

Memorandum of Association (MoA)

PURPOSE OF MEMORANDUM OF ASSOCIATION

- ✓ **Memorandum of association is the constitution of a company.**
- ✓ **It is the charter which defines the limitations of the power of a company established under law.**
- ✓ **It contains the fundamental conditions under which company must be incorporated.**
- ✓ **It determines the powers, objects and limits of the company.**

Clauses in the Memorandum of association

- Name clause.
- Registered office clause.
- Object Clause.
- Liability clause.
- Capital clause.
- Subscription Clause.



Name clause

- The first clause of the Memorandum requires to state the name of the proposed company. A company being a legal person must have a name to establish its identity. The name of a corporation is the symbol of its personal existence. The memorandum should state the name of the company with 'limited' as the last word of the name in case of public limited company and with 'private limited' in case of private limited company.



Object clause

This is the most important clause in the memorandum of association of the company , because its defines the objects or aims for which the company is to be set up. A company is not legally entitled to do any business other than what is specified in the object clause.

This clause is meant to protect the interest of the members of the company (who become aware of the purpose for which their investment is to be employed) and the public at large who deal with the company to know the limitations or powers of the company.

If any company crosses the limit of its objects and does some act which is beyond the scope of its activity, such act would be ultra-vires.

CAPITAL CLAUSE

The capital clause is applicable for the company which has some share capital. It mentions,

- ✓ Amount of authorized capital with which the company gets registered
- ✓ The number of shares of the company
- ✓ Also the nominal value of each share

Liability clause

In case of a company whose liability of members is limited by shares and by guarantee, the memorandum must contain a clause stating that 'the liability of the members is 'limited'.

Subscription Clause

- Maximum seven members in a public company and two members in a private company are shown in a Memorandum.
- A declaration is to be given. Such declaration is to be signed by a member in presence of a witness.
- Moreover the details as regards to name, address, age and business of the promoters are also recorded under this clause.

Situation clause:

It is also known as **Registered Office Clause**. The memorandum must state the name of the place of business of the company. The company must have a registered office and its place must be notified to the registrar.

Doctrine of Ultra Vires

Legal effects of unauthorized work beyond power prescribed in MoA.

Case: Ashbury Railway Carriage & Iron Co v Riche

- The objects of the company is to make, sell, lend and hire railway carriages.
- The directors entered into a contract on behalf of the company for the purchase of a concession to construct a railway.
- The company then refused to proceed with the contract and the vendor of the concession sued for breach of contract.
- Held: Construction of railways was not within the objects of the company as stated in the MOA.
- As the contract was ultra vires, it was void and the action against the company failed.

Doctrine of *Ultra-Vires*

Case Law: *Ashbury Rly. Carriage Co. v. Riche.*

Effects of *Ultra-vires* transactions

- (iii) *void-ab-initio*
- (iv) Injunction
- (v) Personal liability of directors
 - towards the company
 - towards the outsiders

KNOWLEDGE

- Every outsider dealing with a company is deemed to have notice of the contents of the Memorandum and the Articles of Association. These documents, on registration with the Registrar, assume the character of public documents. This is known as 'constructive notice' of Memorandum and Articles.
- The Memorandum and the Articles are open and accessible to all. It is the duty of every person dealing with a company to inspect these documents and see that it is within the powers of the company to enter into the proposed contract.

Kotla Venkatswamy v. C. Rammurthi

- The Articles of Association of a company contained a clause that all deeds and documents of the company shall be signed by the managing director, the secretary and a working director on behalf of the company. A deed of mortgage was signed by the secretary and a working director only.

It was held that the mortgage could not be enforced as the illegality appeared on the face of the deed, and therefore, the deed was invalid notwithstanding that plaintiff acted in good faith and money was applied for the purposes of the company.

The doctrine of constructive notice of the Memorandum and Articles, however, is not a positive doctrine but a negative one. It is like doctrine of estoppels. It does not operate against the company. It operates only against an outsider dealing with the company. It prevents him from alleging that he did not know that the Memorandum and Articles rendered a particular act ultra vires the company.



Homework

Companies Act 1994

MOA related sections

(See Sections 9 to 16)