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REPORT ON AMENDMENT OF THE NAME CLAUSE- LAW AND PROCEDURE WITH REFERENCE TO CASE LAWS

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CHAPTER -1

❖ INTRODUCTION

A business that is a legal entity must have its own name in order to create its separate identity. The company's name is a sign of the company's autonomous existence. The company's first clause in the Association Memorandum says the name a firm is known by. The business may adopt any appropriate name as long as it is not unwanted.

After incorporation, the Company may alter its name by following:
(a) Name conversion from private to public, or
(b) Name conversion from public to private, or
(c) Name change from ABC restricted to XYZ limited.

Change in the Company's Name Clause includes altering the Company's Memorandum of Association(' Memorandum'). Section 13 of the Companies Act 2013 regulates the modification process for all businesses in the Association Memorandum. By adopting a special resolution, all parts of the Memorandum except the Capital clause may be modified by following the provisions of Section 13 of the Companies Act, 2013.

A name change pursuant to section 21 does not influence the company's rights and responsibilities or make defective any legal proceedings by or against the firm and any legal proceedings that could have been continued or initiated by its former name or against the business, may be continued by or against the company by its new name. The business that has altered its name would have the right to ask the businesses in which it holds stocks to replace its ancient certificates with fresh ones.

Section 13 of the Companies Act, 2013 deals with a name change that states that the company's name can be altered by a special resolution and the Central Government's consent. Central government approval is not needed if the change involves adding / removing the phrases "private" to the title.

❖ OBJECTIVE

A business is a legal entity. So, in order to define its identity, it must have a name. Name Clause in the Association Memorandum provides protection in the same or tightly similar name against subsequent company registration. It secures a de facto corporate trading monopoly under a specific name for the business. Each business must have its name etched on its seal along with the address of its registered office and have it mentioned on all official documents and publications.

❖ RESEARCH METHODOLOGY

To answer the research questions, conceptual method will be the most appropriate method. In order to achieve this doctrinal research will be carried out.

❖ **RESEARCH QUESTION**

1. How to amend name clause?
2. Comparative analysis between companies act 1956 and companies act 2013 with respect to change of name of a company

CHAPTER-2

❖ **HOW TO AMEND NAME CLAUSE?**

1. **Passing board resolution When partners are mutually agreed**

A board meeting should be called upon to pass a resolution to modify the name of the business when partners are mutually agreed. The board of directors will discuss and approve the name change at the meeting, authorizing the company's director or CS to check the availability of name with MCA, and calling for a special resolution to be passed by the Extra-Ordinary General Meeting.

2. **Checking name availability**

The approved director or secretary of the business will apply to MCA in the form INC-1 to check the accessibility of the name and approve the name. This method is the same as the method taken at the moment of approval of the original name.

RoC is going to send a letter saying that the name suggested is accessible. Please note that this will not be the business name's final approval, it is only a RoC confirmation that the suggested name is accessible.

The suggested name should not be comparable to another current name of the business and should not include the term "state." In this scenario there are also other circumstances that exist at the moment of the original authorization of the name.

3. **Passing Special Resolution**

Once the name is approved by MCA, the company should call for an extraordinary general meeting. A special resolution will be passed for changing name and make the change in Memorandum of Association and Articles of Association.

4. **Applying to Registrar**

A special resolution will be filed with RoC within 30 days of passing the resolution. With it, Form MGT-14 will also be filed which contains the details about special resolution. Following documents are submitted with MGT-14:

- Certified copy of Special Resolution,
- Notice of EGM,
- Explanatory statement to EGM,
- Altered Memorandum of Association,
- Altered Articles of Association

5. **Issuance of certificate of incorporation**

If the Registrar of Companies is okay with the documents, it will issue a new certificate of incorporation.

Company’s name change process isn’t completed until the new certificate for incorporation is issued by the RoC.

6. **Incorporating company name in MoA and AoA**

Once the new certificate of incorporation is received from RoC, the company name must be incorporated in all the copies of MOA and AOA.

Sub Section- 2 of Section 4 of the Companies Act, 2013 provides that no company shall be registered by name which:

• Is identical with or too close to the name of an current business registered under this Act or any prior business legislation,
• constitutes, for the time being, an offense under any legislation,
• is undesirable in the Central Government's view.
• Sub-Section-3 without prejudice (Effect) to the provisions of sub-Section (2) a company shall not be registered with a name containing any such word or expression unless previous approval has been obtained from the Central Government.

any word or expression likely to give the im pression that the company is in any way rela ted or patronized by the Central Government , any State Government or any local authorit y, corporation or body constituted by the C entral Government or any State Government under any law for the time being in force ; or

• any word or expression as may be prescrib ed

Alteration of Name shall not allow to following Companies:

The change of name shall not be allowed to a company:

- which has not filed annual returns or financial statements pending for filing with the Registrar or
- which has failed to pay or repay matured deposits or debentures or interest and are still pending.

❖ COMPARATIVE ANALYSIS BETWEEN COMPANIES ACT 1956 AND COMPANIES ACT 2013 WITH RESPECT TO CHANGE OF NAME OF A COMPANY

The provisions of the 1956 Companies Act differ in a few ways from the 2013 Companies Act. Change in the name of a business under the Companies Act, 1956 is regulated by Sections 20 and 21 of the aforementioned Act, which is as follows : Companies not to be enrolled with undesirable names. No corporation shall be recorded by a name that is undesirable in the view of the Central Government.

Without prejudice to the generality of the foregoing power, a name which is identical with, or too nearly resembles,-
(i) The name by which a company in existence has been previously registered thereon, or
(ii) A trademark, or a registered trademark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999, may be presume to be undesirable by the Central Government within the meaning of sub-section (1).
The Central Government may, before deeming a name as undesirable under clause (ii) of sub-section (2), consult the Registrar of Trade Marks."

A company may, by special resolution and with the approval of the Central Government signified in writing, change its name.
Provided that no such approval is required if the only change in a company's name is the addition thereof or, as the case may be, the d eletion thereof of the word "private" aconseq uence of the conversion of a public company into a private company in accordance with t he provisions of this Act or of a private com pany into a public company.
While Section 20 does not specifically gover n the procedure and elements of a company's name change law, it is nonetheless essential because it sets out circumstances that must be met, which regulate the kinds of names th at can be provided to a firm.
Thus, as evident from the Section, a change in the name of a company under Section 21 and of the Companies Act, 1956 is possible by two means;

1. By government's unique resolutions and permission: a company's name may be altered at any moment by passing a special resolution at a company's general meeting and with the central government's written consent. Such consent is not needed, however, if the name change includes adding or removing the term "private."
2. By rectifying omission in name: If a business has registered its name by a error that is the same or comparable to an current business name, the business may alter its name by passing an ordinary resolution and obtaining written approval from the central government.
   In such a case, the central government in one year of the first registration or registration under a changed name can direct the company to change its name. In such a situation, the company must alter its name by passing an ordinary resolution in three months from the date of such direction.

The change of the name of the company doesn't result in a change in the power and of the same. As a result of this change, the name legal affairs of the company are not affected. However, after the new name is registered, the legal affairs cannot be continued with the old name.[1]

Due to the spontaneous changes in the economic and financial atmosphere both nationally and globally, the Companies Act, 1956 was under review for a while. Consequently, the Companies Act 2013 was implemented as a consequence of these modifications in the global setting. The objective behind the 2013 Act is less public endorsement and enhanced self-direction in combination with an emphasis on the scheme of corporate majority rules. The 2013 Act delinks the procedural angles from substantive law and provides more adaptability to enable the evolving financial and specialized situation to be adjusted. Under this Act, the Central Government is enabled to monitor growth, funding and work and winding up of organizations. It contains the component in regards to hierarchical, budgetary and administrative and all the significant parts of an organization.

The Companies Act, 2013 was approved on 29 August 2013 by the President of India and published on 30 August 2013 in the Official Gazette. Under the Companies Act 2013, the alteration of the memorandum as a result of a change in the company's name is governed by

[1] Malhati Tea Syndicate v. Revenue Officer

Section 13(2) and (3) read in accordance with Section 4(2) and (3) of the aforementioned Act, which reads as follows; any change in the company's name is subject to the provisions of Section 4 of paragraphs (2) and (3) and has no effect except with the approval of the Central Act. When a change in a company's name is produced in sub-section (2) the Registrar shall enter the new name in the register of companies in place of the old name and issue a fresh certificate of incorporation with the new name and the change in the name shall be complete and effective only on the issue of such a certificate.

And Section 4 (2) and (3) are as follows;

- The name stated in the memorandum shall not include following :-

(a) be identical with or resemble too nearly to the name of an existing company registered under this Act or any previous company law.
(b) such that its use by the company
(i) it will constitute an offence under any law for the time being in force; or
(ii) it is undesirable in the opinion of the Central Government.

- Without prejudice to the provisions of sub-section (2), a company shall not be registered with a name which contains

(a) Any word or expression likely to give the impression that the company is in any way r elated to, or patronized by, the Central Gove rnment, any State Government or any local a uthoritycorporation or body constituted by t he Central Government or any State Govern ment under any law for the time being in for ce ; or
(b) Such word or expression as may be presc ribed, unless such word or expression is pres cribed by that law ;

In a basic reading of Sections 13 (2) and (3) read with Section 4 (2) and (3), it is obvious to notice that, with respect to change of name of a company, Section 13 (2) and (3) establishes the consequence of name change of a company while Section 4 (2) and (3) lays down the criteria to keep in mind while naming or re-naming a company.

Comparing the clauses relating to a business name change in the 1956 and 2013 Act, Section 20(2)(ii) of the 1956 Act restricts a individual from naming any other individual under the Trade Marks Act, 1999, a firm that violates a registered trademark or a trademark that is the topic of a registration request. This specific provision in the Companies Act 1956 is not included in the Companies Act 2013 and the Companies Act 2013, which governs the requirements for a business name in a distinct way by delegating authority to the central government to notify the general public by regulations that set out the requirements or the same.

One such example is the 2014 Companies (Incorporation) Rules, under which Rule 8 and Rule 9, respectively, discuss unwanted names and name reservations. Rule 8 goes on to cover comprehensively what can be covered under the garb of undesirable (which also includes identical) names such as, the plural version of words, type and case of letters (including punctuation), misspelt words, either intentionally or unintentionally conflicting with another company's properly spelt name. The trademark infringement component pursuant to Section 20(2)(ii) of the Companies Act 1956 was included in Rule8(2)(ii) of the Companies (Incorporation) Rules 2014.

With respect to reservation of a name, the Companies Act 2013 under Section 16 incorporates Section 22 of the Companies Act 1956, with certain observed changes such as the change in time period within which the company has to comply with the direction of the Central government to change its name from 3 months to 6 months.

CHAPTER-3 (CASE LAWS)

- **Ashbury Railway Carriage and Iron Co v Riche**

A memorandum of association containing the purpose for which it is incorporated is no longer a requirement for the establishment of companies incorporated under the Companies Act 2006. However, a memorandum of association obviously specifying the purpose for which it was established was needed for businesses restricted by shares incorporated under the Companies Act 1985. Such item may not be illegitimate or may be quashed from its registration. The legal aim for which a corporation can be established is unlimited, and businesses can do most of the stuff necessary to accomplish this objective. The objects of Ashbury Railway Carriage and Iron Co Ltd were to manufacture or sell or lend on hire, railway wagons and wagons, and all sorts of railway plants, fittings, equipment and rolling stock; to carry on the company of mechanical engineers and general contractors; to buy and sell such products as merchants, timber, coal, metals or other materials; and to buy and sell such products on commission As it was not included in the objects clause in its memorandum, the House of Lords regarded the agreement to be beyond or outside the company's powers It was held that the company was in breach of its constitution by entering into the transaction because it had no' competence' or' power' to enter into the contract and therefore had no legal effect on the transaction. This meant that Richie's claim against the business for violation of contract failed, as there was no agreement to be implemented. However, until the House of Lords dealt with this problem in Ashbury Railway Carriage and Iron Co, the situation of a business performing a legitimate activity outside the scope of its objects clause was uncertain.[2]

- **Cotman v Brougham**

The attention shifted to the drafting of the object clauses in company constitutions in order to further restrict the effect of the rules. In Cotman v Brougham Lord Parker indicated the object clauses directed at defending the company's shareholders and individuals, although both had very distinct interests in how broad the clause should be. Shareholder protection was best achieved by narrowly drafting the clause on objects, limiting the purposes for which the capital they invest in the company could be used. And protection of those who deal with the company would be achieved through the extensive drafting of the objects clause, so a particular transaction was less likely to be outside the company's objects. Clauses which were so wide to include every eventuality were called 'Cotman v Broughman' clauses.[3]

[2] Ashbury Railway Carriage and Iron Co v Riche (1875) LR 7 HL 653

[3] Cotman v Broughman

- **Bell Houses Ltd. v City Wall Properties Ltd**

Later, more instruments were used to prevent the effect of the rule of ultra vires. In Bell Houses Ltd. v City Wall Properties Ltd., the object clause contained the object:' to carry on any trade or business whatsoever which, in the view of the board of directors, may be beneficially carried on by the company in connection with or as ancillary to any of the above-mentioned business or the company's overall business.' The claimant charged a fee for a non-object transaction. The defendant refused to pay the claimant company on the grounds that the transaction was ultra vires. The Court of Appeal held that the transaction was intra vires the company, as falling within the objects. 'Bell Houses' clauses were born.[4]

- Conclusion

A corporation is a legal entity. So, it must have a name to define its identity. The Association Memorandum Name Clause offers protection against subsequent company registration in the same or tightly similar name. It secures a de facto business trading monopoly for the business under a specific name. Each company must have its name engraved on its seal along with its registered office address and all official records and publications referred to it.

Drawing a parallel between the Companies Act 1956 and Companies Act 2013, it can be concluded that the Companies Act 2013, unlike Companies Act 1956 divides the procedure into two parts by prescribing guidelines to be followed while renaming a company separately in Section 4 (2) (3) of the Act and the Companies (Incorporation) Rules 2014, while the Companies Act 1956 laid down how the change has to be done with respect to procedures to be complied with.

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[4] In Bell Houses Ltd. v City Wall Properties Ltd