

MEMORANDUM OF ASSOCIATION

M.COM II SEM
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- According to Section 2(56) of the Companies Act, 2013 “memorandum” means the memorandum of association of a company as originally framed and altered from time to time in pursuance of any previous company law or this Act.
- “THE MEMORANDUM OF ASSOCIATION”, observed Palmer, “is a document of great importance in relation to the proposed company”.

FORM OF MEMORANDUM OF ASSOCIATION

- Section 4(6) of the Companies Act, 2013 provides that the memorandum of association should be in any one of the Forms specified in Tables A, B, C, D or E of Schedule I to the Act, as may be applicable in relation to the type of company proposed to be incorporated or in a Form as near thereto as the circumstances admit.
- (i) The Form in Table A is applicable in the case of companies limited by shares;

- (ii) the Form in Table B is applicable to companies limited by guarantee not having a share capital;
- (iii) the Form in Table C is applicable to the companies limited by guarantee having a share capital;
- (iv) the Form in Table D is applicable to unlimited companies not having a share capital;
- (v) the Form in Table E is applicable to unlimited companies having a share capital.
- A company shall adopt any of the model Forms of the memorandum of association mentioned above, as may be applicable to it.

CONTENTS OF MEMORANDUM

- **NAME CLAUSE**

- A company being a legal entity must have a name of its own to establish its separate identity. The name of the company is a symbol of its independent corporate existence. The first clause in the memorandum of association of the company states the name by which a company is to be known.

- **SITUATION CLAUSE**

- The name of the State in which the registered office of the company is to be situated must be given in the memorandum. But the exact address of the registered office is not required to be stated therein. Within 15 days of its incorporation, and at all times thereafter, the company must have a registered office to which all communications and notices may be sent. The company must also furnish to the Registrar verification of its registered office within a period of thirty days of its incorporation in such manner as may be prescribed.

- **OBJECTS CLAUSE**

- The third compulsory clause in the memorandum sets out the objects for which the company has been formed. Under section 4(1)(c) of the Companies Act, 2013, all companies must state in their memorandum the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof.

- **LIABILITY CLAUSE**

- Section 4 1(d) of the Companies Act, states that the liability of members of the company, whether limited or unlimited, and also state,—
- (i) in the case of a company limited by shares, that liability of its members is limited to the amount unpaid, if any, on the shares held by them; and
- (ii) in the case of a company limited by guarantee, the amount up to which each member undertakes to contribute—
- (A) to the assets of the company in the event of its being wound-up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company or of such debts and liabilities as may have been contracted before he ceases to be a member, as the case may be; and
- (B) to the costs, charges and expenses of winding-up and for adjustment of the rights of the contributories among themselves.

- **CAPITAL CLAUSE**
- This is the fifth compulsory clause which must state the amount of the capital with which the company is registered. The shares into which the capital is divided must be of fixed value, which is commonly known as the nominal value of the share. The capital is variously described as “nominal”, “authorised” or “registered”.

The Doctrine of Ultra Vires

- The Doctrine of Ultra Vires is a fundamental rule of Company Law. It states that the objects of a company, as specified in its Memorandum of Association, can be departed from only to the extent permitted by the Act. Hence, if the company does an act, or enters into a contract beyond the powers of the directors and/or the company itself, then the said act/contract is void and not legally binding on the company.
- The term Ultra Vires means 'Beyond Powers'. In legal terms, it is applicable only to the acts performed in excess of the legal powers of the doer.