

SERIES  
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## PROCESS OF ALTERATION IN OBJECT OF COMPANY

(Object clause of Memorandum of Association)

Date: 10<sup>th</sup> February, 2020



### SHORT SUMMARY:

Every business run on finance and share capital is base finance; hence Finance is life blood of a company. Section 13 of Companies Act 2013 regulates the process of amendment in Memorandum of Association is applicable to all companies. All clauses of Memorandum except Capital clause can be altered by following the provisions of Section 13 of Companies Act, 2013 by passing special resolution.

Under Companies Act, 2013, the process of Increase in Authorize Capital is governed by **Section 61 read with Section-13 and 64 of Companies Act, 2013.**

Where any communication or publication of a company contains a statement of the amount of the authorize capital of the company, it shall also contain a statement in an equally prominent position and in equally conspicuous characters of the amount of the capital which has been subscribed and the amount paid – up.

### LEGAL LANGUAGE:

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**Section 61 (1)** of the act states that a limited company having a share capital, [if so authorized by its articles](#), alter the conditions of its memorandum to increase its share capital by such amount as it thinks expedient by issuing New Shares.

Furthermore **section 14(1)** of the act states that the articles of company can be altered by a special resolution, if so allowed by the memorandum of the Company.

### STEPS OF INCEREASE IN AUTHORIZE CAPITAL (Section- 13 & 61)

There are two way of Increase in Authorize Capital:

- 1) If there is no requirement to Alteration in Article of Association.
- 2) If there is require to Alter Article of Association. [ Table F Clause 35 states about Authorized Capital]

## *STEPS FOR ALTERATION IN MEMORANDUM OF ASSOCIATION:*

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### A. - IF THERE IS NO REQUIREMENT OF ALTERATION IN ARTICLE OF ASSOCIATION

First Check is there any provisions in Article of Association regarding increase in capital (generally in clause 35), If AOA 'states that authorized capital shall be as per MOA' then no need for alteration in Article of Association.

**STEP – I: Convey Board Meeting of Directors: (As per section 173 and 55-1)**



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- Issue Notice of Board Meeting to all the directors of company at least 7 days before the date of Board Meeting.
  - Attach Agenda
  - Notes to Agenda
  - Draft Resolution
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**STEP – II: Held Board Meeting: (As per section 173 and SS-1)**

- Get Approval to Increase in the authorized capital and recommending the proposal for members' consideration by way of Ordinary Resolution.
  - Fixing the date, time, and venue of the general meeting and authorizing a director or any other person to send the notice for the same to the members.
  - Approval of Notice of EGM
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**STEP- III: Issue Notice of General Meeting: (Section 101)**

Notice of EGM **shall** be given at least 21 days before the actual date of EGM. EGM can be called on Shorter Notice with the consent of at least majority in number and ninety five percent of such part of the paid up share capital of the company giving a right to vote at such a meeting:

- All the Directors.
- Members
- Auditors of Company



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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.

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**STEP- IV: Hold General Meeting: (Section 101)**

- Check the Quorum.
  - Check whether auditor is present, if not. Then Leave of absence is Granted or Not. (As per Section- 146).
  - Pass Ordinary Resolution.[Section-114(1)]
  - Approval of Alteration in MOA.
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**STEP- V - Filing and Fees:**

I) File FORM NO. SH-7(Section-64(1) read with Rule 15 of The Companies (Share Capital and Debentures) Rules, 2014 ) [within 30 days of passing the Ordinary resolution](#), along with given documents:-

**ATTACHMENTS:**

- Certified True Copies of the Ordinary Resolutions along with explanatory statement;
  - Copy of the Notice of meeting send to members along with all the annexure;
  - A printed copy of the Altered Memorandum of Association
  - Minutes of General Meeting.
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## **B. IF THERE IS REQUIREMENT OF ALTERATION IN ARTICLE OF ASSOCIATION**

First Check is there any provisions in Article of Association regarding increase in capital, if there is provision in AOA then first requires alteration in Article of Association.

### **STEP – I: Convey Board Meeting of Directors: (As per section 173 and 55-1)**

- Issue Notice of Board Meeting to all the directors of company at least 7 days before the date of Board Meeting.
- Attach Agenda
- Notes to Agenda
- Draft Resolution

### **STEP – II: Held Board Meeting: (As per section 173 and 55-1)**

- Get Approval to Increase in the authorized capital and recommending the proposal for members' consideration by way of Ordinary Resolution.
- Fixing the date, time, and venue of the general meeting and authorizing a director or any other person to send the notice for the same to the members.
- Approval of Notice of EGM
- Proposal for alteration in MOA & AOA

### **STEP- III: Issue Notice of General Meeting: (Section 101)**

Notice of EGM **shall** be given at least 21 days before the actual date of EGM. EGM can be called on Shorter Notice with the consent of at least majority in number and ninety five percent of such part of the paid up share capital of the company giving a right to vote at such a meeting:

- All the Directors.
- Members
- 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.

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#### **STEP- IV: Hold General Meeting: (Section 101)**

- Check the Quorum.
  - Check whether auditor is present, if not. Then Leave of absence is Granted or Not. (As per Section- 146).
  - Pass Special Resolution.[Section-114(2)]
  - Approval of Alteration in MOA and AOA
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#### **STEP-V- FILING AND FEES:**

1) File **FORM NO. MGT-14** (Filing of Resolutions and agreements to the Registrar under section 117) with the Registrar along with the requisite filing within 30 days of passing the special resolution, along with given documents:-

- Certified True Copies of the Special Resolutions along with explanatory statement;
  - Copy of the Notice of meeting send to members along with all the annexure;
  - A printed copy of the Altered Article of Association and Memorandum of Association.
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2) File **FORM NO. SH-7** (Section-64(1) read with Rule 15 of The Companies (Share Capital and Debentures) Rules, 2014 )within 30 days of passing the Ordinary resolution, along with given documents:-

- Certified True Copies of the Special Resolutions along with explanatory statement;
- Copy of the Notice of meeting send to members along with all the annexure;
- A printed copy of the Altered Memorandum of Association and Article of Association.
- Minutes of General Meeting.

#### STEP-VI

Concerned Registrar of Companies (ROC) will check the E-form and attached the documents and will approve the increase in Authorize capital of company.

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(Author - CS Divesh Goyal, GOYAL DIVESH & ASSOCIATES Company Secretary in Practice from Delhi and can be contacted at [csdiveshgoyal@gmail.com](mailto:csdiveshgoyal@gmail.com)).

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**DIVESH GOYAL**

Practicing Company Secretary  
**GOYAL DIVESH & ASSOCIATES**

Mob: +918130757966

[csdiveshgoyal@gmail.com](mailto:csdiveshgoyal@gmail.com)

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