Page 1850 - 1859 **DOI:** *https://doij.org/10.10000/IJLMH.114563*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 2

2023

Memorandum of Association

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ABSTRACT

This paper is the proper examination of the memorandum of association of The Companies Act, 1956 and The Companies Act 2013. The paper will describe the facts of the memorandum of association and the doctrine of ultra-vires. This paper consists of an Introduction to the memorandum of association which covers the basic necessary meaning. The paper consists of the cases where the effects of doc doctrine ultra-vires are discussed briefly. The doc doctrine ultra-vires too have been examined accurately in which the case is described with proper reference. The conventional information about the clauses has been analysed with the assistance sections. There are different subtopics Under the topics like memorandum of association, Clauses, doc and doctrine ultra-vires with precedents which is providing a clear view and understanding of the required subject. Under these subtopics the advantages are discussed with some of the provisions of clauses and doctrine of ultra-vires.

Keywords: *Solicitation, Precedent, Aliteration.*

I. INTRODUCTION

The Memorandum of Association is an essential segment of setting up the company. In other words, when the corporate cane is incorporated, the memorandum of association also notifies the investors of the company's objective. The Memorandum of Association is related to the author's importance First and importantly, this outline is used to outline the required conditions under which the corporate can incorporate. The Memoranda, um of Association also have details regarding the firm or company's object current and the fields where the firm will operate. There is another essential function of the Memorandum of Association that it describes about the interaction and how the company interacts with other organizations. Investors and other organizations that plans to work with firms, can use the MOA in order to determine the extent of company's functioning. The Memorandum of Association has basically two functions, i.e. firstly, this document can be an essential segment of alluring the probable investors.

When looking for the investors for the new corporate, the MOA will be used to notify the

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investors of the important verity about the company.

(A) Name clause[3]

This is the first clause of the Memorandum which is necessary to state the title of the presented company. The company being a legal person must have the title to set up the identity.

The title of the company is the sign of its personal existence. Any acceptable title may be be selected subject matter, however to the following. The title should not be such as in the belief of the central government is unpleasant.

Section 4 (2) generally, the title is unacceptable when it is similar with or too nearly bear a resemble to the name of another firm. The title should not designate the relationship with or sponsorship of government. The title should not be in such manner that its utilize by the corporate will be a crime under any law. If the firm is with "Limited Liability."

The last term of the term should be "Limited" and in instance of a private firm "private limited". This informs individuals engaging with the firm that the responsibilities of its members are limited. The Central government may though allow the company inside signification of Section 8.

The title of the company should be tainted on outside of every location where the company carries on every business document and the official letter. Mis description of the title requires the personal liability.

a. Resembling names not allowed

In the first location, no firm can be registered with the title which, in the belief of the Central Government is unpleasant. The Trade Marks Act, 1999 initiated the change in the provisions of the section.

b. Without preconception of the generalization of the provisions in the sub section provides:

- The title is unpleasant if there is earlier on registered firm bearing that title.
- The title is unpleasant if it is similar with or too just about bear a resemble to the registered trade mark or the trade mark which is the subject of a solicitation for the registration of another individual under the Trade Marks Act,1999.

c. Advance restoration of name

The person can build an application in the order form and way and on remission of the order fee

[3] Dr. Avtar Singh, "Company law", 2022, EBC Publishing (P) Ltd., at 49-56.

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for reserving name for the suggested company or for changing the name of a current company. Section 4(4). Such name can be reserved for sixty days from the date of an application. If no such company is formed, the reservation is to be abandoned and the applicant has to be punished with the expanding up to one lakh rupees. If the firm is formed but pointers were wrong the company may be directed in order to change its name within the three months after passing a usual resolution, or the government can take action for detaching the company's name from the register of firm.

d. Change of name

The company may swap its title by advancing the exceptional resolution and with the acceptance of the Central Government signified in writing. Any swap in the title of the company will be subject matter to the provisions of section 4(2) and (3) (which have been stated in the necessity of name clause of the memorandum. Acceptance of the Central Government is not important where the at most swap in the title is deletion or addition of the word "Private" ensuring upon transformation of the company from one category to another category in tendering with the provisions of the Act. Alteration of the title does not act on the rights and obligations of the firm. Alteration becomes productive when it is registered with the Registrar and the new certificate of incorporation with the new title has been issued.

Thereafter the firm should use its new title. Utilize of the older title would be unsuitable. The British Diabetic Society was bound to swap its corporate title to something that would not effect on the fine will of the British Diabetic Association. There was an enough resemblance between the two titles to entail the swap, even though there was no aim to deceive the public.

(B) Registered office[4]

This is the second clause of the memorandum must state in which the registered office of the firm is to be set. Within thirty days of incorporation or the beginning of business whichever is before time, the required place where the registered office is to be pinpointed should be clear and notice of the spot should be given to the Registrar who has to record the same. All the communications to the firm should be addressed to its registered office.

a. Change of registered office situation

Adjustment of registered office clause [Section 13(4)- Shifting of the registered office from one class to another and adjustment of articles may influence not only the company's investors, but also its lenders, workers and dealers.

[4] Dr. Avtar Singh, "Company law", 2022, EBC Publishing (P) Ltd., at 56-57.

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That is why the articles can be adjusted by the special resolution and the registered office can be removed from one cladd to another one by the exceptional resolution and sanction of the central government.

Section 13(4).

(C) Memorandum of association

To set up a company, one of the important documents that is to be framed is the memorandum of association. In the Companies Act, 2013, the term 'memorandum' has been defined under Section 2(56). According to this section, memorandum would include the memorandum of association that was originally framed or that that was altered pursuant to the Companies Act, 2013 or any other previous company law from time to time. Section 4 of the aforementioned act states what all should be contained in the memorandum.

Clauses under memorandum of association

a. Objects clause

Section 4 (1) (c) of the Companies Act, 2013 deals with object clause. This clause must specify the objects for which the company is proposed to be formed. For the purpose of altering this clause, under Section 2(3) of this act, the company can add, omit and substitute. Some requirements have to be fulfilled as provided by section 13 (8) of this act before the alteration of the objects clause takes place

The requirements that shall be fulfilled prior to change in objects clause are:

1. Special resolution has to be passed by the company if it has not completely utilized the amount it has raised through its prospectus from public, otherwise there can be no in this clause.
2. At the place where its registered office is located, the details of such resolution as are prescribed are to be published in two newspapers wherein one should be English and other of vernacular language. Also, if it has any website then therein also it has to be placed. Such publication should tell the rationale behind such change.
3. The company's shareholders who had dissented and want to leave it should be given the opportunity of doing so by promoters as well as shareholders having control over the company as per SEBI's regulations.

Section 13(9) of this act states that Registrar should register the alteration of this clause and he should also certify such registration within thirty days of filing the special resolution. Sub-section (10) of this section states that if the alteration has not been registered according to

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section 13 of this act, it would have no effect. Further, sub-section (11) of this section lays down that any sort of alteration of the memorandum would be void if the company does not have a share capital, is limited by guarantee and purports to give to someone other than its member right to participate in its profits that are divisible.

b. Doctrine of ultra vires

'Ultra vires' literally means 'beyond the power'. Those acts that are beyond the scope of company's legal powers and its authority will be ultra vires leading to them becoming totally void with no binding effect on it. Such acts cannot get ratification or become legal despite all corporation members giving their consent to it unanimously.[5]

This doctrine gets its relevance from the objects clause. This clause is important not only for the company but for the shareholders as well as creditors also because without the objects being specified there would be no restriction on the acts that done by the companies and though the company holds its capital but the contributions done by shareholders are also important as far as the determination of the goodwill that the company has in the market is concerned. As for the creditors, they feel secure as regard to the company's financial health along with its assets and loans. Also, working in limited area of corporate interest would lead to the maximization of the company's profit, its resources getting properly utilized and removal of impediments in the plan that was earlier specified.[6]

This doctrine was applied for the first time by House of Lords in **Ashbury Railway Carriage and Iron Co Ltd *v.* Riche**[7], wherein the aforementioned company and Riche were the parties to a contract in which the company accepted to finance the railway line construction in Belgium. But the company repudiated that contract on the basis of it being ultra vires and thereafter Riche sued it for breach of contract and demanded damages. Riche's contention was that their contract was in the ambit of 'general contractors' and therefore came within company's powers. Also, it contended that the ratification of that contract was done by majority shareholders. The judgement of this case declared that contract as ultra vires and thus making it null and void.

In India, this doctrine has been affirmed by the apex court in **A Lakshmanaswami Mudaliar *v.* LIC**[8], wherein the company's directors were permitted to pay money towards any object that may be charitable or benevolent as well as general object or useful object for any general public.

[5] Dr. SN Maheshwari, Dr. SK Maheshwari, "Corporate laws", 2016, Himalaya Publishing House, at 49.
[6] Anmol Singh Khanuja," Understanding the doctrine of ultra vires under the Companies Act, 2013", Supremo Amicus, Vol.24, May 2021, Available at https://supremoamicus.org/volume-24/#:~:text=https%3A//doi%2Dds.org/doilink/06.2021%2D71127765/supremoamicus/v24/2021/98
[7] (1875) 44 LJ 185: (1875) LR 7 HL 653.
[8] AIR 1963 SC 1185: (1963) 33 Comp Cas 420.

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In compliance with the shareholders' resolution, the directors gave a trust established to further technical knowledge as well as business knowledge two lakh rupees. Such payment was declared as ultra vires. It was said by the court that they could not pay for charitable object or general object as they may select but only towards those charitable objects which would held the company in achieving its own objects and since Life Insurance Corporation had taken over the company's business, it was left no business that it could promote.

The effects of those transactions that are ultra vires are[9]:

- **Injunction:** It can be brought against a company which is involved or is getting involved in ultra vires transaction by any of its member to stop it from going ahead with it.
- **Directors' liability:** Personal liability is of the directors of such company who are involved in ultra vires transaction to make up for the amount taken from corporate capital that is lost in such transaction by restoring it.
- **Ultra vires contracts:** The contracts that fall outside the ambit of the objects clause as stated in the company's memorandum are totally void with no legal effect. The issue with such contracts is not only limited to the fact that they should not have been made but also that the corporation could not make it.
- **Ultra vires torts:** For making the corporation liable any tort it has to be shown that the tort was committed in the course of some activity which comes under the ambit of memorandum and was committed by its servant during his employment.

c. Liability clause

It is another clause of the memorandum of association and is dealt by section 4 (1) (d) of the Companies Act, 2013. The memorandum shall state whether the members of the company have a limited liability or an unlimited liability. Further, it shall state that its members liability is limited up to the amount that is unpaid on the shares that they hold, if there is any such amount, as far as a company with a limited liability is concerned. And if it is limited by guarantee, it shall state the amount undertaken by each of its member that he will contribute in case the company winds-up and also for the winding-up expenses, charges and costs and for the purpose of contributories rights being adjusted amongst themselves.

II. SUBSCRIBERS DECLARATION

The memorandum and articles of association of a corporate are the exceedingly important

[9] Dr. Avtar Singh, "Company law", 2022, EBC Publishing (P) Ltd., at 69-73.

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documents for the formation of a corporate and for its functioning thereafter. It defines the extent of functions of the company and its objective of incorporation. Before dealing with a firm, it is advisable to read the memorandum and articles of the firm to understand various features, like those of intended business activities, liability of members, powers of Board and members, etc. and its relationship with the other nation. The memorandum and articles bind the members to the corporate; the firm to the members; the members inter se; and the company to Nonmembers. A corporate is governed by its memorandum and articles and any act beyond it shall be contemplated as ultra vires. According to Lord Macmillan, the purpose of memorandum of association is "to enable the shareholders, creditors and those who deal with the company to know what is the permitted range of enterprise''.

The definition of "memorandum" under sub-section (56) of Section 2 of the Companies Act, 2013, states that it refers to the company's original memorandum of association or any subsequent amendments made in accordance with this Act or any other earlier company law. **Ashbury Railway Carriage & Iron Co. Ltd. v. Riche, (1875) L.R. 7 H.L. 653**, was a well-known case in which Lord Cairn made the following observation: "A company's memorandum of association is its charter and establishes the bounds of the company's powers...It contains both positive and negative things, as stated above. The scope and degree of the vitality and abilities that the corporation is legally granted are stated positively, and if it is essential, it also states negatively.

(c) One person, if the business being created is to be a One Person business, that is to say, a private company, by signing their names or his name to a memorandum and adhering to the provisions of this Act in regard to registration. The consequence of registration is outlined in Section 9 of the Companies Act of 2013. According to the aforementioned section, such subscribers to the memorandum and all other individuals who may at any time join the company will be a body corporate with the name stated in the memorandum that is capable of performing all the duties of an incorporated company under this Act and has perpetual succession with the authority to:

An authorization of incorporation given by the Registrar in respect of any company shall be conclusive evidence that all the necessity of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorized to be registered and duly registered under this Act. This particular thing has been discussed in the known case **COTMAN V. BROUGHAM [1918-19] ALL E.R. REP. 265(HL)** wherein Lord Wrenbury has held that "before registering a memorandum of association the registrar ought to consider whether the requirements of the Companies Acts have

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been bounded with, and to reject registration if he come up with that they have not. The memorandum must delimit and identify the field of company within which the corporate activities are to be confined".

As per sub-section (55) of Section 2 of the Companies Act, 2013, a member, in relation to a company, means— (i) the subscriber to the memorandum of the corporate who shall be consider to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;

(ii) every other individual who agrees in writing to become a member of the Firm and whose title is entered in the register of members of the company;

(iii) every individual holding shares of the corporate and whose name is entered as a beneficial owner in the data of a repository from the above it is understood that the first members of the Company are the subscribers to the memorandum. After incorporation, the Company may issue further shares and every individual who agrees in writing to become a member thereafter and whose name is entered in the register of organ shall be a member of the Firm. The condition herein is accumulative for members other than first subscribers. In **Sri Arthanari Transport (P) Ltd. and Ors. Vs. K.P. Swami Gounder and Ors. (AIR1966Mad231, (1965)2MLJ504),** the Hon'ble High Court of Madras held that, "Section 12 of the Indian Companies Act, 1956, relates to the mode of forming incorporated companies and says that two or more individuals corelated for any lawful motive may term a private company by subscribing their titles to a Memorandum of Association and otherwise complying with the needful of the Act as regard of registration. It is essential to note that subscribing their titles to a Memorandum of Association" implicit a contract between the individuals concerned to linked each other into a body corporate and subscribing in the context means the signing by such persons or their applicant in the Memorandum in token of their agreement to so connect themselves respective names. The signatories are thus parties to the agreement which is in the form of an announcement. A Memorandum of Association of a Firm is required by S. 14 to be, where it is a private Firm, in the form prescribed in Table B in Schedule I. This form, after providing for the name of the company, the place of its registered office, its articles limited liability of its members and share capital contains, at the end a declaration: We, the many persons whose names and addresses are subscribed are desiring of being formed into a company in execution of this memorandum of association and we consequently agree to take the number of shares in the capital of the corporate set opposite our respective names. Then follow the columns relating to the names, addresses, descriptions and professions of subscribers and the number of shares taken by each subscriber. At the very last comes the column "witness to the above signatures". The statement

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in that formation obviously personified two matters on which the signatories thereto agree

(1) they that is the many members whose titles and addresses are subscribed, aim to form themselves into a firm in pursuance of the Memorandum and

(2) they agree subsequently to take hold of the number of shares in the funds of the company set opposite to their separate titles. It is an idea that those who do not subscribe their signatures to the statement in token of their aim to form themselves into a company and do not agree to take shares as demanding in the declaration, cannot be considered to be subscribers to the Memorandum of Association. Section 13 mentions the essentials with respect to a memorandum and two of them are that no subscriber to the Memorandum must take fewer than one share and each subscriber of the Memorandum shall take slighter than one share and each subscriber of the Memorandum ought to write down opposite to his name the number of shares he takes. It is true that by subsection (1) of S. 41, subscribers of the Memorandum of a company should be considered to have agreed to setoff members of the company and on its registration, shall be entered as members in its register of members". It was also held in the aforementioned case that "subscribers of the Memorandum and subscription to a Memorandum of Association means not merely signing at every one of its pages but inscribing their names in token of entering into an agreement both as to the identification setting up themselves into a firm but also their oath to take the number of shares specify against their names. We do not think that from the pleader signatures elsewhere in the Memorandum than in token of their being parties to an announcement as to the emergence of the association and pledge to receive the number of shares described, they can be regarded as subscribers to the Memorandum of Association, for, they are not by their signatures side to the asseveration which is the vital part of the Memorandum". Thus, the subscribers are parties to an agreement which is in the form of a declaration. By subscribing to the memorandum of association it experiences a contractual obligation on their part. The subscribers by signing the memorandum at intended location declare that they agree to subscribe to the number of shares provided against their name and they are wishful of incorporating a Company for a lawful cause which is included in the objects clause of the memorandum of association. Also, the subscriber is required to sign at the appropriate place in the list of subscribers and only signing the other pages of the memorandum shall not be sufficient to declare or consider them as subscribers or deemed members of the Firm.

In **Official Liquidator of the U.P. Oil Mills Company Ltd.Vs. Jamna Prasad and Ors [(1933) 1 AWR 587, 143Ind. Cas.762]**, it has been held that "the words shall be assumed to have consent to become members of the company" mean that the subscribers of the memorandum of a company are to be served as having become members of the company by the

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fact of the subscription. This vision was taken in the affair of the **Union Bank, Allahabad (1925) 23 A.L.J. 473 : A.I.R. 1525 All. 519 : 47 All. 669 : 88 Ind. Cas. 785** and in the case of the Official Liquidator of **J.H. Chandler and Co. v. H.I. Phillips (1920) 24 A.L.J. 691 : A.I.R. 1920 All, 550 :48 All. 280: 95 Ind. Cas. 92.7**.

III. CONCLUSION

Memorandum of Association is an essential document which is essential for every institution. This document ought to be reprinted and divided in to section and ordered numbered. regulations formulated cannot go beyond the potential of the corporate noticed in Memorandum of Association. should be carried on by the company because it instructs the company in many features. It also helps in controls administration of the company. It shapes the important part in the incorporation of the company. If any conversion is done then the company has to go after a legal course of action which is quoted under the Companies Act 2013.

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