

MEMORANDUM OF ASSOCIATION

- It is known as charter of the company.
- It lays object and scope of activities & limitations on the power of a comp. beyond which the comp. cannot go.
- It enables shareholders, creditors and all those who deal with comp. to know what its powers are and what activities it can engage in.
- A memorandum is a public document under Section 399 of the Companies Act, 2013. Any act done or contracts made by a comp. which are beyond the express or implied scope of its memorandum, are said to be null and void. This is termed as doctrine of ultra vires.
power principle beyond
- The condition and the provisions of the memorandum can be altered to the extent and in the manner provided by the Act which allows alterations by special resolution & confirmation by Govt / Registrar of Companies.

Definition 2 (56)

"Memorandum" means the memorandum of association of a comp as originally framed or as altered from time to time in pursuance of any previous co. law or of this Act.

As per Section 4, Memorandum of a comp shall be drawn up in such form as given in Tables A, B, C, D and E in schedule I of Co. Act, 2013.

Table A.

memorandum of association of a co. ltd. by shares.

Table B.

memorandum of association of a co. ltd. by guarantee & not having a share capital.

Table C.

MOA of a co. ltd by guarantee & having a sh. capital

Table D.

MOA of an unlimited co. & not having a sh. capital.

Table E.

MOA of an unlimited co. & having sh. capital

Content of MOA: The memorandum of a comp. shall

Name Clause

- The name of the co. must end with the word "limited" in the case of a public Ltd Co, or the last words "Private Ltd" in case of a private Ltd Co.

Section 4(1)a

- For the comps. under section 8 of the Act, the name shall include the words foundation, Forum, Association, Federation, Chambers, Confederation, council, electoral trust and the like etc.

- a Groot. co's name must end with the word "limited".

- In the case of OPC, the words "One Person Company", should be included

below its name but in the remarks

Registered office clause
Section 4(1)(b)

The state in which the registered office of the co. is to be situated.

Object clause
Section 4(1)(c)

- The objects for which the co. is proposed to be incorporated & any matter considered in necessary thereto.
- If any co. has changed its activities which are not reflected in its name, it shall change its name in line with its activities within a period of six months from the change of activities after complying with all the provisions as applicable to change of name.

Liability clause
Section 4(1)(d)

This clause states whether liability of members of the co. is limited by shares or limited by guarantee or unlimited.

Capital Clause
Section 4(1)(e)

The amount for authorized capital divided into share of fixed amounts and the number of shares with the subscribers to the memorandum have agreed to take, indicated opposite their names, which shall not be less than one share. A company to not having share capital need not have this clause.

Nominee Clause
section 4(1)(f)

only OPC

(OR)

Succession Clause

The memorandum of an OPC shall indicate the name of the person who is case of death, insanity etc. of the member, shall become the member of the company.

Conditions of MOA

The MOA must be printed, divided into paragraphs, numbered consecutively, and signed by at least seven persons (two in the case of a pvt. comp. and one in the case of OPC) in the presence of at least one witness, who will attest the signatures. The particulars about the signatories to the memorandum as well as the witness, as to their address, designation, occupation etc., must also be entered.

- A minor cannot be a signatory to the MOA as he is not competent to contract. The guardian of a minor, who subscribes to the memorandum on his behalf, will be deemed to have subscribed in his personal capacity.

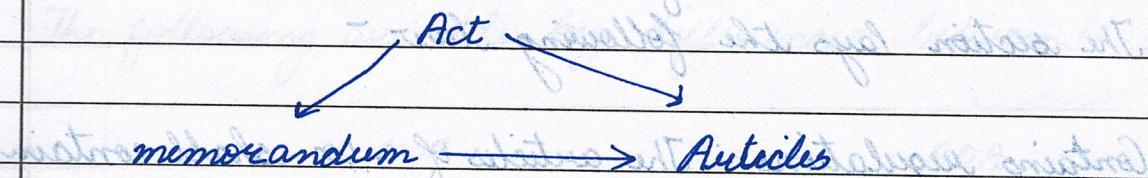
Q. "The MOA is a charter of a co." Discuss. Also explain in brief the contents of MOA. (6M)

A. Major provisions of the MOA

1. Name, object and capital of the company

ARTICLES OF ASSOCIATION

- Document containing internal rules, regulations or bye-laws of a comp.
- It lays down the form in which the business of the co. is to be carried on.
- It also lays down the powers of directors & officers of the co. and thus forming the basis of a contract between the co. & the members & b/w the members inter se (among themselves).
- Every co. have an absolute power to alter its AOA by a special resolution subject to the provisions of the Act & conditions of the memorandum of the co.



Definition 2(5)

"Articles" means the AOA of a co. as originally framed or as altered from time to time in pursuance of any previous co. law or of this act.

As per section 4, articles of a co. shall be drawn up in such form as given in Tables F, G, H, I & J in schedule I of the Co. Act, 2013.

Entrenchment → Pass Special Resolution

+ more conditions

viable
india

GROW UP

Date 1/1/

i.e. it makes changing provision more difficult

Table F.	AOA of a co. Ltd. by shares
Table G.	AOA of a co. Ltd. by guarantee & having a sh. capital
Table H.	AOA of a co. Ltd. by guarantee & not having a sh. capital
Table I.	AOA of an unlimited co. having sh. capital
Table J.	AOA of an unlimited co. & not having sh. capital
	<p>Section 5 of the Co. Act 2013 seeks to provide the contents and model of AOA.</p> <p>The section lays the following law -</p> <p><u>Contains regulations</u>: The articles of a co. shall contain the regulations for management of the company.</p> <p><u>Inclusion of matters</u>: The articles shall also contain such matters, as are prescribed under the rules. However a co. may also include such additional matters in its articles as may be considered necessary for its management.</p> <p><u>Contain provisions for entrenchment</u>: The articles may contain provisions for entrenchment that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution are met or complied with.</p>

Manner of inclusion of the entrenchment provision: The provisions for entrenchment shall only be made either on formation of a co. or by an amendment in the articles agreed to by all the members of the comp. in the case of a private co. & by a special resolution in the case of a public comp.

Notice to the registrar of the entrenchment provision: Where the articles contain provisions for entrenchment, whether made of formation or by amendment, the comp. shall give notice to the registrar of such provisions in such form & manner as may be prescribed.

The following are the key differences between MOA & AOA

Basis	MOA	AOA
Section	2(56) of Co. Act, 2013	2(5) of Co. Act 2013
Purpose	It lays object and scope of activities & limitations on the power of a co. beyond which the co. cannot go.	It lay down internal rules, regulations or bye laws of a co.
Form	Table A, B, C, D & E	Table E, F, G, H, I & J
Subordinate - nature	The MOA is subordinate to Co. Act	The AOA is subordinate to MOA & to Co. Act.
ULTRA VIRES (UV)	Acts done by co. beyond the scope of the MOA are UV & void. These cannot be ratified even by unanimous consent of all the shareholders.	The acts UV the articles can be ratified by a special resolution of the shareholders, provided they are not beyond the provisions of the memorandum.