

M.COM. – FIRST YEAR

(II SEMESTER)

Paper: Corporate Laws And Governance

UNIT -III : The Company Act, 2013

Topic: Memorandum of Association and its content

Lecture : 5

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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.

Object of registering a Memorandum of Association or MOA

- The MOA of a company contains the object for which the company is formed. It identifies the scope of its operations and determines the boundaries it cannot cross.
- It is a public document according to Section 399 of the Companies Act, 2013. Hence, any person who enters into a contract with the company is expected to have knowledge of the MOA.
- It contains details about the powers and rights of the company.

Under no circumstance can the company depart from the provisions specified in the memorandum. If it does so, then it would be ultra vires the company and void.

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.

Content of the MOA

The following information is mandatory in an MOA:

Name Clause

1. For a Public limited company, the name of the company must have the word 'Limited' as the last word
2. For the private limited company, the name of the company must have the words 'Private Limited' as the last words.

This is not applicable to companies formed under Section 8 of the Act who must include one of the following words, as applicable:

- Foundation
- Forum
- Association
- Federation
- Chambers
- Confederation
- Council
- Electoral Trust, etc.

Registered Office Clause

It must specify the State in which the registered office of the company will be situated.

Object Clause

It must specify the objects for which the company is being incorporated. Further, if a company changes its activities which are not reflected in its name, then it can change its name within six months of changing its activities. The company must comply with all name-change provisions.

Liability Clause

It should specify the liability of the members of the company, whether limited or unlimited. Also,

1. **For a company limited by shares** – it should specify if the liability of its members is limited to any unpaid amount on the shares that they hold.
2. **For a company limited by guarantee** – it should specify the amount undertaken by each member to contribute to:

- i. The assets of the company when it winds-up. This is provided that he is a member of the company when it winds-up or the winding-up happens within one year of him ceasing to be a member. In the latter case, the debts and liabilities considered would be those contracted before he ceases to be a member.
- ii. The costs, charges, and expenses of winding up and the adjustment of the rights of the contributors among themselves.

Capital Clause

This is valid only for companies having share capital . These companies must specify the amount of Authorized capital divided into shares of fixed amounts. Further, it must state the names of each member and the number of shares against their names.

Association Clause

The MOA must clearly specify the desire of the subscriber to form a company. This is the last clause.

For One-Person-Company

The MOA must specify the name of the person who becomes a member of the company in the event of the death of the subscriber.

Keep in mind the following aspects before submitting the MOA:

1. Print the MOA
2. Divide it into paragraphs
3. Number the pages in sequence
4. Ensure that at least seven people sign it (2 in the case of a private limited company and one in case of a One Person company).
5. Have at least one witness to attest the signatures
6. Enter particulars about the signatories and witnesses like address, description, occupation, etc.

A few things to remember

- A company can subscribe to an MOA through its agent
- A minor cannot sign an MOA. However, the guardian of a minor, who subscribes to the MOA on his behalf, will be deemed to have subscribed in his personal capacity.

- Companies can attach additional provisions as required apart from the mandatory ones mentioned above.