

Alteration/ Amendment of Memorandum of Association and Rules and Regulations of the Society

In one of our previous articles we had dealt with the Memorandum of Association and the Rules and regulations of the Society under the Societies Registration Act, 1860. In the article we had dealt with the procedure and the requirements for the preparation and filing of the Memorandum and the Rules and Regulations with the Registrar of the Societies at the time of its registration.

However, a society after its registration may require at any time to change its name, or to alter, abridge or amend its objects and /or the rules and regulations at any time. A society may be required to change or alter its objects, rules and regulations at any time for any reasons or if the Government requires it. In this article we would try to deal with the requirements and the procedure for such alterations.

Alteration/ Amendment of Memorandum of Association:

The memorandum of a society contains the aims and objectives of the society within which the society has to operate. Any activity undertaken beyond the aims and objectives specified in the memorandum shall make the activity invalid. Section 12 of the Societies Registration Act 1860 gives the procedure for alteration, amendment or abridgement of the aims and objectives .The Act gives a specific procedure which is very systematic and the steps mentioned has to be adopted as given in the Act. The Section 12 in the Act is given as:

' Whenever it shall appear to the governing body of any society registered under this Act, which has been established for any particular purpose or purposes, that it is advisable to alter, extend, or abridge such purpose to or for other purposes within the meaning of this Act, or to amalgamate such society either wholly or partially with any other society, such governing body may submit the proposition to the members of the society in a written or printed report, and may convene a special meeting for the consideration thereof according to the regulations of the society; but no such proposition shall be carried into effect unless such report shall have been delivered or sent by post to every member of the society ten days previous to the special meeting convened by the governing body for the consideration thereof, not unless such proposition shall have been agreed to by the votes of three-fifths of the members delivered in person or by proxy, and confirmed by the votes or three-fifths of the members present at a second special meeting convened by the governing body at an interval of one month after the former meeting.'

The procedure given in the Act is mandatory and not optional. In a decision of Allahabad High Court, Shridhar Mishra vs. Jaichander Vidyalankar AIR 1959, it has been stated that:

' It is impossible to accept the suggestion that a society is not bound by the Societies Registration Act .A private institution need not get itself registered under the Societies Registration Act. But if an institution chooses to get itself registered under the Act, the institution is bound by the provisions of the Act,

whether the procedure laid down in Sec.12 of the Act is directory or mandatory is another question. But a society registered under the Act cannot altogether ignore Sec.12 of the Act.'

The proposal for alteration or extension of the purposes of the society has to be passed at the special meeting convened by a special majority of members.

Section 12 of the Societies Registration Act 1860 has laid down the following steps for alteration, extension or abridgement of the aims and objectives of a society which have to be followed:

Submission of the proposal by the governing body to the members of the society

10 days notice to members about holding of a special meeting,

convening a special meeting for the consideration of the proposal,

Approval of the proposal by 3/5th of members,

Convening second special meeting after a month, and

Confirmation by 3/5th of members present at the second special meeting.

Certain State Acts have more provisions regarding the alteration of the objects clause. Some of these provisions are:

Section 9 of the Karnataka Societies Registration Act states that the changes should be filed with the Registrar within 30 days along with a fee of Rs. 20. The order of Registrar refusing to register amendment is appealable in the court of law.

Section 11 of Madhya Pradesh Act states the circumstances in which the Registrar may order amendment of objects clause.

Section 9 of the West Bengal Societies registration Act states that the resolution should be passed by 3/5th majority. The amendments should be filed with the registrar within 30 days.

Section 9 of the Telangana Area Societies Registration Act states that the resolution for the alteration is required to be voted by 2/3rd majority of members present.

Alteration/ Amendment of Rules and Regulations of the Society:

The society during the course of its working may find the need to alter its rules and regulations according to the change in working of the management of the society or due to other needs felt by the management and the members. The Societies Registration Act however does not contain any provision as to the change in the rules and regulations, but it is always beneficial for the Society to follow Section 12 guidelines of the Societies Registration Act, 1860. Certain State Acts have specific provisions in their respective State Societies Registration Act for alteration of the rules and regulations of the society. Some

of the provisions specifically given in these state acts are:

Section 4 A of the Bihar Societies Registration Act states that a corrected copy of the rules and regulations certified by at least three members of the governing body should be sent to the inspector general of Registration

Section 4A of the Gujarat (Amendment) Societies Registration Act and U.P. Societies Registration (Amendment) Act states that the corrected and certified copy of the rules should be sent to the registrar within 30 days of alteration.

Section 4A of the Orissa Societies Registration(Amendment) Act states that a certified and corrected copy of the rules should be sent to the registrar within 2 months of the alteration

Section 4 A(6) of Pondicherry Societies Registration(Amendment) Act states that a certified and corrected copy of the rules should be sent to the registrar within 15 days of the alteration

Section 10 of the Karnataka Societies Registration act states that resolution is to be passed for the amendment by 3/5th of the majority. The corrected and certified copy of the rules should be sent to the registrar within 30 days of alteration with a fee of Rs.10 along with it.

Section 4A of the Gujarat(Amendment) Societies Registration Act and Section 8(3) of West Bengal Societies Registration Act states that the corrected and certified copy of the rules should be sent to the registrar within 30 days of alteration

Section 4A of the Assam (Amendment) Societies Registration Act states that a corrected copy of the rules and regulations certified by at least three members of the governing body should be sent to the registrar

Section 11 & 15 of the Madhya Pradesh Societies Registration Act states that the alteration should be registered with the registrar and gives the circumstances under which amendment can be ordered by the registrar.

Change of name of the Society

During the course of its working the members of the society might feel a need to change the name of their society; however, the Societies Registration Act 1860 does not specify any specific procedure for change of the name of the society. For the change of the name, the society has to follow the same procedure which has been laid down in the Act under Section 12. However certain State Governments have inserted amendments in the Societies Registration Act giving procedure for change of name, specifying how the society can change the name by passing a resolution in the General meeting with consent of appropriate majority of its members.

In general, various State Acts under section 12, 12A, 12B give the following

procedure for change of the name of the society:

Convene a general meeting for the purpose of the change of the name

A resolution should be passed by a majority

The notice in writing of the change of name, which has to be signed by the Secretary of the society along with seven members(as in case of the registration of the memorandum of association), should be submitted to the registrar.

The name of the society if accepted by the registrar is registered and the change of name is effected from the date of the registration. However the registrar may refuse to register the change of name in case the name proposed is identical to some other society or for reasons that the name may be deceiving to the public or the name suggests patronage of Government or connection with any body constituted by the Government or any other authority. The change of name does not affect any legal proceedings which are already present for the society.

Various State Governments have provisions related to change of name inserted in the Societies registration Act like:

Section 12 of Delhi (Amendment) Act, Goa, Diu and Daman(Amendment)Act, Himachal Pradesh (Amendment)Act state that the resolution should be adopted by 3/5th of the majority.

Section 12A, 12B, 12C of Bihar (Amendment) Act, Gujarat (Amendment) Act, Maharashtra (Amendment) Act, Pondicherry (Amendment) Act, Orissa (Amendment) Act state that the resolution should be passed by 3/5th majority.

Gujarat (Amendment) Act, Maharashtra (Amendment)Act, Orissa (Amendment) Act also specify that the resolution after being adopted by 3/5th of majority should be confirmed at a subsequent meeting and a certified copy of change in name should be obtained from the registrar on payment of fees of Re.1.

Section 12, 12A, 12B, 12C of Assam (Amendment) Act, Nagaland (Amendment) Act, U.P. Amendment Act, M.P. Act, Rajasthan Act state that the resolution should be adopted by 2/3rd of the majority.

Tamil Nadu Act states that the resolution should be adopted by 3/4th of the majority.

To be continued

Pooja Bagga
Project Monitoring Officer, FMSF