

Memorandum and articles

MEMORANDUM

1.1 Clauses of memorandum [Section 26 to 29]

Memorandum of association consists of various clauses which contain variety of information and it may vary from company to company on the basis of the type of the company or the business of the company. Following clauses usually exist in the memorandum of association of the company.

Name clause

The name of the company with the addition of the following words at the end of the name in case of each of the following companies:

Public Company	"Limited"
Private Company	"(Private) Limited"
Single Member Company	"(SMC-Private) Limited"
Guarantee Limited Company	(Guarantee) Limited"
Unlimited Company	"Unlimited"

Registered office clause

This clause shall state the Province or the part of Pakistan not forming part of a Province, as the case may be, in which the registered office of the company is to be situated.

Please See The Example 01: Registered office clause

Principal line of business clause

“Principal line of business” means the business in which substantial assets are held or likely to be held or substantial revenue is earned or likely to be earned by a company, whichever is higher.

A company may carry on or undertake any lawful business or activity and do any act or enter into any transaction being incidental and ancillary thereto which is necessary in attaining its business activities. However, the principal line of business of the company shall be mentioned in the memorandum of association of the company which shall always commensurate with name of the company.

Please See The Example 02: Principal line of business clause

Please See The Example 03: Principal line of business clause

Liability clause

In case of a company limited by shares and limited by guarantee, the liability clause states that ‘the liability of the members is limited’.

In case of an unlimited company, the liability clause states that ‘the liability of the members is unlimited’.

In case of a company limited by guarantee, an additional sentence is added to clarify the extent of liabilities of the members of that company in the event of its being wound up.

Authorised capital clause (only for companies having share capital)

This clause contains the amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount. This is the maximum number of shares that can be subscribed.

In the same clause, every subscriber of the memorandum is required to agree at least one share in the share capital of the company.

Each subscriber is required to write opposite to his name the number of shares he has agreed to take in the share capital of the company.

Please See The Example 04: Authorised capital clause

Undertaking / Subscription clause

The company shall add an undertaking, as may be specified by the SECP, in their memorandum.

All of the above clauses are undertaken to be abide by, by the subscribers of the memorandum, as they are the first members of the company, they write as follows:

“We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of the memorandum of association, and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.”

Please See The Example 05: MOA – Company limited by guarantee not having share capital

1.3 Memorandum to be printed, signed and dated [Section 31]

The memorandum shall be:

- (a) printed in the manner generally acceptable;
- (b) divided into paragraphs numbered consecutively;
- (c) signed by each subscriber, who shall add his present name in full, his occupation and father's name or, in the case of a married woman or widow, her husband's or deceased husband's name in full, his nationality and his usual residential address and such other particulars as may be specified, in the presence of a witness who shall attest the signature and shall likewise add his particulars; and
- (d) dated.

2 NAME OF COMPANY

2.1 Prohibition of certain names [Section 10]

Prohibited names

A company shall not be registered by a name which contains such word or expression, as may be

notified by the Commission or in the opinion of the registrar is:

- (a) identical with or resemble or similar to the name of a company; or
- (b) inappropriate; or
- (c) undesirable; or
- (d) deceptive; or
- (e) designed to exploit or offend religious susceptibilities of people; or
- (f) any other ground as may be specified.

Names requiring prior approval of SECP

Prior approval in writing of the Commission shall be required if the proposed name contains any words suggesting:

- (a) the patronage of any past or present Pakistani or foreign head of state;
- (b) any connection with the Federal Government or a Provincial Government or any department or authority or statutory body of any such Government;
- (c) any connection with any corporation set up by or under any Federal or Provincial law;
- (d) the patronage of, or any connection with, any foreign Government or any international organisation;
- (e) establishing a modaraba management company or to float a modaraba; or
- (f) any other business requiring licence from the Commission.

Decision of Commission is final

Whenever a question arises as to whether or not the name of a company is in violation of the above provisions, decision of the Commission shall be final.

Reservation of name

A person may make an application to the registrar for reservation of a name set out in the application for a period not exceeding 60 days.

Where it is found that a name was reserved, by furnishing false or incorrect information, such reservation shall be cancelled and in case the company has been incorporated, it shall be directed to change its name. The person making application shall be liable to a penalty.

If the name applied for is refused by the registrar, the aggrieved person may within 30 days of the order of refusal prefer an appeal to the Commission.

An order of the Commission shall be final and shall not be called in question before any court or other authority.

2.2 Rectification of name of a company [Section 11]

Company on its own & on direction by registrar

A company which, through inadvertence or otherwise, is registered by a name in contravention of the Companies Act or the name was obtained by furnishing false or incorrect information:

- (a) may, with approval of the registrar, change its name; and
- (b) shall, if the registrar so directs, within 30 days of receipt of such direction, change its name with approval of the registrar.

However, the registrar shall, before issuing a direction for change of the name, afford the company an opportunity to make representation against the proposed direction.

Failure to comply with direction

If the company fails to report compliance with the direction issued within the specified period, the registrar may enter on the register a new name for the company selected by him, being a name under which the company may be registered under Companies Act, 2017 and issue a certificate of incorporation on change of name.

Penalty

If a company makes default in complying with the direction issued by the registrar or continue using previous name after the name has been changed by the registrar, it shall be liable to a penalty.

2.3 Change of name by a company [Section 12]

Procedure

A company may, by special resolution and with approval of the registrar signified in writing, change its name.

Approval not required

The permission of the registrar shall not be required if the only change is the addition or deletion of the word and parenthesis '(Private)' or (SMC-Private) or (Limited) or (Guarantee Limited) or (Unlimited) as the case may be upon the change in the status of a company.

2.4 Registration of change of name and effect thereof [Section 13]

New certificate of incorporation

Where a company changes its name the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case and, on the issue of such a certificate, the change of name is complete.

Mentioning old name with new name

Where a company changes its name it shall, for a period of 90 days from the date of issue of a certificate by the registrar, continue to mention its former name along with its new name on the outside of every office or place in which its business is carried on and in every document or notice.

No effect on legal proceedings

The change of name shall not affect any rights or obligations of the company, or render defective any legal proceedings by or against the company and any legal proceedings that might have been continued or commenced against the company by its former name may be continued by or commenced against the company by its new name.

Please See The Example 06: Change of name by a company

2.5 Publication of name by a company and penalty [Section 22 & 24]

Name on business places

Every company shall display in a conspicuous position, in letters easily legible in English or Urdu characters its name and incorporation number outside the registered office and every office or the place in which its business is carried on.

Certificate of incorporation

Every company shall display a certified copy of certificate of incorporation at every place of business of the company.

Penalties

A penalty of level 1 be levied on company and its officers in default for not displaying its name in the manner provided for by Companies Act, 2017.

An officer shall be personally liable for debt for issuing / authorizing any document without mentioning the name of the company, unless duly paid by the company.

Name on documents

Every company shall have its name mentioned in legible English or Urdu characters, in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company and in all bills of parcels, invoices, receipts and letters of credit of the company.

Name and particulars on documents

Every company shall get its name, address of its registered office, telephone number, fax number, e-mail and website addresses, if any, printed on letter-head and all its documents, notices and other official publications.

3 REGISTERED OFFICE AND PRINCIPAL LINE OF BUSINESS

3.1 Registered office of a company [Section 21]

Purpose

Registered office is a place which is the address of the company for receiving all of its communications. It does not necessarily be same as head office of the company. There may be more than one office for business of the company but registered office shall be only one.

Notify to registrar

A company shall have a registered office to which all communications and notices shall be addressed and such address shall be notified to the registrar within a period of 30 days of its incorporation.

Notice of change and special resolution

Notice of any change in situation of the registered office shall be given to the registrar within a period of 15 days after the date of change:

The change of registered office of a company shall also require approval of general meeting through special resolution if it is from :

- (a) one city in a Province to another; or
- (b) a city to another in any part of Pakistan not forming part of a Province;

3.2 Alteration of registered office clause in memorandum [Section 32 to 34]

Alteration

A company may by special resolution alter the provisions of its memorandum so as to change the place of its registered office from:

- (a) one Province to another Province or Islamabad Capital Territory and vice versa; or
- (b) one Province or Islamabad Capital Territory to a part of Pakistan not forming part of a Province and vice versa.

Confirmation from SECP

The alteration shall not take effect until it is confirmed by the Commission on petition. The Commission may make an order confirming the alteration on such terms and conditions and make such order as to costs as it thinks proper. The Commission shall in exercising its discretion have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors and may, if it thinks fit, give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement.

Please See The Example 07: Objection on change of registered office

Copy of order to company and registrar

A copy of the order confirming the alteration duly certified by an authorised officer of the Commission shall be forwarded to the company and to the registrar within 7 days from the date of the order.

Conclusive evidence of alteration

An altered copy of the memorandum shall within 30 days from the date of the order be filed by the company with the registrar, who shall register the same and issue a certificate which shall be conclusive evidence that all the requirements of the alteration and the confirmation thereof have been complied with.

Extension in time limit

The Commission may by order, at any time on an application by the company, on sufficient cause shown extend the time for the filing of memorandum with the registrar.

Transfer of record

Where the alteration involves a transfer of registered office from the jurisdiction of one company registration office to another, physical record of the company shall be transferred to the registrar concerned of the company registration office in whose jurisdiction the registered office of the company has been shifted.

Please See The Example 08: Alteration in registered office clause

3.3 Alteration of principal line of business clause [26 & 32]

Alteration

A company may by special resolution alter the provisions of its memorandum to change its principal line of business. Approval from Commission not required An alteration so as to change its principal line of business shall not require confirmation by the Commission.

Filing of amended memorandum

Where the alteration involves change in principal line of business, the company shall file the amended memorandum of association with the registrar within 30 days, which shall be recorded.

Change of name may be directed by registrar

Any change in the principal line of business shall be reported to the registrar within 30 days from the date of change, on the form as may be specified and registrar may give direction of change of name if change does not commensurate with principal line of business of the company.

Please See The Example 09: Principal line of business and alteration therein

3.4 Adoption of business activity subject to approval under any law [Section 32 to 34]

Alteration

A company may by special resolution alter the provisions of its memorandum to adopt any business activity or any change therein which is subject to licence, registration, permission or approval under any law.

Confirmation from SECP

The alteration shall not take effect until it is confirmed by the Commission on petition.

The Commission may make an order confirming the alteration on such terms and conditions and make such order as to costs as it thinks proper.

The Commission shall in exercising its discretion have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors and may, if it thinks fit, give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement.

Copy of order to company and registrar

A copy of the order confirming the alteration duly certified by an authorised officer of the Commission shall be forwarded to the company and to the registrar within 7 days from the date of the order.

Conclusive evidence of alteration

An altered copy of the memorandum shall within 30 days from the date of the order be filed by the company with the registrar, who shall register the same and issue a certificate which shall be conclusive evidence that all the requirements of the alteration and the confirmation thereof have been complied with.

Extension in time limit

The Commission may by order, at any time on an application by the company, on sufficient cause shown extend the time for the filing of memorandum with the registrar.

4 ARTICLES OF ASSOCIATION

4.1 Registration of articles [Section 36]

Articles are the byelaws of the company, subordinate to the constitution of the company and further subordinate to the Companies Act. The articles may be stricter than the Companies Act but not vice versa.

Please See The Example 10: Articles of association

Registration of articles

The articles of association signed by the subscribers to the memorandum and setting out regulations for the company may/shall be registered with the memorandum.

- Optional for company limited by shares
- Compulsory for company limited by guarantee or unlimited company

Adopting Table A

Articles of association of a company limited by shares may adopt all or any of the regulations contained in Table A in the First Schedule to the Companies Act.

Amount of share capital

In the case of an unlimited company or a company limited by guarantee, the articles, if the company has a share capital, shall state the amount of share capital with which the company proposes to be registered.

Number of members

In the case of an unlimited company or a company limited by guarantee, if the company has no share capital, the articles shall state the number of members with which the company proposes to be registered.

Applicability of Table A

- Table A is applicable in full, if articles are not registered.
- Table A is applicable to the extent not modified or excluded by articles filed by a company.
- Table A not applicable at all, if specifically excluded by articles filed by a company.

Clarity and voting rights

The articles of every company shall be explicit and without ambiguity and shall list and enumerate the voting and other rights attached to the different classes of shares and other securities.

Penalty

If a company contravenes the provisions of its articles of association, the company and every officer of the company shall be liable to a penalty.

4.2 Contents of articles – Table A

The following is list of contents of Table A:

- Business
- Shares
- Transfer and Transmission of Shares
- Form for Transfer of Shares
- Bank Account Details of Transferee for Payment of Cash Dividend
- Transmission of Shares
- Alteration of Capital
- General Meetings
- Notice and Proceedings of General Meetings
- Votes of Members
- Instrument of Proxy
- Directors
- Powers and Duties of Directors
- Minute Books
- The Seal

- Disqualification of Directors
- Proceedings of Directors
- Filling of Vacancies
- Dividends and Reserve
- Accounts
- Notices
- Winding Up
- Indemnity

4.3 Articles to be printed, signed and dated [Section 37]

The articles shall be:

- (a) printed in the manner generally acceptable;
- (b) divided into paragraphs numbered consecutively;
- (c) signed by each subscriber, who shall add his present name in full, his occupation and father's name or, in the case of a married woman or widow, her husband's or deceased husband's name in full, his nationality and his usual residential address and such other particulars as may be specified, in the presence of a witness who shall attest the signature and shall likewise add his particulars; and
- (d) dated.

Please See The Example 11: Registration and signing of articles

4.4 Alteration of articles [Section 38]

Alteration by special resolution

Subject to Companies Act and memorandum, 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.

Restriction on alteration

When alteration in articles affects the substantive rights or liabilities of members or of a class of members, it shall be carried out only if a majority of at least three-fourths of the members or of the class of members affected by such alteration, as the case may be, exercise the option through vote personally or through proxy vote for such alteration.

Filing to registrar

A copy of the articles of association as altered shall, within 30 days from the date of passing of the resolution, be filed by the company with the registrar and he shall register the same and the articles so filed shall be the articles of the company.

5 GENERAL PROVISIONS AS TO MEMORANDUM AND ARTICLES

5.1 Copies of memorandum and articles to be given to members [Section 39]

Each company shall send to every member, at his request and within 14 days on payment of fee fixed by the company, a copy of the memorandum and the articles.

Please See The Example 12: Copies of memorandum and articles

5.2 Effect of memorandum and articles [Section 17]

Binding on Company and members

The memorandum and articles, when registered, bind the company and the members of the company as if they had been signed by the members and, his heirs and legal representatives that they shall observe and be bound by the memorandum and articles, unless in conflict with the Companies Act.

Money payable to be debt

All moneys payable by a subscriber against the shares subscribed in pursuance of his undertaking in the memorandum of association shall be a debt due from him and be payable in cash within 30 days from the date of incorporation of the company.

Please See The Example 13: Time period of payment by subscriber

Share cancellation in case of default

In case the share money is not deposited within the prescribed time, the shares shall be deemed to be cancelled and the name of that subscriber shall be removed from the register and the registrar shall give such direction to the company in each case as deemed appropriate for compliance with the provisions of the company law.

Please See The Example 14: Effect of non-payment by a subscriber

Report regarding receipt of subscription money

The receipt of subscription money from the subscribers shall be reported by the company to the registrar within 45 days from the date of incorporation of the company, accompanied by a certificate by a practicing chartered accountant or a cost and management accountant verifying receipt of the money so subscribed.

Please See The Example 15: Intimation to the registrar

Penalty

Violation of above requirements will be considered as offence and a penalty of level 1 on the standard scale shall be applicable.

5.3 Effect of alteration in memorandum or articles [Section 35]

If the memorandum of association or articles of association are altered and such alteration requires the members to take more shares in the company than they already have or to undertake more amount of guarantee than the existing amount, such alteration shall be applicable to a member only if he gives his consent in writing either before or after the alteration.

5.4 Alteration to be noted in every copy [Section 40]

Where an alteration is made in the memorandum or articles of a company, every copy of the memorandum or articles issued after the date of the alteration shall conform to the memorandum or articles as so altered.

For each copy issued in contravention of above, the company and every officer of the company who is in default shall be liable to the penalty.

5.5 Form of memorandum and articles [Section 41]

The form of memorandum and articles of following companies shall be in accordance with Table of First Schedule mentioned:

<i>Type of company</i>	<i>Document</i>	<i>Form</i>
Company limited by shares	Articles	Table A
	Memorandum	Table B
Company limited by guarantee and not having a share capital	Articles & Memorandum	Table C
Company limited by guarantee and having a share capital	Articles & Memorandum	Table D
Unlimited company having a share capital	Articles & Memorandum	Table E
A company licensed under section 42 i.e. <i>Association not for profit</i>	Articles & Memorandum	Table F