

Objects Clause of Memorandum of Association

- It specifies the activities which a company can carry on and which activities it cannot carry on. The company cannot carry on any activity which is not authorized by its Memorandum of Association. Any activity carried out beyond or outside the objects will be ultra vires and void. However the company may do anything incidental to the objects specified.
- However, under section 4 of Companies Act, 2013 there are only two types of Object clauses:
 1. Main Object of the company to be pursued by the company on its incorporation
 2. Objects considered necessary in furtherance of the main objects
- A new business mentioned in 'other objects' cannot be commenced without the prior approval of shareholder through a Special Resolution.
- Company law prescribes that any activity beyond the scope of the objects will be ultra vires and hence void.

Doctrine of Ultra-Vires

- Any transaction which is outside the scope of the powers specified in the objects clause of the MOA, and are not reasonable incidentally or necessary to the attainment of objects is ultra-vires to the company and therefore void.

LAW CAPSULE

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**ALTERATION OF
OBJECT CLAUSE AS
PER COMPANIES
ACT 2013**

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Consequences of an ultra vires act

If an act is deemed to be an ultra-vires transaction it has the following consequences:

- No rights and liabilities on the part of the company arise out of such transactions and it is a nullity even if every member agrees to it.
- The company cannot sue any person for enforcement of any of its rights.
- No person can sue the company for enforcement of its rights.
- The directors of the company may be held personally liable to outsiders for an ultra vires act. A director may be compelled to restore to the company the funds that have been employed in an ultra vires transaction.
- The ultra vires acts are deemed to be void-ab-initio. Hence, the company is not bound by the act and cannot sue or be sued upon it.
- The members in a company have a right to get an injunction from the Court if he finds out that the company is going ahead with an ultra vires act.

Procedure for amendment/alteration of object clause of MOA

- Object Clause of MoA can be altered following provisions under Section 13 of Companies Act 2013 read with Companies (Incorporation) Rules, 2014.

- As per Section 13 of Companies Act 2013 which states that a Company may, by a special resolution and after complying with the procedure specified in this section, alter the provisions of its Memorandum.

STEPS FOR ALTERATION IN OBJECT CLAUSE OF MEMORANDUM OF ASSOCIATION

STEP-I: Call and Convene A Board Meeting

- Call and Convene a Board Meeting to alter the Object clause in Memorandum of Association of Company by giving Notice of at least 7 days as provided under section 173(3) of the Act.
- Main Agenda for this Board meeting would be:
 - a. To Get in-principal approval of Directors for change in Object clause of Memorandum;
 - b. Fix date, time and place for holding Extra-ordinary General Meeting (EGM) to get approval of shareholders, by way of Special Resolution, for amendment in Object Clause of Memorandum. This amendment in Object Clause of Memorandum shall be in accordance with the requirement of Section 13 of the Companies Act, 2013;

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c. To approve Notice of Extra-ordinary General Meeting (EGM) along with Agenda and Explanatory Statement to be annexed to the notice of General Meeting as per section 102(1) of the Companies Act, 2013;

d. To authorise the Director or Company Secretary to issue Notice of the Extra-ordinary General meeting (EGM) as approved by the Board under clause 1(c) mentioned above.

STEP-II: Issue Notice of EGM

- Issue Notice of the Extra-ordinary General meeting (EGM) in writing to all Members, Directors and the Auditors of the company at least 21 days before the actual date of the EGM in accordance with the provisions of Section 101 of the Companies Act, 2013 to all the Directors, Members and Auditors of Company.
- The Notice shall specify the place, date, day and time of the meeting and contain a statement on the business to be transacted at the EGM.

STEP-III: Holding of General Meeting

- Hold the Extra-ordinary General meeting (EGM) on due date and pass the necessary Special Resolution under section 13(1) of the Companies Act, 2013, for change in Object clause of Memorandum.
- **Quorum:** As per Section 103 (b) of the Companies Act, 2013 which states that in the case of a Private Company,

two members personally present, shall be the quorum for a meeting of the company.

STEP-IV: ROC Form filing

As per Section 13 of Companies Act 2013, Company is required to file Special Resolution passed by shareholders for Alteration of Memorandum within 30 days of passing of Special Resolution with the concerned Registrar of Companies in Form MGT-14 with prescribed fees and along with following attachments:

- Certified True Copies of the **Special Resolutions** along with explanatory statement;
- Copy of the **Notice of EGM** send to members along with all the Annexure;
- A printed copy of the **Altered Memorandum**;
- Certified True copy of Board Resolution may be attached as an optional attachment.

STEP-V: Duty of Registrar of Companies

- As per section 13(10) of Companies Act 2013, no alteration made under this section shall have any effect until it has been registered in accordance with the provisions of this section.
- As per section 13 (9) of Companies Act 2013, The Registrar shall register any alteration of the Memorandum with respect to the objects of the company

and certify the registration within a period of thirty days from the date of filing of the Special Resolution in accordance with clause (a) of sub-section (6) of this section. Concerned Registrar of Companies (ROC) will check the E-forms and attached documents and will give effect to the change in Object clause of the Memorandum.

- Thereafter, the Registrar will issue such certificate which will be the conclusive evidence that all the requirements with respect to the alteration have been duly complied with by the company.
- The alteration shall be complete and effective only on the issue of certificate by the Registrar.
- If the special resolution is not filed within 30 days from the date of passing of such Resolution, then additional fees will be levy as per Companies Act- 2013.
- It is the duty of the company to incorporate the alteration in every copy of the memorandum.

SECRETARIAL PRACTICE / DRAFTING

Sample Board Resolution for change in Object Clause of the Company:

“RESOLVED THAT pursuant to the provisions of Section 13 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 there under, consent of the Board of Directors of the Company be and is hereby accorded, subject to the approval of the Registrar of Companies, NCT of Delhi & Haryana and subject to the approval of Shareholders in General Meeting, to append following sub clause (4) after sub clause (3) of clause III (A) of the Memorandum of Association of Company:

(4) *“To carry on the Trade and Business*”

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, matters and things as deem 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-form as return of appointment with the Registrar of Companies, NCT of Delhi and Haryana.”

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