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Vellore Institute of Technology  
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# Legal Aspects of Business

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# Recapitulate

## The companies Act, 2013

### Formation and Incorporation of Company

- Promotion
- Registration
- Capital Formation
- Commencement of Business



# The Companies Act, 2013

## Memorandum Of Association (MOA)

MOA is one of the **core documents**, which has to be filed with the Registrar of companies at the time of incorporation of a company. It is a document, which sets out the constitution of the company and is really the **fundamental conditions** upon which alone the company is allowed to be incorporated.

# The Companies Act, 2013

## Content of Memorandum Of Association

- Name Clause
- Registered Office Clause
- Object Clause
- Liability Clause
- Capital Clause
- Association Clause



# The Companies Act, 2013

## CONTENTS OF MEMORANDUM

### 1. Name Clause

Being a legal person, must have a name to establish its identity. It is the symbol of company's personal existence.

#### Rules regarding name

- Undesirable name to be avoided
- Identical name to be avoided
- Injunction if identical name adopted
- Limited or private limited as the last word or words
- Prohibition of use of certain names
- Restriction on use of certain key words as part of name

# The Companies Act, 2013

## Name Clause

Use of certain key words as part of the name. It must have a minimum authorized capital mentioned against the key words;

Sl. No.	Key Words	Required Authorised Capital (Rs.)
1	Corporation	5 crores
2	International, Globe, Universal, etc.,	1 crore
3	Hindustan, India, Bharath, being the first word of the name	50 lakhs
4	Industries/Udyog	1 crore
5	Enterprise, Products, Business, Manufacturing	10 lakhs



# The Companies Act, 2013

## Name Clause

### Publication of Name

- a. Paint or affix its name and address of its registered office on the outside of every office or place of business in a conspicuous position, legible letters and in the local language
- b. Have its name engraved on its seal
- c. Name and address of its registered office mentioned in all documents like bill heads, letters, invoice, receipts, etc.

# The Companies Act, 2013

## 2. Registered Office Clause

- This clause states the name of the State in which the registered office of the company will be situated.
- Every company must have registered office which establishes its domicile.
- Company's statutory books must normally be kept and to which notices and all other communication can be sent.
- Notice of exact address of the registered office may be given to the Registrar within 30 days from the date of incorporation



# The Companies Act, 2013

## 3. Object Clause

- The object clause is the most important clause in the memorandum of association of a company. It is not merely a record of what is contemplated by the subscribers.
- But it serves a two-fold purpose;
  - 1) It gives an idea to the prospective shareholders the purpose for which their money will be utilized;
  - 2) It enables the persons dealing with the company to ascertain its powers.

# The Companies Act, 2013

## 3. Object Clause

- A company cannot do anything beyond or outside its objects and any act done beyond them will be ULTRA VIRES and void and cannot be ratified even by the assent of the whole body of shareholders.
  - a. Main objects
  - b. Ancillary or incidental objects
  - c. Other objects

The objects of the company must not be illegal, immoral or opposed to public policy or in contravention of the Act.



# The Companies Act, 2013

## 4. Liability Clause

This clause states that the liability of the members of the company is limited. In the case of a company limited by shares, the members are liable only to the amount unpaid on the shares taken by him. In the case of a company limited by guarantee, the members are liable to the amount undertaken to be contributed by them to the assets of the company in the event of its being wound up.



# The Companies Act, 2013

## 5. Capital Clause

The memorandum of a company limited by shares must state the authorized or nominal share capital, the different kinds of shares, and the nominal value of each share. The chief point to consider in regard to this clause is what funds are necessary to set the business going or, if it is proposed by an existing concern, what sum is needed to pay its price and what, in addition, is wanted to keep the business going.



# The Companies Act, 2013

## 6. Association Clause

This clause provides that those who have agreed to subscribe to the memorandum must signify their willingness to associate and form a company. The memorandum has to be signed by each subscriber in the presence of at least one witness who must attest the signature. Each subscriber must write opposite his name the number of shares he shall take.



# Review Questions

1. As per the companies Act, 2013, there is no restriction in fixing the name of the company . **True or False**
2. A company has its registered office at Chennai. Owing to some reasons favourable to the company, it wishes to shift its registered office to London. Can the company be permitted to shift its registered office?
3. The objects of the defendant company, as stated in the memorandum of association, were 'to make, sell or lend on hire, railway carriages and wagons, and all kinds of railway plants, fitting, machinery and rolling back'. The company entered into a contract for the purchase of a deal for constructing a new railway line in Australia. A shareholder of the company filed suit for setting aside the contract since it was outside the scope of the object clause of the company. But the company defended the suit under the plea that the general body of shareholders has ratified the action taken by its directors. How would you decide? Give reasons



# Answer

1. As per the companies Act, 2013, there is no restriction in fixing the name of the company .

**Answer: False**

2. A company has its registered office at Chennai. Owing to some reasons favourable to the company, it wishes to shift its registered office to London. Can the company be permitted to shift its registered office?

**Answer: No, its not possible**

3. The objects of the defendant company, as stated in the memorandum of association, were 'to make, sell or lend on hire, railway carriages and wagons, and all kinds of railway plants, fitting, machinery and rolling back'. The company entered into a contract for the purchase of a deal for constructing a new railway line in Australia. A shareholder of the company filed suit for setting aside the contract since it was outside the scope of the object clause of the company. But the company defended the suit under the plea that the general body of shareholders has ratified the action taken by its directors. How would you decide? Give reasons

**Answer: The contract is ultra vires the company could not make it**