

# LL.B IV SEMESTER

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## COMPANY LAW 2013

### MEMORANDUM OF ASSOCIATION

The Memorandum of Association or MOA of a company defines the constitution and the scope of powers of the company. In simple words, the MOA is the foundation on which the company is built. In this article, we will look at the laws and regulations that govern the MOA. Also, we will understand the contents of the Memorandum of Association of a company.

As per Section 2(56) of the Companies Act, 2013 “memorandum” means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any previous company law or of this Act.

#### **Format of Memorandum of Association (MOA)**

According to Section 4 of the Companies Act, 2013, companies must draw the MOA in the form given in Tables A-E in Schedule I of the Act. Here are the details of the forms:

**Table A:** Form for the memorandum of association of a company limited by shares.

**Table B:** Form for the memorandum of association of a company limited by guarantee and not having a share capital.

**Table C:** Form for the memorandum of association of a company limited by guarantee and having a share capital.

**Table D:** Form for the memorandum of association of an unlimited company.

**Table E:** Form for the memorandum of association of an unlimited company and having share capital

#### **Contents of Memorandum of Association**

Under Section 4 of the Companies Act 2013, a Memorandum of Association should comprise of the following clauses as discussed below:

### **Name Clause:**

It is mandatory to mention the name of the company while drafting the Memorandum of Association. A company may select any name that it prefers but it should not be identical to an existing company. The chosen name of the company as it appears in the Memorandum of Association should be exactly the same as the one approved by the Registrar of Companies. A Public Limited Company should end with the word "*Limited*" and likewise, a Private Limited Company should end with the words "*Private Limited*". A company should restrain from using words like "*King, Queen, Emperor, Government Bodies and names of World Bodies like U.N.O., W.H.O., World Bank etc*". In order not to mislead the public a company must not use a name which is prohibited under the Emblems and Names (Prevention of Improper Use) Act of 1950. A company is restricted from using any name which may connect it to the government of the state, without obtaining prior permission from the government.

### **Situation Clause:**

The Memorandum of Association of a company must contain the name of the state where the company operates and the jurisdiction of the *Registrar of Company* must be specified. It is mandatory for the company to have the registered office within **15 working days**. Likewise, the verification of the registered office must be completed in **30** days. This procedure is done to fix the domicile of the company which may or may not be the place where the company is operating. In the event of a change in location of the registered office the memorandum needs to be altered, the procedure for the same is mentioned below.

### **Object Clause:**

The objective for which the company is formed must be mentioned in the Memorandum of Association. It is one of the key clauses and should be drafted carefully mentioning all the types of businesses that the company may possibly

engage in the future. A company is legally prohibited from carrying out any activity that is not specified in the object clause. The objects are classified as 'Main Objects', 'Ancillary Objects' and 'Other Objects'. The objects must be stated articulately and must not be ambiguous in nature. The objects must not also be illegal or against the prohibition of the Act or the public policy of the country.

### **Liability Clause:**

The liabilities of the members of the company must be clearly stated in the Memorandum of Association. They may be limited by shares or by guarantee. In case of unlimited liability company, the entire clause can be eliminated.

When a company is limited by shares, the liability of its members remains limited to any unpaid amount on the shares owned by them. When it is limited by guarantee the members of the company are liable to pay the amount stated in the memorandum at the time of liquidation of the company. In case of unlimited companies, the liability of the members is unlimited, involving personal assets.

### **Capital Clause:**

The maximum amount of authorised capital that can be generated by the members of the company is ought to be specified in the Memorandum of Association. Stamp duty is applicable on this amount. Although there is no legal limit to the maximum amount of capital that can be raised by a company, it cannot increase the *authorised share capital* once it has been incorporated. The denomination for each such share has to be either RS 10 or RS 100 in case of equity and preference shares respectively. A company should make sure that the raised authorised capital is sufficiently high for further expansion of business in the future. All other rights and privileges, as agreed upon by shareholder, creditors, investor and other members of the company may also be specified in this charter. It is not mandatory for an unlimited company having an authorised share capital to mention it in the memorandum.

### **Association or Subscription Clause:**

The amount of authorised capital and the number of shares owned by each member of the company should be mentioned in the Memorandum of Association of the company. The subscribers to the memorandum must own a minimum of one share each. Each subscriber must write the number of shares owned by him and sign the memorandum in the presence of at least one witness who is required to attest the signature

### **Alteration, Amendment & Change in Memorandum of Association under Companies Act 2013**

A memorandum of association needs to be amended if any of the following changes occur in the company:

- An alteration in the name of the business.
- A change in the office of registration.
- An alteration in the object clause of the business.
- An alteration in the authorised capital of the business.
- Any adjustments made in the legal liabilities of the members of the business.

The *procedures* for making any amendments in the Memorandum of Association as prescribed under **Section 13** of the Companies Act 2013:

- It is advisable to conduct a board meeting to uphold the proposal to the members of the company for consideration, by passing a special resolution.
- It is recommended to issue a notice of an Extraordinary General Meeting in which the special resolution will be passed. The notice must mention the location, date, day and time of the meeting and a statement specifying the objective of the meeting and the business to be carried out in the meeting.
- As mentioned under **Section 102** of the Act, an explanatory statement must accompany the notice for the meeting.
- As specified under **Section 61** of the Act, in the event of an amendment of the authorised share capital, approval of the members by way of an

ordinary resolution is necessary. However, for amendment of all other clauses, approval of members by special resolution is mandatory.

- For amendment of a Memorandum of Association with the Registrar of Companies, a company must file a special resolution which has been passed by its shareholders. In order to register the special resolution, **Form MGT 14** is required to be filed within *30 days* of passing such a motion.
- A validated copy of the special resolution, the notice and the explanatory statement of the Extraordinary General Meeting must be attached with **Form MGT 14**, along with the altered memorandum of the company.
- In the event of an alternation in the name of the company or a change in the registered office, a copy of approval from the Central Government is necessary.
- Any such alterations and amendments made under **Section 13** of the Act shall not be in effect unless registered