

***COMPANY LAW***  
***B.Com 3rd Semester***  
***Memorandum of Association***

**DR. VANDANA PANDEY**  
**ASSOCIATE PROFESSOR**  
**DEPARTMENT OF COMMERCE**  
**HCPG COLLEGE VARANASI**

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# MEMORANDUM OF ASSOCIATION

## Definition Of Memorandum Of Association

- According to sec(56) of the companies Act,2013  
Memorandum means “Memorandum of association of a company as originally framed or altered from time to time in pursuance of any previous Companies Law or of this act”.
- According To Cairns  
Memorandum of Association of a company is its charter and defines the limitations of the powers of a Company.

## Meaning

- Memorandum of association is one of the documents which has to be filed with the registrar of the companies at the time of incorporation of a company. The memorandum of association contains the fundamental conditions upon which alone the company has been incorporated.
- Hence MOA contains the objects for which the company is formed and therefore identifies the possible scope of its operations beyond which its actions cannot go.

# Importance of memorandum

- The memorandum of association is an extremely important document in relation to the affairs of the company
- It is a document which sets out the constitution of the company
- It contains the fundamental conditions upon which alone the company is allowed to be incorporated
- A company can pursue only such objects and exercise such powers as are conferred expressly in memorandum or by implication
- A company cannot depart from the provisions contained in its memorandum. If it does it would be ultra vires the company and therefore wholly void.
- It defines its relations with the outside world and the scope of its activities.
- After registration of the company the memorandum becomes a public document.

## **Printing and Signing of Memorandum Under Rule 13 of Companies (incorporation ) Rules,2014**

- U/S 3(1) of the companies act ,2013
- At least seven persons in case of a public company
- At least two persons in case of a private company
- At least one person in case of one person company (OPC)

must subscribe to the shares of the company.

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continued.....

## Contents of Memorandum

- According to sec 4 the memorandum of association of every company must contain the following clauses:
  - 1) The name of the company with “limited” in case of public company and with “Private Limited” as the last word in the case of a private limited company. One person company shall also describe as “one Person Company”

- 2) The name of the state in which the registered office of the company is to be situated.
  - 3) The objects of the company to be classified as-
    - i) Objects for which the company is proposed to be incorporated
    - ii) Any matter considered necessary in furtherance thereof
  - 4) In the case of companies (other than trading corporations ) with objects not confined to one State ,the States to whose territories the objects extend
  - 5) The liability of the members is limited if the company is limited by shares or by guarantee]
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6) In the case of a company having a share capital the amount of share capital with which the company proposes to be registered and its divisions into shares a fixed amount.

The memorandum shall conclude with an 'association clause' which must state the desire of the subscribers to be formed into a company.

An unlimited need not include clause 5 and 6 in its memorandum

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EXAMPLE: Plaintiff was carrying on business under the trade name of Buttercup Dairy Company .Another company was registered under the name of Buttercup Margarine Company Limited. It was held that the plaintiff was entitled to restrain the newly registered company from carrying on business on the ground that the public might reasonably think that the registered company was connected with his business.

[ Ewing v. Butter cut Margarine Company Ltd.(1917) 2 Ch 1 (C.A.)

According to Rule 8 of the companies (Incorporation) Rules,2014 a proposed name is considered to be undesirable if it is identical with or too nearly resembling with:

- i) Name of a company in existence or,
  - ii) A registered trade- mark or a trade mark which is subject of an application for registration of any other person under the Trade Marks Act,1999
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iii) The name shall also be considered undesirable if

- It attracts the provisions of sec 3 of the Emblems and Names (Prevention and Improper Use) Act, 1950
  - It includes any word or words which are offensive to any section of the people
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## **b) Registered Office Clause**

### **[section 4(1)(b)]**

- This clause states the name of the state where the registered office of the company is to situate.
- A company shall have its registered office . Such office must be in existence on and from the 15<sup>th</sup> day of its incorporation. Notice of situation of registered office and every change therein must be given the registrar within 15 days.

## Address of registered office to be specified in correspondence, bills

- Address of the registered office must be specified in company's letter heads, bill books and in all notices and official publications. Name board of company and address of registered office should be painted or affixed in a conspicuous position on the outside of every office or place in which business is carried out.
- If default is made in complying with these requirements the company and every other office who is in default shall be punishable with fine which may extend to Rs. 1000 for every day during which the default continues but not exceeding Rs 100000

# Importance of registered office

The registered office clause is important for following reasons

- 1) It ascertains the domicile and nationality of a company.
- 2) The jurisdiction of a court is also determine with reference to the registered office of the company
- 3) It is the place where various registers relating to the company must be kept and to which all communications and notice must be sent.
- 4) Any document can be served on a company by sending it by post under certificate of posting or by registered post or by hand delivery at the registered office.
- 5) Case against the company should normally be filed where registered office is situated unless cause of action has arisen elsewhere

## (c) Object Clause [section 4(1)(c)]

- the third and important clause which defines the limits and extent of the activities of a company is its objects clause.

Section 4(1)(c) requires a company to divide its objects clause into two parts

- i) Objects to be pursued on incorporation and,
- ii) Matters necessary for furtherance therefore

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## Importance of the object clause

- This clause is the most important clause in the memorandum of association of a company because it not only shows the objects for which company is formed but also determines the extent of the powers which company can exercise in order to achieve the objects
- It is essential that the public who purchase its shares should know clearly what are the objects for which they are paying and which they want to encourage .
- Lord Parker in case of *Cotman v Brougham* has beautifully summed up the importance of the object clause

## e) Capital Clause [Section (4)(1)(e)]

- The memorandum of a company limited by its shares must state the authorized share capital, the different kinds of shares and the nominal value of each share. Provisions as nature of these shares are more properly to be made in the articles .
  - The amount of share capital with which the company is to be registered is left to the discretion of those promoting it.
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- Requirement of minimum paid up
- Private company – Rs.1 lakh
- One person company- Rs. 1 lakh
- Public Company- Rs. 5 lakh

## f) Association or Subscription clause [Section 13(4)(c)]

- This clause provides that those who have agreed to subscribe to the memorandum must signify their willingness to associate and form a company.
- Association clause generally runs in the following forms, “We the several people whose name and address is a subscriber in the memorandum of association and we are respectively agree to take the number of shares in the capital of the company that operate a respective names”.

- The memorandum has to be signed by its each subscriber in the presence of at least one witness who can attest the signatures one witness to all the signatures is sufficient .
- But a subscriber cannot attest the signatures of another subscriber.
- No subscriber to the memorandum shall take less than one share. This clause need not be numbered.

## **g) Nomination or Succession Clause (in case of One Person Company)**

- In case of a one person company there is a requirement to have 7th clause to describe the nominee in the event of the date that of the subscriber.
- Prior written consent of nominee required to be obtained in form No. INC 3. Nomination, in Form No. INC 2. along with written consent in form No. INC 3 shall be filed with ROC at the time of incorporation of OPC along with the memorandum and articles

# Alteration Of Memorandum

- The procedure for alteration of compulsory clauses are conditions of memorandum is discussed below:

a) **Change of name**

i) **by special resolution**

companies can change its name for this purpose it was first pass special resolution and then attain approval of the central government .

ii) **By ordinary resolution:**

if through inadvertence or otherwise a company is registered by a name which in the opinion of central government is identical with name of an existing company it can change its name by passing an ordinary resolution and with the previous approval of the central government

iii) Direction for changing name:

the central government may also it in 12 months for of its registration direct the company to change its name. within three months of such direction the company must change its name bypassing an ordinary resolution.

iv) Defaulting companies prohibited to change the name:

change of name shall not be allowed to any company which is defaulting its in filing its annual returns of all which has defaulted any payment of matured deposits and debentures.



## b) Change of registered office

- The change of registered office be involved in any of the following :
  - i) change of registered office from one place to another place in the same city town or village
  - ii) change of registered office from one town to another town in the same state
  - iii) change of registered office from one state to another state

## (c) Change of the object clause

- A company has no unlimited right to alter the objects of the memorandum, however ,urgent or beneficial such alteration may.
- The power of alteration of objects clause is subject to two limits
  - 1) Substantive Limits
  - 2) Procedural Limits

# 1) Substantive limits

- A company can change its registered office from one state to another as far it is necessary for any of the following purposes
  - a) To carry on its business more economically and more efficiently
  - b) To attain its main purpose by new or improved means
  - c) To enlarge or change the local area of its operation
  - d) To carry on some business which under existing circumstances may be conveniently or advantageously combined with the business of the company

## 2) Procedural limits

- The following may be followed for altering the object clause

- Special resolution :

Before the company can alter the objects clause it shall pass a special resolution sanctioning the alteration. However special resolution authorizing the alteration of the object clause should be one of the purpose mentioned in section 13 as stated above

Copy of the resolution is to be filed with the registrar

## (d) Change of liability clause

- A limited company if authorized by its articles by a special resolution may alter its memorandum to make liability of its directors or manager unlimited.
- This rule applies to future appointees only. Such alteration will not affect the existing directors and manager unless they have accorded their consent.

## (e) Change of capital clause U/s 61(1)

- Section 61 of the companies act provides for alteration of share capital. A limited company having a share capital may alter its capital
  - The confirmation of court is not required in following cases
    - 1) to increase its share capital
    - 2) To consolidate and divide its shares of larger amount
    - 3) To convert its fully paid shares into stock and recovery the stock into fully paid up shares
    - 4) To sub divide its shares into shares of smaller amount
    - 5) To cancel its shares
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## Filing With ROC [SEC. 64]

- a) Where a company has done any of the above alterations with regard to its share capital, it shall within 30 days give Notice to the ROC specifying the shares consolidated, divided, converted, subdivided, redeemed or cancelled or the stock reconverted.
- b) Upon such Notice the Registrar shall record the same and make any alterations that may be required in the company's MOA and AOA.
- c) Defaulting in giving Notice to the Registrar shall render the company and every officer of the company liable to fine upto Rs. 1000 per day of continuing default or Rs. 5 lakh, which ever is less.

## Doctrine of ultra vires

- 'Ultra' means beyond , 'vires' means power .
- An action outside the memorandum is ultra vires the company .
- An act is said to be ultra vires when it is performed which, though legal in itself is not authorized by the objects clause in the memorandum of association or the statute.
- Such an act is void and cannot be ratified even by unanimous resolution of all the shareholders



## Effects and consequences of ultra vires

1. Void ab initio
2. Injunction
3. Breach of warranty of authority
4. Personal liability of directors
5. Ultra vires contracts
6. Ultra vires acquired property
7. Ultra vires borrowings
8. Ultra vires torts

## Exceptions to the doctrine of ultra vires

1. An act which is intra vires the company but outside the authority of the directors may be ratified by the shareholders in proper form
2. An act which is intra vires the company but done in an irregular manner may be validated by the consent of all the shareholders.
3. If the company has acquired any property through an investment which is ultra vires the company's right over such a property shall still be secured

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- 4) When applying the doctrine of ultra vires, the effects which are incidental or consequential to the act shall not be invalid unless they are expressly prohibited by the companies act.
  - 5) There are certain acts under the company's law which though not expressly stated in the memorandum are deemed impliedly within the authority of the company and therefore not deemed ultra vires
  - 6) If the act of the company is ultra vires the articles of association the company can alter its articles in order to validate that act
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# DRAFTING THE MEMORANDUM OF ASSOCIATION

- Contents of memorandum
  - NAME
  - PLACE
  - OBJECTS
  - LIMITED LIABILITY
  - FORM OF MEMORANDUM
  - PRINTING
  - STAMPING
  - SUBSCRIPTION OF MEMORANDUM



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● **THANK YOU**

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