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# Memorandum of Association in Company Law: A Study on Indian Judicial System

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## ABSTRACT

*One issue resulting from the memorandum's listing of the objects of association was the subject of lengthy discussion for many years. The courts determined that the corporation was not permitted to make contracts with legal force or take any actions that were inconsistent with the memorandum's stated purposes of organisation. Since the Companies Act of 1989, the law has undergone significant modification, and only very seldom will the previous law be applicable. The necessity of comprehending the common law rules was not entirely eliminated by the revisions, nevertheless.*

*The necessity of comprehending the common law rules was not entirely eliminated by the revisions, nevertheless. This chapter will first look at the history and rationale behind the common law standards, then the new rules, and then briefly touch on the challenges that anyone attempting to bring up an issue of supra vires could have in the few instances when it might still be relevant.*

**Keywords:** MOA, Company Law, Judicial System.

## I. INTRODUCTION

According to the Companies Act of 2013, "articles" are a company's "initial articles of association, or as amended from time to time in accordance with any earlier company legislation or of the present." The Articles of Organization are a crucial document in the existence of a company since they specify the rules, regulations, and bye-laws for the internal management of the company and the conduct of its operations. A business's articles, which govern the management and authority of the company and its executives, are frequently likened to a rule book for how the organisation should operate. It specifies numerous aspects of the company's internal operations, including the how calls are made, the qualifications, authority, and In fact, a contract between the members and between the members and the firm is established by the articles of association. The defined terms of this agreement set forth the customary privileges and duties that come with being a member of the company.

However, it should be remembered that the memorandum of association, which is the primary,

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fundamental constitution of the firm, supersedes the articles of association. Additionally, any and all articles that go beyond the memorandum of association shall be ruled extra vires, as stated in *Shyam Chand v. Calcutta Stock Exchange*. As a result, the articles shouldn't contain any clauses that go beyond the memoranda. In the event of a discrepancy between the articles and memorandum, the provisions The Memorandum of Association (MOA), a legal document that is created when a company is incorporated, outlines the essential guidelines and rules that direct the firm's operations. It outlines the organization's goals, authority, and operational parameters. The MOA is a key document since it specifies the type and extent of the company's business activity.

The MOA serves as the company's constitution and specifies its goals and authority, as well as its share capital, share liability, and the kinds of commercial activities it will engage in. The MOA is the initial file that a company submits to the Registrar of Companies for registration.

Each provision in the memorandum of association describes a separate facet of how the business will operate.

- **Name Clause:** The name clause, which is the first in the MOA, contains the name of the company. The company name must be distinctive and distinct from the names of any other registered companies.
- **Registered Office Clause:** Section 12 of the 2013 Companies Act mentions the company's registered office clause.

The company's nationality and registered office address are determined by the registered office clause. All formal correspondence is routed to the company's registered office, which serves as its official address. Every corporation is required to post the name and address of its registered office on the door of each office where it conducts business.

- **Object Clause:** The company's object clause is described under Ultra vires doctrine

According to this concept, the company's activity will be considered ultra vires and void if it exceeds the range of authority specified in the object clause.

The liability provision outlines the company's obligations to its shareholders. It specifies whether the corporation is a guarantee- or share-limited entity. The responsibility of the shareholders in a corporation limited by shares is constrained to the amount of share capital they have contributed to the business. The members of a company limited by guarantee are only liable for the amount they have agreed to contribute to the firm in the case of its dissolution. In two places, the Companies Act of 2013 defines limited liability.

## **II. NATURE AND ARTICLES OF ASSOCIATION CONTENT**

According to the Companies Act of 2013, each company's articles of association must be written in the prescribed form because the model form varies depending on whether the company is limited by shares, limited by guarantee with share capital, limited by guarantee without share capital, unlimited with share capital, or unlimited without share capital.

Articles of Association are signed.

According to the Companies (Incorporation) Rules, 2014, a company's memorandum and articles must be signed in a specified way.

- All subscribers must sign the company's memorandum and articles of incorporation, and they must also add their names.
- Where a subscriber lacks literacy, he must substitute a thumbprint for his signature and designate a person to authenticate the thumbprint with his signature and personal information. This designated person should also read the documents' contents to the subscriber who is illiterate so that he can understand them.
- If a subscriber is a body corporate, the board of directors of the body corporate must enact a resolution authorising any director to sign the memorandum and articles on behalf of the body corporate.
- If the subscriber is a Limited Liability Partnership, the LLP's partner who has been given proper authorization to sign on behalf of the LLP must do so.

## **III. PROVISIONS FOR ENTRENCHMENT**

The Companies Act of 2013's Section 5(3) established the idea of entrenchment, which suggests that some parts of the articles of association cannot be changed by simply adopting a special resolution but instead call for a considerably more drawn-out and involved procedure. The word "entrench" literally means to develop an attitude, habit, or belief so strongly that changing it is unlikely. Thus, an entrenchment clause contained in the Articles is one that renders some adjustments or alterations either impractical or challenging.

Only during incorporation, or through an amendment to the articles brought about by a special resolution in the case of a public company, and through an agreement between all the members in the case of a private company, are provisions for entrenchment permitted.

### **Articles of Association Change**

A business may amend its articles in accordance with the terms of the memorandum of

association by passing a special resolution, according to Section 14 of the 2013 Companies Act. This authority is crucial to the operation of the business. The business may change its bylaws in a way that would change:

becoming a private firm from a public one

Just passing a special resolution is insufficient for a corporation looking to change its status from public to private. The Tribunal's consent and approval must be obtained by the corporation. Also, within 30 days of its passage, a copy of the special resolution must be lodged with the Registrar of Companies. Also, a business must submit a copy of the modified, new articles of organisation along with the Tribunal's approval decision to the Registrar of Companies within 15 days of receiving it.

#### **Limits on the ability to change the articles**

- The change must not contradict with the terms of the memorandum, which replaces the articles and will take precedence in the event of a dispute.
- Since the amendment supersedes both the company's memorandum and its articles, it cannot be in violation of the Companies Act or any other company law. It also cannot be in violation of the Tribunal's rules, amendments, or suggestions.
- The modification cannot be unlawful or against public policy. Furthermore, it must be in the legitimate interest of the business. The changes must be for the company's overall advantage and cannot be an attempt to commit fraud against the minority.
- Unless the Tribunal has granted the necessary approval, no changes can be made to turn a public business into a private corporation.
- A corporation may not utilise the modification to absolve itself of contractual obligations or to conceal or correct a violation of contract with a third party.
- It is against company law and therefore impossible for a firm to change its bylaws in order to remove a board of directors member.

#### **IV. NEED OF MOA**

The firm's charter outlines its scope and authority; if these are exceeded, the company cannot operate. Anyone with the necessary funds may access this public record. Consequently, it is crucial to make sure the MOA is written accurately and correctly. At least two subscribers must sign the MOA in the presence of a witness, and it must be written in compliance with the Companies Act.

To make sure that it accurately reflects the company's actual goals and operations, the MOA should be reviewed and updated on a regular basis. The company must alter its MOA by passing a special resolution and submitting the modified MOA to the Registrar of Companies if it decides to change its objectives or activities.

## **V. CONCLUSION**

The Memorandum of Association, which outlines the firm's core principles and rules that guide its activities, is an essential document for the foundation of a corporation. It outlines the organization's goals, authority, and operational parameters. The MOA must be drafted carefully and precisely, and it must be reviewed frequently to reflect the business's most recent goals and operations. It is crucial to make sure that the MOA is written in line with the Companies Act because it is a public document that anybody can see.

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