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**MEMORANDUM OF ASSOCIATION**

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- Vandana Reddy Maddi<sup>1</sup>

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**Introduction**

A company is a legal entity established by a group of individuals for business purposes and to gain profits from day-to-day activities. The primary objective of establishing a company was for commercial. A document has to be made with ROC to form a company. A list of documents is required for the company's incorporation. One of the fundamental documents on the list was the Memorandum of Association, which has to be handled by the ROC. Where the Moa states the purpose for which the company has been incorporated.

**Memorandum of Association**

*“The memorandum of association is a document of great importance about the proposed company.”*

- Palmer

One of the fundamental documents for the formation of the company is a memorandum of association. A company's memorandum of association describes the purpose the company has incorporated.

Under section 2(56) of the Companies Act, 2013, “Memorandum” means “Memorandum of association of a company as originally framed or altered from time to time in pursuance of any provision of any previous company law or of this Act”.

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In addition, section 399 of the Companies Act 2013 also provides that any person apart from the company's members can refer to the company's documents, which state that the company has been registered with ROC with the prescribed fees.

Moa states the ability of the company and the circumstances under which it works. Every company needs to maintain an MOA, which displays the extent of its performance. As soon as the MOA has been prepared, the company cannot perform on the far side of the scope of the legal paper. If the company performs on the far side of the scope of legal paper, it would be considered a violation. That is, the doctrine of ultra vires would be applied here. Moa was the base for which the company was incorporated, and the whole formation of the company will be mentioned in Moa.

For instance, Shreya, who was willing to incorporate the company with the ROC, needed to submit the MOA with the ROC during the formation of the company.

### **Object of Registering the Memorandum**

Moa is a legal document containing detailed business information that states why the business was established. Section 3 of the CA, 2013 provides significance about the Moa, saying that during the registration process for the public company, a maximum of 7 or more individuals are a must; for private companies, two or more are required; and for OPC, only one person is needed for registering the company.

### **Format of Memorandum of Association (MOA)**

Section 4 of the CA, 2013 provides that the Moa will be in any way which has been inserted in the tables A, B, C, D and E of Schedule-1 of CA 2013.

Table A	Form for the Moa of a share limited
Table B	Form for business limited by guarantee
Table C	Form for the business Moa limited by guarantee with share capital
Table D	Form for an unlimited company's memorandum without share capital.

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Table E	Form for a business with unlimited shares that has a capital of shares.
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## Contents of MOA

Section 4 provides the contents of the Moa and provides all the necessary details that the Moa has to carry:

1. Name clause- states the name of the proposed company.
2. Registered office clause- ROC determines the citizenship and authority of the company.
3. Object clause- states the purpose for which the company has formed.
4. Liability clause- It provides legal protection to the members.
5. Capital clause- states the amount of the company's nominal capital.

## Name Clause

Among the contents of Moa, the first clause was the name clause, which provides the company's title. Under section 4(1) (a) of CA 2013, has laid down certain conditions has to be complied with

1. the word 'limited' has to be mentioned as the name for a public company.  
Example: If it is Tata Steel, then it has to reflect the title "Tata Steel Limited"
2. the word 'Private Limited' must be mentioned in a private company's name.  
Example: If it was Google India, a private company, the registered name should be "Google India Pvt. Ltd."
3. Section 4(1) (a) of the Companies Act 2013 condition won't apply to section 8 companies.

## Registered Office Clause

Among the contents of Moa, the second clause was the registered office clause. Section 12 of the CA, 2013, states regarding the Registered Office Clause. Where the Registered Office Clause serves as the company's jurisdiction, the registered office will be treated as the company's residence and for the communication of official purposes towards the company. Before the company's formation, it was not mandatory to specify the exact location of the company. Still,

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once the company had been incorporated, it was compulsory to determine the precise location of the company for communication. Once the incorporation has taken place, the correct place of the business must be verified within 30 days. The company shall attach all the necessary details of the company outside where the company activities take place. If it was OPC, along with all the details in addition to it, the company has to mention it in the bracket.

If the company was planning/willing to change its registered office within the prescribed period, it must notify the registrar's office.

### **Object Clause**

The object clause was one of the contents of Moa. Section 4(c) of the CA 2013 states about the Object Clause. It plays a vital role in the memorandum of association, where the object clause states for which the company has been incorporated.

### **The doctrine of Ultra Vires**

If the business performs on the far side to the extent of the legal paper, it would be considered a violation of the doctrine of ultra vires. The company should not void the limits of the Moa and must follow the conditions stated in the Moa. If anything has been performed out of the conditions stated in the Moa, it will be considered ultra vires. Hence, it will be void.

In the case of *Ashbury Railway Carriage and Iron Co. Ltd. vs. Riche* (1875), the doctrine of ultra vires was established. It was held that if the company operates beyond the scope of the memorandum of association, its action will be considered ultra vires and void.

### **Alteration, Amendment and Change in MOA under CA, 2013**

Section 13 of the CA, 2013, states the alteration of Moa. For alteration of the memorandum, a special resolution was mandatory, requiring two-thirds most to be effective; central government approval was required in writing.

### **Alternation of MOA**

The amendment of different provisions has various procedures:

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1. Amendment to the Name provision: A special resolution was required to pass to amend the name provision. Once the special resolution has been passed, the printed one must be sent to the registration office. For the alteration of the company's name, the appeal must be registered in Form INC-24 with the fixed charges. Once the company's title gets changed, a new certificate of incorporation will be issued.
2. Alteration to the Registered Office Clause: If the company wants to change the place of the certified office, then the company shall be reported to the higher authority in the sense that the national government is in the form INC 23 with fixed charges.  
If the company plans to change its Registered Office, then the National Government approval is necessary. The national government must resolve the subject within 60 days, and the federal government must ensure that all the stakeholders have consented to change their registered office.
3. Alternation of object clause: A remarkable decision is needed to amend the object clause. Once a special resolution gets passed, the authority must approve the change. The approved document and the duplicate photocopy of the amended Moa must be registered with the registrar.  
For the public company, it has to publish the alternation in the newspaper where the company's registered office is located, and the changes must also be mentioned on the company's website.
4. Alternation of Capital Clause: To alter the capital clause, an ordinary resolution has to be passed.

Once the alternation of the memorandum of association has occurred after the resolution has passed, the altered MOA should be given to the Registrar of Companies within 30 days.

### **Memorandum of Association for OPC**

Section 2(62) of the 2013 CA discusses the OPC. An OPC can be decided by an individual whose smallest capital required was Rs.1 00,000. Every OPC needs to convert into a private limited company once the annual turnover of the OPC is two crore.

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Apart from all the clauses, in the Moa, there will be an additional clause known as the Nomination Clause, which contains details regarding the nominee. The nominee must be a resident of India, and he had to have spent at least 182 days living in India. The person whose name is mentioned as a nominee has to consent in writing and file with the company's registrar while incorporating the company. If the nominee was not interested, then even if he was willing to withdraw his name as a nominee, he had to give his consent in writing, and the business holder, in 15 days, must provide a new candidate.

### **Conclusion**

Thus, the Memorandum of Association was crucial to the company's incorporation. Without the memorandum of association, the company can't be incorporated.

The memorandum of association states for which the company has been incorporated and contains all the necessary information about the company.

<sup>2</sup> Pearl Narang, Memorandum of Association: Know everything about it, leaders (February 28, 2024, 8:30 PM, <https://blog.ipleaders.in/memorandum-of-association-2/>).

<sup>3</sup> Companies Act, 2013, Section 2(56), India.

<sup>4</sup> Companies Act, 2013, Section 399, India.

<sup>5</sup> Companies Act, 2013, Section 3, India.

<sup>6</sup> Companies Act, 2013, Section 4, India.

<sup>7</sup> Companies Act, 2013, Schedule 1, India.

<sup>8</sup> Companies Act, 2013, Section 4(1) (a), India.

<sup>9</sup> Companies Act, 2013, Section 12, India.

<sup>10</sup> Companies Act, 2013, Section 4(c), India.

<sup>11</sup> Companies Act, 2013, Section 13, India.

<sup>12</sup> Companies Act, 2013, Section 2(62), India.

<sup>13</sup> Ashbury Railway Carriage and Iron Co. Ltd. vs Riche (1875) LR 7 HL 653, United Kingdom.



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