Section 2

INCORPORATION OF COMPANY
Process of Incorporation

Following steps are involved in the formation of the company

• Getting availability of suitable name from the registrar of companies;

• Preparing Memorandum of Association;

• Preparing Articles of Association;

• Filing the Memorandum and Articles of Association and other documents with the Registrar and obtaining the certificate of incorporation of company;

• Filing documents necessary for obtaining certificate of commencement of business if the company is required to obtain it.
Company Name - Restrictions regarding names

Prohibited names
While selecting the name it should be considered that the name:

• Is not inappropriate, undesirable or deceptive;
• Is not designed to exploit or offend the religious sentiments of the people;
• Is not a name identical with the name of the company already registered and does
• Not closely resemble with the name of the company already registered.
• Should not contain word or expression notified by the Commission;
Names which require prior approval of Commission

Prior approval of Commission shall be required if the proposed name contains any words suggesting;

• The patronage of any, past or present, Pakistani or foreign, Head of State;
• Any connection with the Federal Government or a Provincial Government or any department or authority of any such Government;
• Any connection with any corporation set up by or under any Federal or Provincial law; or
• The patronage of, or any connection with, any foreign Government or any international organization.
• establishing a modarba management company or to float a modarba
• any other business requiring a license from the government
Application for reservation of a name

Application can be made for reservation of any name for a period of 60 days.

If the application is refused by registrar, aggrieved person may prefer an appeal to Commission.

Order of the Commission shall be final.
Company Name - Restrictions regarding names

Rectification of names

If defective name is registered erroneously it may be changed.

Registrar may also direct the company to change its name within 30 days.
Company Name - Restrictions regarding names

Special Resolution

Means a resolution which has been passed by a majority of not less than three-fourth of such members entitled to vote as are present in person at a general meeting.
Company Name - Restrictions regarding names

Change of name

• Change can be due to new management or changed business environment.
• Company can change its name by special resolution.
• Permission is not required to change of certain types e.g. deletion of SMC-PVT.
• Former name should be used 90 days if new name is allowed.
Publication of names

• The name and incorporation number of company shall be displayed outside company’s every office.

• Company shall display a certified copy of certificate of incorporation at every place of business.

• The name of the company shall also be engraved in English or Urdu on the seal of the company; and

• The name, address of registered office, telephone, fax number, e-mail and website addresses shall be mentioned on all documents of the company.
Introduction to memorandum of association

MOA is the constitution of the company. It defines what the company is, what it is for, where it will be and what shall be liability of the members of the company.

It consists of following clauses:

• Name clause
• Registered office clause
• Principal line of business clause
• Undertaking clause
• Liability clause
• Authorised Capital clause
• Subscription clause
Names of Company – Pre-requisites

• Public Company: "Limited"
• Private Company: "(Private) Limited"
• Single Member Company: "(SMC-Private) Limited"
• Guarantee Limited Company: "(Guarantee) Limited"
• Unlimited Company: "Unlimited"
• Association not for profit: "No Addition"
Registration of Memorandum of Association - MoA

• For registration of a MOA, it shall be filed with the registrar of companies. A declaration of compliance with requirements of the Act in getting the company registered shall be provided to the registrar along with the memorandum.

• Registrar shall register the memorandum of association only if it satisfied that
  • the company is being formed for lawful purposes,
  • all the requirements of this Act have been complied with in respect of registration.
Alteration in memorandum of association

• Act allows the alterations of various clauses of the MOA however, there is difference as to the procedure of law in altering various clauses of the memorandum

• Alternation of name – already discussed.

• Liability clause is only altered at the time of conversion of the status of the company (e.g. from limited to unlimited etc).

• Subscription clause of the memorandum of the company cannot be altered in the life time of the company.

A company may alter the provisions of its memorandum so as to:

• change the place of its registered office from one Province to another or from Islamabad Capital Territory to a Province and vice versa;

• change its principle line of business.
Member - Definition

The subscribers to the MoA are deemed to have agreed to become members of the company and become members on its registration and every other person-

• to whom is allotted, or who becomes the holder of any class or kind of shares; or

• in relation to a company not having a share capital, any person who has agreed to become a member of the company;

• and whose names are entered; in the register of members, are members of the company.
Introduction to Article of Association - AoA

• The byelaws of the company
• Subordinate to the constitution of the company and
• Subordinate to the Act.

• They contain the guidelines on day to day issues faced by a company
Alteration in the articles of association

- A company may, by special resolution, alter its articles and

- Any alteration so made shall be as valid as if originally contained in the articles and

- Be subject in like manner to alteration by special resolution
Commencement of business

- Private company and a guarantee limited company not having share capital can commence their business and exercise all of the powers regarding borrowings after the incorporation of the company without needing to do anything further.

- However other companies are required to commence the business only after they obtain certificate of commencement of business from the registrar.

- For obtaining the certificate of commencement of business company has to meet certain requirements which are as follows.

- In order to get a certificate of commencement of business the company should have allotted shares against cash for an amount which is at least equal to the amount of minimum subscription.
Minimum Subscription

That minimum amount of money which is required to commence the business,

for example company would need a building, machinery, equipment and working capital budget for starting the business,

if company has not got sufficient funds for all this company would not be able to commence its business

hence this amount must be available in order to obtain a certificate of commencement of business.