

What will you learn in this chapter ?

- 4.1 Introduction and Definition
- 4.2 Characteristics of Memorandum of Association
- 4.3 Importance of Memorandum of Association
- 4.4 Clause of Memorandum of Association
 - 4.4.1 Name Clause
 - 4.4.2 Registered Office Clause
 - 4.4.3 Object Clause
 - 4.4.4 Liability Clause
 - 4.4.5 Capital Clause
 - 4.4.6 Subscription Clause
- 4.5 Change in Memorandum of Association
 - 4.5.1 Change in Name Clause
 - 4.5.2 Change in Registered Office Clause
 - 4.5.3 Change in Object Clause
 - 4.5.4 Change in Liability Clause
 - 4.5.5 Change in Capital Clause

Introduction

Each and every type of company is required to be compulsorily registered under the provisions of the Companies Act, 2013. At the time of registration, the company has to present and register the Memorandum of Association and Article of Association. Memorandum of Association is a fundamental and important document for every company. It is such a basic document of a company based upon which the area of operation of company external affairs of the company in relation to outsiders are determined. Memorandum of Association presents the constitution of a company wherein name, capital, liability, objects etc. are determined.

4.1 Meaning and Definition of Memorandum of Association

Meaning : Memorandum of Association is a fundamental document of a company which determines the area of working of a company. The objective of Memorandum of Association is to provide information about the objectives of the

company to the Shareholders, creditors and all the persons having relation with the company. Thus Memorandum of Association is very important document which indicates an established company having specific name, situated in a particular State, having fixed Share Capital, with definite fixed liabilities of its members and specific objective. It indicates establishment of the company by the signatories.

Definition : “The Companies Act, 2013, defines Memorandum as Memorandum of Association of a company as originally framed or as altered from time to time in pursuance of any previous company law or the present Act.”

As stated by Lord Cance “Memorandum of Association is a constitution of company and such a document which shows the limitation of the officers of a company established under law.”

4.2 Characteristics of Memorandum of Association

It is for the purpose to inform the shareholders, creditors and public at large about the objectives of the company. From above definition the following are the characteristics of the Memorandum of Association :

- (1) It is a basic fundamental document of a company.
- (2) It defines the objectives of the company.
- (3) It is useful for all parties.
- (4) It provides the information about the existence of the company and its registered office.
- (5) It is very difficult to make changes in the Memorandum of Association.
- (6) Memorandum of Association is considered as the constitution of a company.

Depending upon the nature of a company the Memorandum of Association of a Company can be drafted as per one of the following formats prescribed in the various tables of Schedule I of the Companies Act, 2013.

	Type of Company	Table of Memorandum of a Company Under Schedule I of the Companies Act, 2013
(1)	Company limited by Shares	As per TABLE A
(2)	Company limited by Guarantee and not having a Share Capital	As per TABLE B
(3)	Company Limited by Guarantee and having a Share Capital	As per TABLE C
(4)	Unlimited Liability Company and not having Share Capital	As per TABLE D
(5)	Unlimited Liability Company and having Share Capital	As per TABLE E

The Memorandum of Association has to be printed in serially numbered paragraphs prescribed as per the contents of the Tables A, B, C, D or E whichever is applicable and the same should be signed by the subscribers of the company in presence of the witnesses.

Any provision of the Memorandum of Association which is contrary to the provisions of the Companies Act shall be void. Similarly, any agreement executed or resolution passed by the company in general meeting or by its Board of Directors which is contrary to the provisions of the Companies Act, 2013 are void.

4.3 Importance of Memorandum of Association

It is compulsory for every company under the Companies Act to get its Memorandum of Association registered. It gives basic information about the company which is important for the following parties :

(1) **For Company** : It is a fundamental document for every company. It forms the base of a company. Memorandum of Association shows the constitution as well as area of affairs of a company. It contains name, objects, capital, liabilities, and state of the Registered Office etc. If a company does any act contrary to its objectives given in its Memorandum of Association, the same is called **ultra virus** act. This document also contains the information like official capital of company, liabilities of a company limited or unlimited etc.

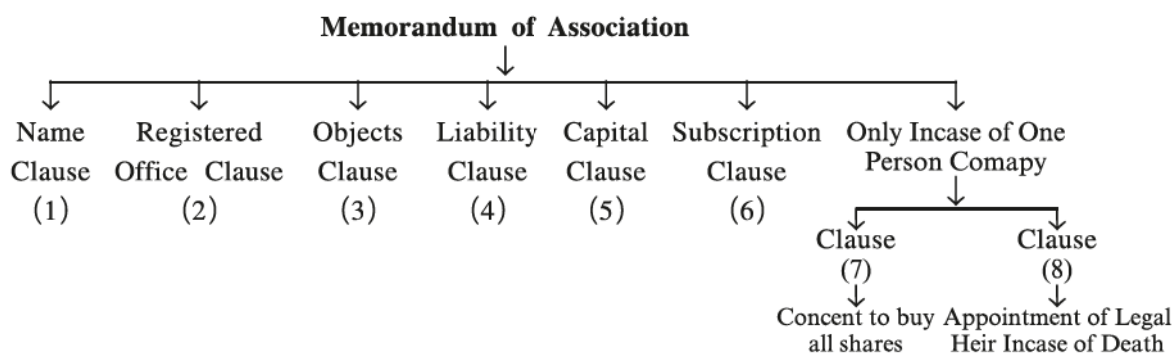
(2) **For the Creditors, Traders Banks** : Memorandum of Association determines relation of a company with the third parties. After having known the proposed activities of a company, creditors, Traders banks decide whether to lend money to the company or not.

(3) **For Shareholders of a Company** : The shareholders are assured that the fund invested by them shall be utilized only for the activities specified in the Memorandum of Association of a company. If a company does not function as per the Memorandum, the same can be challenged before the court. Shareholders feel secure with the determination that their liabilities will be limited to the extent of the amount of the shares purchased by them.

(4) **For Public at Large** : Any person can get preliminary information for investing money in any company from its Memorandum of Association. He can also get a copy of the Memorandum.

4.4 Clauses of the Memorandum of Association

Following clauses are included in the Memorandum of Association :



4.4.1 Name Clause : Name Clause of the memorandum is necessary to state the name of the proposed company. Being artificial legal person, company must have its name. It is a privilege for the Promoters of the company to select name of the company as they desire. However, this discretion to have desired name of the company is subject to following restrictions :

- (1) Name stated in the memorandum of the company should not be identical with or resemble the name of any existing registered company.
- (2) The name should not be undesirable or objectionable and it should not constitute any offence under any law.
- (3) No word or expression in the name of company should be such that it carries impression that the company is connected with central/state government or local authority or body corporate constituted by central/state government for example President, Rashtra Pita (Father of Nation), Prime Minister ,Chief minister, court, Governor etc.
- (4) Every public company with limited liability must add the word “Limited” and a private company must have “Private Limited” at the end of its name.
- (5) Companies proposed to be established for the purpose of promotion of commerce, art, science, sport, research, social welfare, religion, charity etc. having no motive to distribute the profit in the form of dividend are exempted from adding the words “Limited” or “Private Limited”.

4.4.2 Registered Office Clause : In the Memorandum of Association itself, every company has to mention the state in which its registered office is situated. A company must from the fifteenth day of its incorporation must have a registered office which is capable of receiving and acknowledging all communication and notices as may be addressed to it. All the correspondences and communications to the company must be addressed to its registered office. The territorial jurisdiction of the court is also determined from the address of the registered office of company. The members of the company or other parties who want to examine the documents personally or obtain additional information about the company may approach its registered office.

4.4.3 Object Clause : It is mandatory for every company to state in its Memorandum of Association the objectives for which the company is proposed to be incorporated. Object Clause carries the greatest importance in the entire memorandum of a company. The promoters of the company are at liberty to have a choice of objects of a company. However, the following are the restrictions upon the promoters to select the object of the company :

- (1) Objects must not be against any law or the provisions of the Companies Act.
- (2) Objects of the company must not be against any public policy or the provisions of the Constitution of India.
- (3) The objects should not be contrary to the provisions of any general law.

Doctrine of Ultravires : A company can pursue only those objects which and are clearly mentioned in its Memorandum of Association. A company possesses only those powers which are either explicitly or impliedly conferred upon it by virtue of its Memorandum of Association. Any activity in excess to what is stated in the object clause will be void and the same will be declared ultra vires (beyond powers). If the act is ultra vires it does not create any legal relationship. Such an act is absolutely void even the whole body of shareholders ratify it and make it binding upon the company. Following are the consequences of Ultra Vires Acts :

- (1) The Directors of the company are held personally liable for ultra vires acts.
- (2) Courts can prevent a company from doing such acts.
- (3) Ultra vires contracts are void.

(4) For any ultra vires act by an employee acting on behalf of the company, the company can be held liable.

(5) The Directors of a company are responsible to the Third Party for Ultra Vires Acts.

In order to avoid above situations generally company includes most area of function with the term “any other objects” in the object clause of its Memorandum of Association.

4.4.4 Liability Clause : On the basis of kind of liability the companies can be classified into three classes :

(i) a company limited by Shares, (ii) a company limited by guarantee and (iii) an unlimited liability company.

The Memorandum of a company limited by shares must state in its liability clause that the liability of its members is limited. In the company limited by shares members cannot be called on to pay more than the nominal value of their shares.

If the liability of the members of a company is limited by guarantee then their liability will be up to the extent of the guarantee offered by them. In case of one person company the name of the person who in the event of death of the subscriber, shall be nominated the member of the company must be stated in the liability clause.

4.4.5 Capital Clause : The capital clause is compulsory only in the case of a limited company. The company limited by shares must state in its capital clause the amount of capital, the number of shares into which it is divided and the amount of each share.

In the case of a company limited by guarantee, the amount up to which each member undertakes to contribute at the time of winding up should be specified. If the company limited by guarantee also has a share capital, the capital clause of such company has two capital clauses, (i) one relating to the guarantee and (ii) another relating to share capital.

In case of “one Person Company” the name of the person who in the event of death of the subscriber shall become the member of the company must be written.

4.4.6 Subscription Clause : This clause can be termed as Incorporation Clause, Association clause or Signature Clause. A company may be formed for any lawful purpose by signature of minimum seven or more persons where the company to be formed is a “Public Company”. Signature of minimum two or more persons are required where the company to be formed is a “Private Company”. In case the company is to be formed by one person only, it is termed as “One Person Company”.

The members of the company put their signatures and give an undertaking to the effect that they are interested in promoting the incorporation of a company and are willing to purchase the shares mentioned against their names. The name, address and details about their work has to be provided and attested by a witness. Such members are also called signatories.

4.5 Change in the Memorandum of Association

Memorandum of Association is important, fundamental and basic document of a company which can not be easily changed. However, depending upon the requirements the Memorandum of Association can be changed in a restricted manner by following the provisions of the Companies Act.

4.5.1 Change in the “Name Clause” : A company may change its Name Clause by passing a special resolution to that effect and the same has to be approved by the Central Government. Within 15 days from the date of such approval from the Central Government, the Registrar of Company must be informed by the company about such change of name. The Registrar enters new name of the company in the Register of Company. However, no such approval of the Central Government is necessary when the word “Private” is added or deleted from the name on the conversion of any one class of company to another class.

4.5.2 Change in Registered Office Clause :

(1) **Change of Registered Office Within the Same City :** By passing resolution any company can change its registered office. The company must inform such change of address within 15 days of such change of its Registered Office to the Registrar of Companies.

(2) Change of Registered Office from One City to Another Within the Same State : The Registered Office of any company can be changed from one city to another from the jurisdiction of one Registrar to the jurisdiction of another Registrar after having passed special Resolution by the company to the effect and also on the permission given by the Regional Director to that effect.

(3) Change of Registered Office from one State to Another : Registered Office of a company can be shifted from one state to another state with the following conditions :

- (a) The permission of the Central Government is to be obtained by company. After obtaining the permission from the Central Government within 30 days, application is to be presented to the Registrar of Companies with certified copy of permission along with necessary fees in requisite form.
- (b) If the creditors, debenture holders and other concern persons with the company have any objection to change of registered office. They may apply for that. Intimation of such alteration of office shall be intimated to the Registrar of the State, where the office is being shifted and a fresh Certificate of Incorporation shall be given by him indicating such change of Registered Office.

4.5.3 Change in Object Clause : Object Clause of a company can be changed only on the following conditions :

- (1) A company cannot deviate from the object without passing special resolution for which the capital is raised.
- (2) No alteration made in the object clause shall be effective until it has been registered by the Registrar of Companies.
- (3) Change in the object clause of Memorandum of Association can be made giving any member right to participate in the divisible profits of a company, when a company is limited by guarantee and does not have share capital. Any other change of object clause shall be void.

4.5.4 Change in Liability Clause : In this clause following alteration can be done :

- (1) It may extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up.
- (2) A Company limited by Share Capital or limited by Guarantee may reduce its share capital by a Special Resolution.

4.5.5 Change in Capital Clause : A limited company having a share capital may if so authorised by its Articles of Association alter its Memorandum of Association after passing resolution in its general meeting. By such Resolution a company may change its Capital Clause in the following manner :

- (1) Increase its authorised share capital.
- (2) Consolidate and divide all or any of its share capital into shares of larger amount than its existing shares.
- (3) Sub-divide its shares or any of them into shares of smaller amount than is mentioned in the Memorandum.
- (4) Cancel the shares, which are not taken by anyone and diminish the amount of its share capital.

The Share capital of a company limited by shares or limited by guarantee and having a share capital may be reduced by a special resolution of the company, which is followed by an application to the court and on confirmation the share capital can be reduced.

What have you learnt in this chapter ?

In order to register any company it is essential to submit Memorandum of Association and Articles of Association. Memorandum of Association is a basic fundamental document which cannot be easily changed.

Meaning : Memorandum of Association determines the relation of company with outsiders.

Definition : “The Companies Act, 2013, defines Memorandum as Memorandum of Association of a company as originally framed or as altered from time to time in pursuance of any previous company law or the present Act.”

Characteristics of Memorandum of Association : (1) It is a fundamental document of a company. (2) It states objects of a company. (3) It is helpful for outsiders. (4) It provides information about the existence of a company and its Registered Office. (5) It is difficult to change. (6) It is constitution of a company.

Memorandum of Association is to be prepared depending upon the kinds of company as per the specimens provided in table A, B, C, D or E of Schedule I of the Companies Act, 2013. Memorandum of Association is divided into various paragraphs and should be printed. It should not be contrary to the provisions of the Companies Act.

Importance :

- (1) **For Company :** It is main document determining the constitution of a company.
- (2) **For Creditors of Company- Traders - Banks :** It decides relationship of company and they decide whether to lend money or not.
- (3) **For Shareholders of Company :** Memorandum of Association determines the area of work of a company. It gives idea about where the money/capital of the shareholders would be spent by a company.
- (4) **For public :** Public can get information about the company from the Memorandum of Association.

Contents of Memorandum of Association :

- (1) **Name Clause :** It is compulsory for every company. The name should not be similar to other company. It should not create illusion that a company is of State/Central government. At the end of name Public Company must write the words “Limited” and Private Company must write the words “Private Limited”.
- (2) **Registered Office Clause :** It shows in which state the Registered office is existing. This clause informs about the correspondence and other transactions with the company.
- (3) **Object Clause :** This is the most important clause determining the object of a company. The object of any company should not be contrary to the Companies Act or illegal. If a company act outside the object of a company, the same is considered as ultra vires act.
- (4) **Liability Clause :** So far as liability is concerned, companies can be divided into three categories- (1) company limited by Shares (2) company limited by guarantee (3) Company with unlimited liability. This clause determines the type of liabilities of Shareholders.
- (5) **Capital Clause :** In this clause it states the Share Capital of the proposed company.
- (6) **Subscription Clause :** It is also known as Association clause, Signature Clause or Incorporation Clause. The promoters have to put their signature in presence of witnesses. In public company minimum 7 and in private company minimum 2 persons have to put their signature.

Change in Memorandum of Association :

- (1) **Change in Name Clause :** In order to change name of a company special resolution is to be passed followed by the permission of the Central Government.
- (2) **Change in Registered Office Clause :** (a) change in the address of registered office of a company from one place to another place within the same city can be done by passing resolution. (b) The Registered Office of any company can be changed from one city to another city after having passed special Resolution (c) For changing Registered Office of a company from one state to another, permission of the Central Government is necessary. The creditors, debenture holders and other persons having any objection for it may apply to competent authority.
- (3) **Change in Object Clause :** (1) A company cannot deviate from the object for which the fund is raised by it. (2) Such change in object clause becomes enforceable only after the entry of such change by the Registrar (3) In a company limited by guarantee change in the object clause can be made giving any member right to participate in the divisible profits of a company.
- (4) **Change in Liability Clause :** The company limited by Shares, by special resolution can reduce the share capital in any manner
- (5) **Change in Capital Clause :** By changing capital clauses a company may (i) increase its authorised share capital; (ii) consolidated and divide share; (iii) Sub-divide its shares; (iv) cancel the shares. After passing special resolution permission from court is essential for above changes.

Exercise

1. Select suitable option from the given options :

- (1) Memorandum of Association is
 - (A) Ancillary Document
 - (B) Sub-Document
 - (C) Main Document
 - (D) Additional Document
- (2) Which of the following matter is incorrect about the Name Clause of a company ?
 - (A) Name should not be of an existing company.
 - (B) Name should not be such which creates impression about State Government/Central Government
 - (C) Name should not resemble with that of Local Authority.
 - (D) Any Name can be kept.
- (3) Which of the following matters are incorrect about the Memorandum of Association ?
 - (A) Memorandum of Association is a fundamental document.
 - (B) It provides information regarding registered office.
 - (C) It includes the matters about internal management of a company.
 - (D) It clarifies the object of a company.
- (4) Ultra vires acts are
 - (A) Void.
 - (B) Voidable.
 - (C) Void at the option of the person who has contracted with a company.
 - (D) Voidable at the option of the share-holders of a company.

- (5) Which companies are exempted from adding the words “Limited” or “Private Limited” ?
 (A) One Person Company (B) Company established for social welfare
 (C) Company doing business of Building and Construction
 (D) Company established for selling software products
- (6) Unlimited liability Company and not having Share Capital has to prepare its Memorandum of Association as prescribed under of Schedule I of the Companies Act, 2013.
 (A) Table A (B) Table B (C) Table C (D) Table D
- (7) While changing the name clause within how many days after receiving permission from central Government for the register should be informed ?
 (A) 15 (B) 90 (C) 30 (D) 60
- (8) Within how many days a permission of Central Government has to be taken for changing Registered Office of a company from one state to another after having made application to the Registrar of Companies ?
 (A) 15 (B) 30 (C) 90 (D) 60
- (9) Which Table is applicable to company Limited by shares as per schedule ?
 (A) Table A (B) Table C (C) Table E (D) Table D
- (10) Which matter is incorrect with reference to Memorandum of Association ?
 (A) Capital clause (B) Object clause (C) Dividend clause (D) Liability clause

2. Answer the Following Questions in One Sentence :

- (1) Where would public correspond to a company if they want ?
- (2) Which company has to write “Limited” after its name ?
- (3) Which company has to write “Private Limited” after its name ?
- (4) On what basis the court jurisdiction of a company can be ascertained ?
- (5) If a person wants to verify the documents of a company, from where can he have inspection of the same ?
- (6) How many capital clauses are there in a company limited by a guarantee ?
- (7) How much liabilities a member has in a company limited by guarantee ?
- (8) Which document gives idea about the existence of a company ?
- (9) What is ‘One person company’ ?
- (10) What kind of a liability a shareholder has in a company limited by shares ?
- (11) From where public can obtain primary information for investing money in any company ?

3. Answer the Following in Briefly :

- (1) How is Memorandum of Association useful to the creditors ?
- (2) What is the minimum number of persons required to establish a public company and a private company ?
- (3) When is a permission of Regional Director necessary in order to change Registered Office of a company ?
- (4) How a Registered Office of a company can be changed from one State to another ?
- (5) What are the limitations of the object clause.
- (6) How many clauses are there in Memorandum of Association ?

4. Answer the Following Questions Poinr Wise :

- (1) How is Memorandum of Association useful for a company ?
- (2) Which assurance is given by Memorandum of Association of a company to shareholders ?
- (3) Which type of names a company cannot keep ?
- (4) Why is Registered Office Clause necessary ?
- (5) State the limitations of Object Clause.
- (6) 'Which company is given exemption from using words "Limited" or "Private Limited"?'
- (7) How can Name Clause be changed ?
- (8) In which circumstances it is not necessary to obtain permission of the Central Government for changing the Name Clause ?
- (9) How can Liability Clause be changed ?
- (10) How can change in the Capital Clause be done ?
- (11) What kind of liability are the Directors having for the ultra vires acts ?

5. Answer the Following Questions in Detail :

- (1) State the meaning of the Memorandum of Association of Company and its characteristics.
- (2) Define Memorandum of Association and explain the importance thereof.
- (3) Which clauses are included in the Memorandum of Association ? Explain in short.
- (4) Which acts are Ultra Vires? State the consequences of Ultra Vires Acts.
- (5) Write Short Notes on the following :
 - (A) Name Clause
 - (B) Registered Office Clause
 - (C) Object Clause
 - (D) Liability Clause
 - (E) Capital Clause
 - (F) Subscription Clause
- (6) State the kinds of companies and state which type of table will be applicable to it.

