resemblances with trademark, resemblances with name of an existing company?
 - A. Hint: For rectification of trade marks, the time given is 6 months. In case of other rectifications, the time given is 3 months.
3. Advise "Asiatic Government Security Life insurance Companies Ltd" whether it can seek an injunction against 'The New Asiatic Insurance Companies Ltd.' Which was subsequently formed, restraining it from having in its name the word 'Asiatic' on the ground that it has caused confusion and can deceive the public.
 - A. If a company is registered with a name which is identical or similar to the name of an existing Company then the CG may direct such company to rectify its name.
 In the given case the name of 'The New Asiatic Insurance Companies Ltd.' was similar to the name of 'Asiatic Government Security Life insurance Companies Ltd'.
 CG may direct New Asiatic Insurance Companies Ltd (on suo-moto).
 The New Asiatic Insurance Companies Ltd shall rectify its name within 3 months from the date of issue of such direction, by passing an 'Ordinary Resolution'.
 Procedure for rectification of Name: Refer Point 2 Above.

(IMMEDIATELY REFER PRACTICAL QUESTION CRD 5, 6, 7)

Q.No.7. What is the importance of registered office of the Company and State the provisions of Companies act relating to Registered Office? (A) (NEW SM, OLD SM OLD PM, N11 - 8M, N15 - 2M)

IMPORTANCE OF REGISTERED OFFICE OF THE COMPANY: Once a company gets incorporated, it is required to maintain a registered office.

- 1) It is the place where all the statutory registers and records are maintained.
- 2) It indicates the jurisdiction of the court to which the Company is subjected to.
- 3) All notices and official correspondences are addressed to the Registered Office.
- 4) Every company shall paint and affix its name and address in front of every place of business.

PROVISIONS OF COMPANIES ACT 2013 RELATING TO REGISTERED OFFICE:

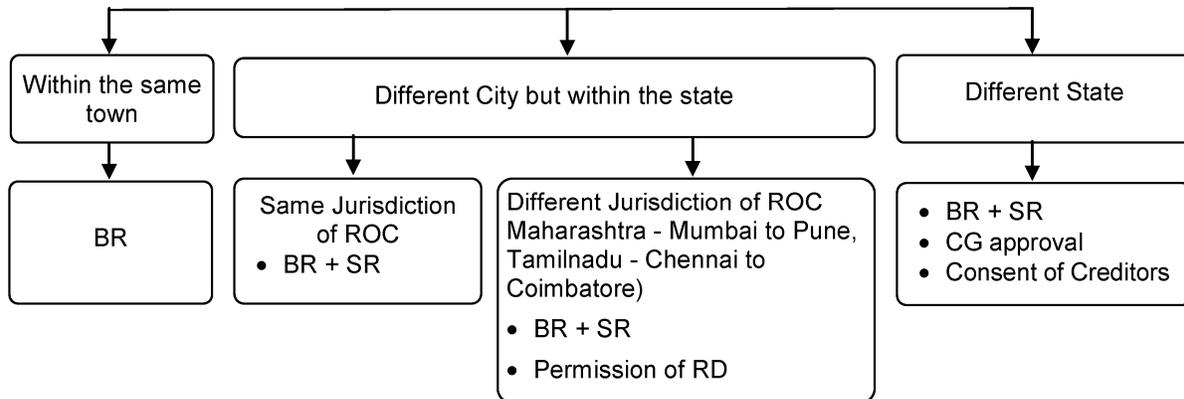
- 1) **Mandatory to have Registered Office:** Every company shall have its registered office within 30 days of its incorporation.
- 2) **Verification of registered office:** The Company shall have its registered office within 30 days of incorporation and file e-form INC-22 with ROC within 30 days of incorporation⁶.
- 3) **Giving Notice of change to ROC:**
 - a) Whenever there is a change in the Registered Office, a notice has to be given to the ROC.
 - b) The notice shall be given within 30 days of such change and shall be verified in the prescribed manner, as stated above.

SIMILAR QUESTION:

1. M/s Pratap Limited (not an IFSC company) was incorporated on 01/04/2019 as per provisions of the companies Act, 2013. At the time of incorporation the applicant has filed an address for temporary correspondence. After incorporation, the company has no permanent establishment. Advice the company in how many days it is required to have its registered office?
A. Hint: 30 days

Q.No.8. Write about different possible ways of shifting Registered Office along with the procedure thereof? (B) (NEW SM, OLD SM)

DIFFERENT POSSIBLE WAYS OF SHIFTING REGISTERED OFFICE



1) CHANGE OF REGISTERED OFFICE WITHIN LOCAL LIMITS (SEC 12)⁷:

- a) Pass Board Resolution for change of Registered Office.
- b) File e-form INC-22 with ROC within 30 days of change.

6) In case of specified IFSC public and private, it shall be 60 days.

7) This change does not involve alteration of MOA.

- 2) **CHANGE OF REGISTERED OFFICE FROM ONE CITY / TOWN / VILLAGE TO ANOTHER CITY / TOWN / VILLAGE WITHIN THE SAME STATE:**
- Board Resolution:** Pass Board Resolution to call for General Meeting.
 - Special Resolution:** Pass Special Resolution at General Meeting⁸.
 - Notice of change to ROC:**
 - File e-form MGT-14 with ROC within 30 days of passing Special Resolution.
 - File e-form INC-22 with ROC within 30 days of effective date of change.
- 3) **SHIFTING OF REGISTERED OFFICE FROM THE JURISDICTION OF ONE ROC TO ANOTHER ROC WITHIN THE SAME STATE:** - Refer Q.No: 9
- 4) **SHIFTING OF REGISTERED OFFICE FROM ONE STATE TO ANOTHER STATE:** - Refer Q.No: 10

Q.No.9. Explain the procedure for shifting of registered office from the jurisdiction of one Registrar to the other Registrar within the same state. (B) (NEW SM, OLD SM)

PROCEDURE TO BE FOLLOWED WHEN THERE IS A CHANGE OF REGISTERED OFFICE FROM THE JURISDICTION OF ONE ROC TO ANOTHER ROC WITHIN THE SAME STATE:

- Pass Board Resolution to call for General Meeting.
- Pass Special Resolution of the members approving the shifting.
- APPROVAL FROM RD:** File an application with Regional Director in order to obtain approval of Regional Director (INC-23). Such application shall be accompanied by the following documents:
 - Board Resolution for shifting of registered office.
 - Special Resolution of the members of the company approving the shifting of registered office.
 - 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.
 - Declaration not to seek change in the jurisdiction of the Court. This is applicable only when some cases are pending for prosecution.
 - 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.
- COMMUNICATION AND FILING WITH RD & ROC:**
 - The confirmation shall be communicated to the company within 30 days from the date of receipt of application by the Regional Director.
 - Within 60 days of receiving the confirmation, the company shall file the same with the ROC and ROC shall register the same.
 - ROC shall certify the registration within 30 days of filing of such confirmation.
 - The Company shall file INC-22 within 30 days of change of registered office.
- CONCLUSIVE EVIDENCE:** The certificate issued by the ROC is conclusive evidence that all the requirements of this Act with respect to change of registered office have been complied with.

SIMILAR QUESTION:

- VD Company Ltd. is registered in Tamil Nadu within the jurisdiction of the ROC, Chennai. The company proposes to shift its registered office to a place within the jurisdiction of ROC, Coimbatore. State the steps to be taken by the company to give effect to the proposed shifting of its registered office.
 - Refer above answer

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8) This resolution shall be passed by postal ballot in case of company having more than 200 members.

**Q.No.10. Explain the procedure for shifting of registered office from one state to another state.
(A) (NEW SM, OLD PM, N11 - 8M, N13 - 8M, N15 - 6M)**

PROCEDURE FOR SHIFTING OF REGISTERED OFFICE FROM ONE STATE TO ANOTHER IS STATED BELOW [Sec.13 (1)]:

- 1) Pass Board Resolution to call for General Meeting.
- 2) Pass Special Resolution of the members approving the shifting.
- 3) **APPROVAL OF CG:** The alteration of the memorandum relating to the place of the registered office from one State to another shall not have any effect unless it is approved by the Central Government⁹ on an application in such form and manner as may be prescribed.
- 4) **APPLICATION TO C.G.:** Company shall make application to CG in prescribed form and manner.
 - a) **Such application should be accompanied by:**
 - i) Copy of MOA, with proposed alterations
 - ii) Copy of Board Resolution
 - iii) Copy of Special Resolution and the minutes of the General Meeting at which the resolution authorizing such alteration was passed
 - iv) List of creditors and debentures holders with their respective amount due.
 - v) Copy of advertisement
 - b) **Inspection of list of Creditors:** List of creditors is kept open for inspection at Registered Office. Any person can inspect it and get extract on payment of fees during business hours.
- 5) **ADVERTISEMENT AND NOTICE:** Atleast 14 days (but not more than 30 days) before the date of hearing, the Company shall -
 - a) Advertise the application for change of Registered Office¹⁰ in two newspapers (vernacular and English newspapers).
 - b) Serve Individual notices on each debenture holder and creditor of the company by Registered post acknowledgement due.
 - c) Serve a notice to the -
 - i) Registrar of Companies, and
 - ii) Regulatory body, if the company is regulated by special act or law. *Ex: SEBI in case of listed company.*
- 6) **DISPOSAL OF APPLICATION:** Central Government shall dispose the application within 60 days. Before passing any order, C.G. shall satisfy itself that-
 - a) **Consent of Creditors:** The alteration has the consent of the creditors, debenture-holders and other persons concerned with the company, or
 - b) **Provisions and Security:** Sufficient provision has been made by the company either for the due discharge of all its debts and obligations, or adequate security has been provided for such discharge.
- 7) **FILING WITH ROC:**
 - a) The Company shall file a certified copy of the C.G. order¹¹ with the ROC of each of the States, within 30 days and in prescribed form and manner (INC 28).
 - b) The Company shall file INC-22 within 30 days of change of registered office.

9) Now Delegated to Regional Director

10) i.e. from one state to another state

11) approving such alteration

- 8) **ISSUE OF FRESH CERTIFICATE OF INCORPORATION:** The ROC of the State where the registered office of the company is to be shifted shall issue a fresh certificate of incorporation indicating the alteration.

NOTE: If a company is having more than 200 members then Special Resolution shall be passed by postal ballot.

SIMILAR QUESTIONS:

1. A Company filed a petition before CG for shifting its registered office to another state. The SG objected to such shifting on the ground that it would adversely affect the government revenues and employment. Decide whether objection of the SG is tenable?
- A. In *Minerva Mills Ltd. Vs. Govt. of Maharashtra* the court refused to accept the contention of the State on the ground of loss of revenue. The SG can raise objections only in the capacity of creditor and it cannot raise objection on general considerations. Hence, the objection of the SG is not tenable, in the given case.
2. Explain the power of CG in protecting interest of creditors in case of change of registered office from one state to another state.
- A. Refer above Answer point 6.

(IMMEDIATELY REFER PRACTICAL QUESTION CRD 3, 4)

Q.No.11. Explain the provisions of law and procedure relating to "Alteration of Objects clause" of MOA of a company under the companies Act, 2013.

(A) (OLD PM, N12 - 8M, M16 - 5M, RTP - M16, MTP -N18 (O))

ALTERATION OF OBJECTS CLAUSE OF MOA:

- 1) The Companies Act, 2013 has made alteration of MOA simpler and more flexible.
- 2) **Board Resolution:** Board Meeting shall be conducted -
 - to consider the proposal for change of objects clause and
 - to fix the date, time and place of General Meeting.
- 3) **Special Resolution:** A company may alter objects clause by passing Special Resolution at General Meeting.
- 4) **Exit Offer to Dissenting Shareholders:** Dissenting shareholders shall be given an opportunity to exit by the Promoters and shareholders having control, in accordance with SEBI regulations.
- 5) **Filing with ROC:** File MGT-14¹² with the Registrar within 30 days of passing the resolution.
- 6) **Certification by ROC:** ROC shall register the same and certify it within 30 days from the date of filing. The alteration shall be effective only when it is registered by the ROC.

ALTERATION OF OBJECTS STATED IN PUBLIC OFFER:

- 1) **Prohibition on a company which raised funds:** A company, which has raised money from public through prospectus and still has any unutilized amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution through postal ballot is passed by the company and
- 2) **Publish in News Papers:** The details, in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating there in the justification for such change

Note: If a company is having more than 200 members then Special Resolution shall be passed by postal ballot. It is not required for companies having not more than 200 members.

SIMILAR QUESTION:

1. Explain the steps to be taken by a company for starting a business for which there is no provision in the objects clause of the MOA. (OLD PM)
- A. Refer Above Answer
2. A company was started with the object of developing a 'A mall with shops' in one of its buildings. The proposed building was destroyed by fire and the company wanted to alter the objects clause in the MOA by substituting the words 'A mall

12) (Copy of special resolution)

with shops' with the words "Shops, Residential buildings and Warehouses for letting purposes.' Will this alteration of the MOA for the purpose be permissible? Decide referring to the provisions of the Companies Act, 2013. (OLD PM)

- A. As per Section 13(1), the alteration to the MOA is permissible only with the approval of members by SR. It must be duly registered with the ROC. Hence, the proposed alteration is permissible.

(IMMEDIATELY REFER PRACTICAL QUESTION FOR SELF PRACTICE 8)

SECTION 2: QUESTIONS FOR ACADEMIC INTEREST – FOR STUDENTS SELF STUDY

(MAY GET SOME MCQs. SO, STUDENTS NEED TO READ THE SAME ON THEIR OWN)

Q.No.12. Write about "Capital Clause" of MOA

(C) (NEW SM, OLD SM)

- 1) **"Capital Clause" of the MOA:** In case of a company having share capital, MOA shall state -
 - a) Authorized Capital or Nominal capital or Registered Capital i.e. the amount of Share Capital with which the company comes into existence.
 - b) The division thereof into shares of a fixed amount
- 2) Stamp duty and Registration fee payable is determined on the basis of Authorised capital.
- 3) **Effect of Capital Clause:** As per Section 61 of the companies Act, 2013, A Company cannot issue more shares than the amount stated under this clause, without altering the Memorandum.
- 4) The amount of authorised capital should be sufficiently high so that further issue of shares may easily be done to finance the expanding business.
- 5) It is optional for a company to state the division of the Authorised capital into different classes of shares (if any) and the rights of various classes of shareholders.

NOTE: Company having no share capital is not required to have capital clause in its memorandum.

Q.No.13. What is meant by "Alteration of MOA" Also state the circumstances in which MOA of a company may be altered.

(C) (NEW SM)

MEANING OF ALTERATION [SEC 2(3) OF COMPANIES ACT, 2013]: Alter or Alteration includes making of additions, omissions, and substitutions.

A Company may alter the provisions of its MOA with the approval of the members, and after complying with the procedure specified in this section.[Sec.13(1)]

THE MOA OF A COMPANY MAY BE ALTERED IN THE FOLLOWING SITUATIONS¹³:

- 1) By changing its name [Sec 13(2)]
- 2) By changing the state in which its registered office is situated [Sec 13(4) & (7)]
- 3) By altering its objects [Sec 13(1) & (9)]
- 4) By altering its share capital [Sec 61]
- 5) By reorganizing its share capital [Sec 203 to 237]
- 6) By reducing its capital [Sec 66]

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Q.No.14. What are the names that are considered to be undesirable as per the provisions of Companies Act, 2013 (C)

(NEW SM)

1) **A NAME IS SAID TO BE UNDESIRABLE IF**

- a) It is identical with, or
- b) too nearly resembles the name of an existing company or
- c) Infringes a registered trademark or a trademark subject to an application for registration.

¹³ Only members are entitled to have right to participate in the divisible profits of the company [Sec 13(12)]: In the case of a company limited by guarantee and not having share capital, any alteration of the MOA intending to give a right to participate in the divisible profits of the company, to any person (except member), shall be void.

2) GUIDELINES REGARDING SELECTION OF NAME:

- a) The name should not be prohibited u/s 3 of the emblems and names (Prevention and improper use) Act, 1950.
 - b) The name should not contain any word which is offensive to any section of the people
 - c) It should not be identical with name of any LLP (inside or outside India)
 - d) The name should not contain word 'British India'
 - e) The name should not imply any association or connection with embassy or a foreign government or national hero
 - f) It should not be identical with company which was dissolved within last 2 years.
 - g) It includes words such as 'Insurance', 'Bank', 'Stock Exchange', 'Venture capital', 'Asset Management', 'Nidhi', 'Mutual fund' etc., unless a declaration is submitted by the applicant that the requirements mandated by the respective regulator, such as IRDA, RBI, SEBI, MCA etc. have been complied with the applicant.
 - h) The name should not include word 'State' (except in case of Government Company).
- 3) The word 'National' is allowed to be used as part of name of company if it is a Government Company.
 - 4) Name 'Electrol Trust' may be allowed to be used for formation of section 8 company as per Electrol Trusts Scheme, 2013.
 - 5) Name identical with name of company which is struck off in pursuance of action under companies Act, 2013 or Companies Act, 1956 can be allowed only **after expiry of 20 years** from the date of publication in official gazette striking off the name.
 - 6) Abbreviate name (23k Limited Or DJMO Ltd.) is allowed if it is not violate of provisions of IPR.

SECTION 3: PRACTICAL QUESTIONS FOR CLASSROOM DISCUSSION

Q.No.1. The registered office clause of the MOA of A ltd. does not contain name of the city. Because of this ROC refused to register the MOA. Is it Correct?

PROVISION: As per Sec 4 of the Companies Act, 2013 - requirements in respect of MOA.

Sec 4(1) (b) of the Companies Act, 2013 states that the registered office clause shall contain the name of the state in which the registered office of the company is situated.

ANALYSIS & CONCLUSION: By applying the above provisions, it is clear that the address of the company is not required for registering MOA. However the address of the company is to be mentioned properly in AOA. The contention of ROC is not correct.

Q.No.2. Decide, under the Companies Act, 2013 whether Mr. Prabhu can incorporate a new company using the phrase "Electoral Trust" with the name of the company. **(M14 - 4M)**

PROVISION: As per Rule 8 of Companies (Incorporation) Rules, 2014, the name of the Company may contain the phrase "Electoral Trust" if such company is to be formed u/s 8 of the Companies Act, 2013.

ANALYSIS: The use of the phrase "Electoral Trust" is in accordance with the Electoral Trust Scheme 2013 as notified by Central Board of Direct Taxes (CBDT) and the name application is accompanied with an affidavit to the effect that the name is to be obtained only for the purpose of registration of companies under Electoral Trust Scheme 2013 as notified by CBDT.

CONCLUSION: In the given case Mr. Prabhu can use the phrase "Electoral Trust" only for the purpose of incorporating a new company u/s 8 of Companies Act, 2013 complying with the Electoral Trust Scheme issued by CBDT.

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Q.No.3. M/s ABC Ltd. a company registered in the State of West Bengal desired to shift its registered office to the State of Maharashtra. Explain briefly the steps to be taken to achieve the purpose. Would it make a difference, if the Registered Office is transferred from the Jurisdiction of one ROC to the Jurisdiction of another ROC within the same state?
(OLD PM, M18 (N) - 5M)

TRANSFER OF REGISTERED OFFICE OF A COMPANY: The change in the address of the registered office of a company requires an alteration to its Memorandum which is covered under section 13 of the Companies Act, 2013.

In order to shift the registered office from the State of West Bengal to the State of Maharashtra, M/s ABC Ltd. has to take the following steps:

- 1) **BOARD RESOLUTION FOR CALLING GENERAL MEETING:** To hold a Board Meeting for the purpose of calling a general meeting of the members of the company in which the shifting of the registered office from West Bengal to Maharashtra will have to be approved;
- 2) **SPECIAL RESOLUTION:** The general meeting of the members will have to pass a special resolution approving the change of address of the registered office from West Bengal to Maharashtra [section 13 (1)].
- 3) **APPLICATION TO THE CG/RD:** Make an application to the Central Government/Regional Directors in such form and manner as may be prescribed, for getting its approval [sec 13(4)].
- 4) **ALTERATION TO MOA:**
 - a) Where an alteration of the Memorandum results in the transfer of the registered office of the company from one state to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the registrar of each of the states, within such time and in such manner as may be prescribed, and the registrars shall register the same.
 - b) The registrar of the state where the registered office is being shifted to shall issue a fresh certificate of incorporation indicating the alteration.
 - c) In the present case, it will be the registrars of both West Bengal to Maharashtra.
- 5) **FILING WITH ROC:** The change in registered office will be effective only after the issue of the fresh certificate of incorporation by the Registrar of the state where the registered office is being shifted to, Maharashtra in this case.

CHANGE OF REGISTERED OFFICE FROM THE JURISDICTION OF ONE REGISTRAR TO THE OTHER REGISTRAR WITHIN THE SAME STATE:

- 1) A change of registered office from the jurisdiction of one registrar to another does not involve an alteration to the Memorandum of a company as the location clause in the Memorandum merely states the name of the state, which is not changed by such relocation.
- 2) Hence, the provisions of section 13 which deals with the alteration of the Memorandum do not apply.
- 3) **SPECIAL RESOLUTION (SEC 12 (5)):** The registered office of the company shall not be changed from one city or town to another within the same state except on the authority of a special resolution passed by a company.
- 4) **APPROVAL FROM REGIONAL DIRECTOR:** In case of change of the registered office from the jurisdiction of one registrar to another such change must be confirmed by the Regional Director also, on an application made in this behalf by the company.
- 5) **FILING WITH ROC:** He shall certify the registration within a period of 30 days from the date of filing of such confirmation.
- 6) The certificate shall be conclusive evidence that all the requirements of this Act with respect to change of registered office have been complied with and the change shall take effect from the date of the certificate. [Section 12(6) & (7)].

Q.No.4. XY Ltd. has its registered office at Mumbai in the State of Maharashtra. For better administrative conveniences the company wants to shift its registered office from Mumbai to Pune (State of Maharashtra). What formalities the company has to comply with under the provisions of the Companies Act, 2013 for shifting its registered office as stated above? Explain.
(NEW SM - TYK, OLD PM)

The Companies Act, 2013 under section 13 provides for the process of altering the Memorandum of a company. Since the location or Registered Office clause in the Memorandum only names the state in which its registered office is situated, a change in address from Mumbai to Pune, **does not result in the alteration of the Memorandum** and hence the provisions of section 13 (and its sub sections) do not apply in this case.

However, under section 12 (5) of the Act which deals with the registered office of company, the change in registered office from one town or city to another in the same state, must be approved by a **special resolution** of the company. Further, registered office is shifted from one ROC to another, therefore company will have to seek approval of Regional director.

Q.No.5. Manglu and friends got registered a company in the name of Taxmann advisory private limited. Taxmann is a registered trade mark. After 5 years When the owner of trade mark came to know about the same, it filed an application with relevant authority. Can the company be compelled to change its name by the owner of trade mark? Can the owner of registered trade mark request the company and then company changes its name at its discretion? **(NEW SM – TYK)**

PROVISIONS: According to section 16 of the Companies Act, 2013 if a company is registered by a name which,—

- in the opinion of the Central Government, is identical with the name by which a company had been previously registered, it may direct the company to change its name. Then the company shall by passing an ordinary resolution change its name within 3 months.
- is identical with a registered trade mark and owner of that trade mark apply to the Central Government within three years of incorporation of registration of the company, it may direct the company to change its name. Then the company shall change its name by passing an ordinary resolution within 6 months.

Company shall give notice to ROC along with the order of Central Government within 15 days of change. In case of default company and defaulting officer are punishable.

ANALYSIS & CONCLUSION: In the given case, owner of registered trade mark is filing objection after 5 years of registration of company with a wrong name. While it should have filed the same within 3 years. Therefore, the company cannot be compelled to change its name.

As per section 13, company can anytime change its name by passing a special resolution and taking approval of Central Government. Therefore, if owner of registered trade mark request the company for change of its name and the company accepts the same then it can change its name voluntarily by following the provisions of section 13.

Q.No.6. M/s India Computers Ltd. was registered as a Public Company on 1st July, 2005 in the State of Maharashtra. Another company by name M/s All India Computers Ltd. was registered in Delhi on 15th July, 2005. The promoters of India Computers Ltd. have failed to persuade the management of All India Computers Ltd. to change the company's name, as it closely resembles with the name of the first registered company. Advise the Management of India Computers Ltd. about the remedies available to them under the provisions of the Companies Act, 2013.

PROVISION: Name of the company shall not be identical with or resemble too nearly to the name of an existing company (Sec 4(2)).

If a company is registered with a name which is identical or similar to the name of an existing Company then the CG may direct such company to rectify its name.

The company shall rectify its name within 3 months from the date of issue of such direction, by passing an 'Ordinary Resolution'.

ANALYSIS: In the given case, the name of M/s All India Computers Ltd too nearly resembles the name of "M/s India Computers Ltd". As per Rule - 8(1) (i) of the Companies (Incorporation) Rules, 2014, the addition of words "All" does not distinguishes one name from another.

CONCLUSION: Therefore, M/s India Computers Ltd is advised to satisfy the CG regarding the resemblance of name and get an order directing the "All India Computers Ltd" to change its name.

Q.No.7. Alfa Ltd. Was incorporated on 15th March, 2016. A company with identical name and similar objects was incorporated on 5th August, 2017. On account of similarity of name, Alfa Ltd i.e. the company which was previously registered, filed a petition on 15th April, 2018 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, 2018, 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.

PROVISION: As per section 16 of the companies Act, 2013, the central Government is empowered to direct a company to change its name on the grounds of sillarity of the name with an exiting company, if through in advertence or otherwise a company on its first registration or on its registration by a new name, is registered by a name which, in the opinion of the central Government, is identical with too nearly resenbles the name by which a company in exitance had been previously registered.

In such a case, it may direct the company to change the name and the company shall chage the name or the new name within three maonths from the issue of direction after adopting an ordinary resolution for the purpose.

ANALYSIS AND CONCLUSION: Inrespect of the above case, the later company with identical name shall comply with the orders of the central Government within 3 months from the date of order i.e. 16th August 2018 failing which the company and every officer in default is liable to pay fine not less than five thousand rupees but which may extend to one lakh rupees.

Q.No.8. Anushka security equipments limited is a manufacturer of CCTV cameras. It has raised ` 100 crores through public issue of its equity shares for starting one more unit of CCTV camera manufacturing. It has utilized 10 crores rupees and then it realized that its existing business has no potential for expansion because government has reduced customs duty on import of CCTV camera hence imported cameras from china are cheaper than its own manufacturing. Now it wants to utilize remaining amount in mobile app development business by adding a new object in its memorandum of association. Does the Companies Act allow such change of object? If not then what advise will you give to company. If yes, then give steps to be followed. **(NEW SM-TYK)**

PROVISION: According to section 13 of the Companies Act, 2013 a company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and—

- a) The details in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change;
- b) The dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with SEBI regulations.

Company will have to file copy of special resolution with ROC and he will certify the registration within a period of thirty days. Alteration will be effective only after this certificate by ROC.

ANALYSIS AND CONCLUSION: Looking at the above provision we can say that company can add the object of mobile app development in its memorandum and divert public money into that business. But for that it will have to comply with above requirements.

SECTION 4: PRACTICAL QUESTIONS FOR STUDENTS SELF STUDY

Q.No.1. Whether ROC can allow name of company as 'Three Ltd'. When another company is already registered with name '3 Ltd.'?

PROVISION: The name stated in the **MOA** shall not be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law.

ANALYSIS AND CONCLUSION: Name '3 Ltd.' shall not be allowed. Since name contains numeric character like 3, it is in resemblance with 'Three'.

Q.No.2. The promoter of a new company has decided to start their company with the name 'i2 Technologies Ltd.' However, the jurisdictional Registrar of company has declined to allow the name starting with small alphabets. Is the ROC's contention valid under the company law as prevalent in India?

PROVISION: The name stated in the MOA shall not be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law.

ANALYSIS AND CONCLUSION: ROC may allow name starting with small alphabets i2 Technologies Ltd., provided that name starting with small alphabets does not have phonetic or visual resemblances with name of company already registered. ROC's contention is invalid in this case.

Q.No.3. India Cosmetics Limited was registered under the Companies Act, 2013. Later on, another company 'India Cosmetics and Accessories Limited' was formed and registered. As both the names were similar, India Cosmetics Limited lodged the complaint against India Cosmetics and Accessories Limited to the registrar of companies stating that there is sufficient similarity between these two names which may mislead or defraud the public. India Cosmetics and Accessories Limited' is intending to alter its name. Advise India Cosmetics and Accessories Limited' according to the provisions of Companies Act, 2013.

(J09-5M)

PROVISION: Name of the company shall not be identical with or resemble too nearly to the name of an existing company (Sec 4(2)).

If a company is registered with a name which is identical or similar to the name of an existing Company then the CG may direct such company to rectify its name.

The company shall rectify its name within 3 months from the date of issue of such direction, by passing an 'Ordinary Resolution.

ANALYSIS: In the given case, the name of M/s India Cosmetics and Accessories Limited too nearly resembles the name of "M/s India Cosmetics Limited"

CONCLUSION: Therefore, M/s India Cosmetics and Accessories Limited is advised to satisfy the CG regarding the resemblance of name and get an order directing the "India Cosmetics and Accessories Limited" to change its name.

Q.No.4. The Directors of a company registered and incorporated in the name "Mars Textile India Ltd." desire to change the name of the company entitled "National Textiles and Industries Ltd." Advice as to what procedure is required to be followed under the Companies Act, 2013? (NEW SM - TYK, OLD PM)

CHANGE IN THE NAME OF COMPANY: In the first instance, Mars Textile India Ltd., should ascertain from the Registrar of Companies whether the proposed name viz. National Textiles and Industries Ltd. is available or not. For this purpose, the company should file the prescribed Form No.INC.24 with the Registrar along with the necessary fees. The Registrar after examination will inform whether the new name is available or not for registration.

In case the name is available, the company has to pass a special resolution approving the change of name to National Textiles and Industries Ltd.

ANALYSIS AND CONCLUSION: Thereafter the approval of the CG should be obtained as provided in Section 13(2) of the Companies Act, 2013. The power of CG in this regard has been delegated to the Registrar of Companies. Thus, the company has to file an application along with the prescribed filing fee for change of name. The change of name shall be complete and effective only on the issue of a fresh COI by the Registrar. The Registrar shall enter the new name in the Register in place of the former name as per Sec. 13(3). The change of name shall not affect any rights or obligations of the company and it shall not render defective any legal proceedings by or against it.

Q.No.5. A registered office was shifted from one state to another. A labour litigation was pending before the court .So, the employees objected to transfer, whether the objection of employee is sustainable?

The objection of employee is sustainable. Employees have right to appear before authority and to oppose application of shifting of registered office from one state to another on the ground that their interest would be likely to be adversely affected. Once objection is raised, it is up to CG to examine the reasons and decide that whether it would be just and equitable to conform such shifting. **Bharat Commerce and Industries Ltd.**

Q.No.6. State with reason, whether the following statement is correct or incorrect, according to the Companies Act, 2013
Change of Registered Office of Company from one place to another within a State requires confirmation by the Central Government.

INCORRECT STATEMENT:

PROVISION: A change in the location of its registered office by a company from one place to another within the same state does not result in the alteration of its Memorandum and hence the provisions and requirements under section 13 of the Companies Act, 2013 will not apply.

Q.No.7. Rishi Pharmacy Ltd. decided to take up the business of food processing because of the downward trend in pharmacy business. There is no provision in the object clause of the MOA to enable the company to carry on such business. State whether its object clause can be amended? Mention briefly the procedure to be adopted for change in the object clause

(OR)

The object clause of the Memorandum of Vivek Industries Ltd., empowers it to carry on real estate business and any other business that is allied to it. Due to a downward trend in real - estate business the management of the company has decided to take up the business of Food processing activity. The company wants to alter its Memorandum, so as to include the Food Processing Business in its objects clause. Examine whether the company can make such change as per the provisions of the Companies Act, 2013?

PROVISION: As per Sec. 13 of companies act, Alteration of Memorandum, A company can alter its objects clause only after passing special resolution by postal ballot. Further the details of alteration of Objects clause shall be published in newspapers and shall also be placed on website of the company. The change in Objects clause shall be informed to ROC within prescribed time who shall approve it within 30 days.

Also, for Dissenting shareholders, the company management and controlling shareholders shall give an option to exit as per directions of securities and exchange board in this regard.

ANALYSIS AND CONCLUSION: In the given case Vivek Industries Limited which is engaged in business of real estate, can change its objects clause so as to include FOOD processing by following above procedure.

SECTION 5: TRUE OR FALSE STATEMENTS – FOR STUDENTS SELF PRACTICE

- 1) Change in the situation of Registered office shall be intimate to ROC within 30 days (T).
- 2) In case of change in objects for which prospectus is issued, company shall give an exit option to Dissenting shareholders (F).
- 3) Change of nominee IN One Person Company does not attract the process for Alteration of MOA (T).
- 4) Situation clause of Memorandum of Association shall state the full address of the company (F).
- 5) Memorandum determines the scope of operations of a company beyond which its actions cannot go (T).
- 6) Change of the registered office from one city to another within the same state involves alteration of Memorandum (F).
- 7) Regulations provided for in the Articles must not exceed the powers of the company as laid down by its memorandum (T).
- 8) MOA of OPC shall specify the name of a person who will become a member in the event of death of members (T).
- 9) A company shall not use a name which gives an impression that it is in any way connected with the CG/SG (T).
- 10) When a trade mark is infringed, the name of a company has to be rectified within 3 months from the CG (F).

SECTION 6: IMPORTANT SECTION NUMBERS

CONCEPT	Sec. No.
Contents of Memorandum of Association	4
Registered office of the Company	12
Alteration of Memorandum	13
Rectification of Name of Company	16

PENALTIES

S.No.	When	For Whom	How Much
1)	Availability of name has been obtained by furnishing wrong or incorrect information and the company is not yet incorporated. [Sec.4(5)(ii)(a)]	The person who has made the application for getting availability of name.	Up to Rs.1 Lakh
2)	Default in complying with Sec.12 - Registered office, Particulars to be displayed etc. [Sec.12(8)]	a) Company; and b) Every officer of the company who is in default	Rs.1,000/day. Max.Rs.1 Lakh.
3)	Default in complying with direction given by CG relating to rectification of name. [Sec.16(3)]	Company	Rs.1,000/ day
		Every officer of the company who is in default	Min.Rs.5,000. Max.Rs.1,00,000
4)	Default in giving copies of MOA and AOA to members who made a request.	a) Company; and b) Every officer of the company who is in default	Rs.1,000/day. Max.Rs.1 Lakh.

TIME LIMITS

Particulars	Time-Limit
Validity period of name reserved by ROC	20 days.
Filing of SR with ROC	30 days
Time-limit for making an application to CG in case of infringement of Trade Mark.	3 years from the date of incorporation of a company which is infringing the Trade Mark
Rectification of name in case of infringement of Trade Mark.	6 months from the date of CG order
Rectification of name in other cases.	3 months from the date of CG order
Notice to be given to ROC in case of rectification of name	15 days of change of its name.
Rectification of name when the name availability is obtained by furnishing wrong or incorrect information	3 months from the date of order from RoC.
Time-limit for establishing a registered office for the first time.	30 days of incorporation of the company
Time limit for giving a notice to ROC regarding the address of first registered office.	30 days of incorporation of the company
Time limit for giving notice to ROC in case of change in the address of registered office.	30 days of change.
Time-limit for confirming the shifting of registered office from the jurisdiction of one ROC to another ROC, by RD.	30 days of receipt of application from the company
Time-limit for filing of RD Confirmation with ROC, in case of shifting of registered office from the jurisdiction of one ROC to another ROC	60 days of receipt of confirmation from RD
Time-limit for confirming the shifting of registered office from one state to another state, by RD	60 days of receipt of application from the company

THE END