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COMPANY LAW

TOPIC- MEMORANDUM OF ASSOCIATION: A COMPREHENSIVE STUDY

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ABSTRACT

This article discusses memorandums of association, which are essential to the creation of companies. The fact that a business is founded on a legal act is highlighted, setting it apart from other private law societies. It is believed that the adoption of a legislation or the negotiation of a memorandum of association are the two legal acts that might serve as the foundation for a corporation. The creation of legal bodies such as credit unions, joint stock corporations, and associations just requires the enactment of a statute. A formal document known as a memorandum of association is necessary for the establishment of all other companies. The legislative solution that necessitates the adoption of a statute and the conclusion of a memorandum of association in order to form mutual insurance companies and cooperative societies is criticised because it burdens the formation process unnecessarily, produces issues, and creates legal uncertainty. Additionally, a company does not need to be constituted based on two legal acts. The author outlines the characteristics of specific firms' memorandums of association and examines fundamental issues with them, including conclusion, content, interpretation of their provisions, application of the law, modification, etc. Their ability to control relationships in all kinds of businesses is assessed. Concerning that, There is evidence to suggest that the way that laws regulate the memorandum of association in limited liability firms and partnerships differs noticeably. This is explained by the disparity in their economic significance, which is determined by their impact on the economy rather than the quantity of those businesses. It is highlighted that the partnership contract (societas) serves as the foundation for all memorandums of associations of partnerships. Legislative regulations on partnerships include provisions on contracts of partnership (societas), even when discussing legal persons; similarly, requirements on general partnerships are mentioned in regulations on other firms that fall under the legal person category. In actuality, this indicates that everything is predicated on the terms of the partnership agreement (societas). Again, everything is based on societas in cases where a partnership lacks legal ability (silent partnership, association without legal capacity), as societas

is a sort of firm and such an association is a societas. It is argued that the memorandum of association's legal nature is defined by the fact that it is a long-term organisational contract. It is subject to the rules governing relevant companies and, with certain exclusions, obligations. It is emphasised that memorandums of association are to be understood objectively as acts for the portion of them that contain substantive content, and in accordance with contract interpretation standards for the portion that is formal. It is underlined that, unlike other contracts, the majority of voices required to amend a contract may not always require the approval of all members; instead, the contract or applicable legislation may specify that requirement. Conclusion: Because the memorandum of association can be more easily adjusted to members' needs and can govern a wider range of questions within and about the firm, it is a more suitable tool for regulating important questions related to the operation of the business.

INTRODUCTION-

We shall begin by comprehending the idea behind the memorandum of association before moving on to the function it serves. Over the course of our journey, we will learn about the components of a memorandum of association and the modifications brought about by the The Companies Act of 2013 law. A company's transactions would be void and it would not be possible to seek redress in court if it disobeyed its constitution. Ultra-vires acts are those that are carried out in violation of the company's charter. There have been inquiries over the doctrine's existence as a result of recent legislative changes in numerous countries. One example of a statutory development is the addition of provisions to the Companies Acts of the various Australian states and territories, which aim to give companies virtually unlimited powers and to abolish the doctrine except for specific purposes. Another example is the interpretation of an objects clause in a memorandum of association that gives the directors the authority to conduct any business that "they deem would be beneficial to the company." 1. However, there has been no such change and the idea is still in place in India. We shall examine the doctrine's history in India as well as the consequences of the ultra vires act. However, prior to comprehending the supra vires doctrine, Understanding the idea of a memorandum of affiliation and the connection between the two is essential. Thus, let us begin our voyage by reviewing the memo.

THE MEMORANDUM OF ASSOCIATION

Saying that a company's memorandum of association serves as its constitution would not be an overstatement. It is the document that establishes the company's framework, and its articles give the fundamental elements of the charter.2. It is fairly well established that the articles of association and memorandum form a contract between the company and its members insofar as they assign obligations or rights to the members as members, but not insofar as they assign obligations or rights to the members in other capacities, such as directors.4 If we examine The Companies Act, 2013 (henceforth referred to as the "Act"), Section 2(56), According to its definition, "memorandum" refers to a company's memorandum of association as initially drafted or as amended from time to time in accordance with this Act or any prior company law. Although

the precise meaning and nature of the term "memorandum" cannot be inferred from this definition, Section 4 of the Act gives us access to the memorandum's clauses, which are covered in more detail in the section that follows. Since the memorandum's terms create the foundation for the company's constitution, it is essential that they comply with the laws that regulate businesses. The corporation must stay within the parameters established by the memo, just as a state is not allowed to exert its authorities beyond those delineated by the constitution. In the historic Ashbury Carriage & Iron Co. Ltd. case, Lord Cairns drew the clearest definition of the phrase memorandum of association. The memorandum of association of a company establishes the limitations on the powers of the company. It comprises both affirmative and negative language (V. Riche 6). Your lordship made the following proclamation in this passage. It declares, in the positive, the scope and extent of the vitality and authority granted to the organisation by law, and, in the negative, that nothing may be done outside of that scope. In general, memorandums of association are used for the following reasons. It allows creditors, shareholders, and anybody else doing business with the company to know What variety of activities it engages in and what its capabilities are.7. A prospective shareholder has the ability to ascertain the intended use of his funds by the company as well as the level of risk associated with his investment.8 Similarly, anybody interacting with the business—for example, a supplier of goods or money—will be aware of whether the transaction he plans to conduct with it is consistent with its goals and does not go beyond them.9. Through its objects section, the agreement also regulates the company's business operations and management behaviour.

Object of registering a Memorandum of Association or MOA

An important document that includes all of the company's information is the memorandum of association. It controls how the business and its stakeholders interact. The Companies Act, 2013's Section 3 highlights the significance of memoranda when it comes to company registration. It specifies that: 1. A public company must have seven or more members; 2. a private company must have two or more members; and 3. a one-person company only needs one member.In each of the aforementioned situations, the parties involved ought to sign a memorandum prior to registering the business with the Registrar. Therefore, in order to register a corporation, a Memorandum of Association is required. The Memorandum of Association and Articles of Association of the company must be properly signed by the subscribers and submitted to the Registrar in order for the company to be incorporated, according to Section 7(1)(a) of the Act. Furthermore, a memorandum contains other items. Firstly, it gives shareholders information about the company prior to purchasing shares. This aids in the shareholders' decision on the amount of money they will provide to the business.

2. It disseminates information to all parties interested in collaborating with the business.

Format of Memorandum of Association

Section 4(5) of the Companies Act states that a memorandum should be in any form as given in Tables A, B, C, D, and E of Schedule 1. The Tables are of different kinds because of different kinds of companies.

Table A – It is applicable to a company limited by shares.

Table B – It is applicable to a company limited by guarantee and not having a share capital.

Table C – It is applicable to a company limited by guarantee and having a share capital.

Table D – It is applicable to an unlimited company not having a share capital.

Table E: This applies to an infinite business with share capital
.
I. It is necessary to print, number, and divide the message into paragraphs. Additionally, the company's subscribers should sign it.
An example of a company limited by shares memorandum
An enterprise called XYZ Private Limited is based in Punjab and produces security equipment. It wishes to file an application with the Registrar of Companies. The corporation must first subscribe to a memorandum in order to be registered. The following will be the format of XYZ Private Limited's Memorandum of Association:
(The form in Table A will apply to XYZ Private Limited since it is a corporation limited by shares.)

Shareholder-owned companies under the Companies Act of 2013
Declaration of Association

I. XYZ Private Company
1. The company is called XYZ Private Limited. (Name-Specific Clause)
2. Punjab will be the location of the company's registered office. (Clause of Registered Office)
3. The following are the reasons the company was founded (Object Clause):
(a) The company's goals upon incorporation are as follows: I. To continue the business of manufacturing, converting, changing, designing, and producing security systems.
II. To deal in, purchase, sell, or serve as an agent for the import or export of any equipment connected to security.

1. II. To do business as buyers, sellers, traders, agents, and dealers in order to acquire the aforementioned items.
(b) The following items are essential to advancing the goals listed in section 3A:
1. To produce and market boxes, packaging materials, branding, weighting, grading, and marketing for various security device types and related electronic components.
2. To draft, create, accept, approve, discount, execute, issue, bargain, assign, and handle checks, drafts, and bills of exchange in any other way

3. All other negotiable or transferable documents, including warrants, railway receipts, debentures, bonds, bills of lading, and promissory notes.
4. To combine with another business or businesses.
5. To buy out or combine with another business.
5. To begin a cooperative venture with any other business.
6. In the case of a winding up, to distribute any of the company's property among the members in kind or in specie, according to the Companies Act's restrictions.
7. To make an application for, submit a bid, buy, or otherwise obtain any contracts, subcontracts, licences, and concessions for or in connection with the business or objects stated above, or any of them, and to take on, carry out, dispose of, or otherwise account for the same.

The member(s) have limited responsibility, which is capped at the amount owing on any outstanding shares that they own. Liability Clause: The company's share capital is 70,00,000 rupees, split into 2000 shares valued at 3500 rupees apiece. (Capital Clause) We, the many individuals whose names and addresses are subscribed, desire to be incorporated under the terms of this memorandum of association, and we each consent to obtaining the number of shares in the company's capital indicated against our names:
2.

Names, addresses, descriptions and occupations of subscribers	No. of shares taken by each subscriber	Signature of subscriber	Signature, names, addresses, descriptions and occupations of witnesses
A.B. of…Merchant	………….		Signed before me: Signature…………………
C.D. of…Merchant	………….		Signed before me: Signature…………………
E.F. of. ..Merchant	………….		Signed before me: Signature…………………
G.H. of…Merchant	………….		Signed before me: Signature…………………
I.J. of…Merchant	………….		Signed before me: Signature…………………
K.L. of…Merchant	………….		Signed before me: Signature…………………
M.N. of…Merchant	………….		Signed before me:

			Signature…………………

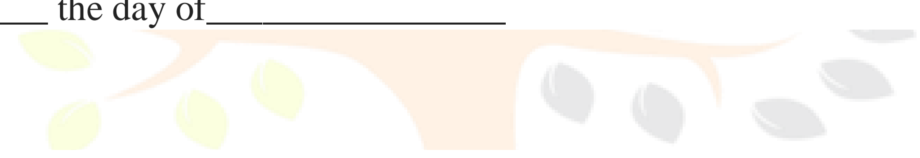
Total shares taken: 1400

7. I, whose name and address are given below, am desirous of forming a company in pursuance of this memorandum of association and agree to take all the shares in the capital of the company *(Applicable in case of one person company)*:

Name, address, description and occupation of subscriber	Signature of subscriber	Signature, name, address, description and occupation of witness
A.B. ……..Merchant		Signed before me: Signature…………………

8. Shri/Smt______________, son/daughter of _____________, resident of______________ aged_____________ years shall be the nominee in the event of death of the sole member *(Applicable in case of one person company)*

Dated_____________ the day of_________________



Content of Memorandum of Association

Section 4 of the Companies Act, 2013 states the contents of the memorandum. It details all the essential information that the memorandum should contain.

Name Clause

1. The company name is stated in the first clause. The corporation may choose any name. Nonetheless, there are requirements that must be met.
2. As per Section 4(1)(a): 1. "Limited" ought to appear in a firm's name if it is a publicly traded company. For instance, "Robotics Limited" will be the registered name of the publicly traded firm "Robotics."

3. 2. The phrase "Private Limited" ought to appear in the name of a corporation if it is private. "Secure" is a private firm, and "Secure Private Limited" will be its registered name. 3. Section 8 companies are not subject to this requirement. Section 8 companies: what are they? The name "Section 8 Company" comes from Section 8 of the 2013 Companies Act. It talks

about businesses that were founded to advance social welfare, education, research, commerce, the arts, sports, and religion, among other things. While Trust and Societies and Section 8 corporations are comparable, Section 8 companies enjoy greater legal standing and recognition.

4. What kind of names are prohibited?
   The name mentioned in the memo cannot be:
   1. The same as the name of another company;
   2. Too similar to the name of existing company

5. Rule 8 of the firm (Incorporation) Rules, 2014 states that a firm's name will not be recognised even if it includes designations such as "Limited," "Private Limited," "LLP," "Company," "Corporation," "Corp," "inc," or any other type of designation to set it apart from the name of another company.
   For example, Precious Technology Limited and Precious Technology Company are the same if no suffix or plural is used to distinguish the names.
   Examples: Greentech solutions are interchangeable with other green technologies.
   Colours Technology is the same as Colour Technology if additional punctuation, letter case, or type is used.
   Example: Wework and We.work are the same. Names have different tenses.
   For example, Ascend Solutions and Ascended Solutions are the same.

6. if the name has phonetic alterations or deliberate spelling errors.
   Examples: Greentek and Greentech are the same.
   DQ and DeeQew are the same. • Designations connected to the internet, such as.org and.com, are used.For example, Greentech Solutions Ltd. and Greentech Solutions.com Ltd. are the same company.

Exception: If the current firm approves the name through a board of resolution, it won't be ignored.
• Modify the word combination's order.
For example, Shah Builders and Contractors is the same as Shah Builders and Contractors.

1.
2. The name includes a registered trademark.
3. The name includes any word or words which are offensive to a section of people.
4. Name which is identical to or too nearly resembles the name of an existing Limited Liability Partnership.

Furthermore, statutory names such as the UN, Red Cross, World Bank, Amnesty International etc. are also not allowed to be chosen.

Names which in any way indicate that the company is working for the government are also not allowed.

Reservation of a Name

According to Section 4(5)(i) of the Act, the Registrar has 20 days to reserve a name for the Company after obtaining the necessary paperwork. If the application is submitted by an already-

existing business, the name will be reserved for 60 days following the application date if it is approved. Within these sixty days, the company should be incorporated using the reserved name. If incorrect information is discovered after a name reservation has been made. Then two situations come up.

1. Should the business not have been formed. In this situation, the Registrar has the authority to revoke the name reservation and charge a fine of Rupees one million.

2. Should the business have been incorporated. In this instance, the Registrar has three choices after learning the company's justifications. These are

• If he is happy, he can grant the business three months to adopt an ordinary resolution changing the name.

• He has the option to file a petition for the company to be wound up or to have the name removed from the Register of Companies.

According to Rules 8 and 9 of the Company (Incorporation) Rules, 2014, Form INC-1 should be used to submit the application for name reservation under Section 4(4).

Registered Office Clause

A company's registered office establishes its country of origin and judicial jurisdiction. It serves as both a place of abode and a communication hub for the business.
The Registered Office of the firm is discussed in Section 12 of the Companies Act of 2013. It is sufficient to indicate the name of the state in which the firm is located prior to the company's incorporation. However, the business must indicate the precise address of the registered office following formation. The location must then be confirmed for the company within 30 days of its incorporation.
It is required of all businesses to change their name and address of the company's registered office is displayed outside each location where business is conducted. If the business is run by just one person, the phrase "One-person Company" should appear in brackets beneath the company's attached name.
Any changes to the Registered Office location must be reported to the Registrar within the allotted time frame.

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Object Clause

The Act's object clause is described in full in Section 4(c).The most significant section of the Memorandum of Association is the Object Clause. It outlines the reason behind the company's formation. The primary objects and items that are required to achieve the stated objects—also referred to as incidental or supplementary objects—are both included in the object clause. As per Section 6(b) of the Companies Act, 2013, the declared objects should be clearly defined and

legitimate.
by restricting the company's range of authority. The following are protected by the object clause:
Owners of shares: The operations that the company will carry out are expressly stated in the object clause. This makes it easier for the shareholders to understand how their money will be used by the business.

Creditors: It guarantees the creditors that the company is operating within the parameters set forth in the clause and that no capital is at danger.
Public Interest: The object clause restricts the range of issues the business can handle, making it illegal for the business to diversify its operations.
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Doctrine of Ultra Vires

If the company operates beyond the scope of the powers stated in the object clause, then the action of the company will be ultra vires and thus void.

Consequences of Ultra Vires

1. Directors' Liability: It is the directors' responsibility to make sure that the company's cash is solely utilised for the intended purposes. In the event that the capital is misappropriated for a purpose not specified in the memorandum, the directors shall bear personal liability.

2. The Company's Ultra Vires Borrowing: A bank will not be able to recoup the amount if it makes a loan to the Company for a purpose that isn't specified in the object clause

3. The corporation's Ultra Vires Lending: A loan made by the corporation for an ultra vires purpose qualifies as ultra vires lending.

4Void ab initio - The company's Ultra Vires actions are regarded as null and void from the start.

5. Injunction - Any shareholder may utilise an injunction as a remedy to stop the firm from engaging in ultra vires conduct.

Liability Clause

The Liability Clause shields the shareholders from being held individually accountable for the company's failure, giving them legal protection.
Limited liabilities come in two varieties:
Limited By Shares: A corporation limited by shares is defined in Section 2(22) of the Companies Act, 2013. The only expense for shareholders in a corporation with a share limit is the cost of the shares they have subscribed for. Their liability will be restricted to the amount they have not paid for the shares in the event that the firm fails for whatever reason.
Limited By Guarantee: As stated in Companies Act of 2013, Section 2(21).Rather of having shareholders, a business limited by guarantee has members. These members agree to contribute to the company's assets when it is wound up. The members guarantee a certain sum for which they will be held accountable.
Charities and other non-profit organisations typically have a structure of corporations limited by guarantee.

Capital Clause

It details the entire capital of the company's shares as well as their allocation among the shares. how the capital is allocated among various types of shares. Shares may be either preference or equity shares.
As an example: The company's share capital is eighty million rupees, split into three thousand shares, each worth four thousand rupees.

Subscription Clause

Who is signing the memorandum is stated in the Subscription Clause. Every subscriber needs to specify how many shares they are purchasing. The memorandum must be signed by the subscribers in front of two witnesses. A minimum of one share must be subscribed to by each subscriber.

Association Clause

The memorandum's subscribers declare in this section that they wish to create an association and affiliate themselves with the business.

Alteration, Amendment & Change in Memorandum of Association under Companies Act, 2013.

According to Section 2(3) of the Act, "alter" or "alteration" refers to any modifications, omissions, or substitutes. A corporation can only make changes to the memoranda that are

allowed by the Act. By adopting a special resolution, the firm may amend the terms in the memorandum in accordance with Section 13.
A formal decision made during a meeting is called a resolution. Resolutions come in two varieties: regular and special. A special resolution is one that needs to be approved by at least two thirds of the members. The Central Government must also provide written consent for any changes made to the terms.
There are several reasons why a memorandum might be altered. The modification is possible if,

1. Facilitates the organization's ability to do business more efficiently;
2. Aids in the accomplishment of goals;
3. Aids in the organization's merger or acquisition;
4. Aids in the completion of any project.

Alteration of Memorandum

- There are distinct processes for changing the memorandum's clauses.
  1. Modification of the Name Clause: A specific resolution is needed in order to change the company's name. The copy is forwarded to the registrar following the passing of the resolution. The application for a name change must be submitted in Form INC-24 together with the required costs. A new certificate of incorporation is issued following the name change.
  2. Modification of the Registered Office Clause: To modify the company's Registered Office, submit an application in Form INC-23 together with the required fees to the Central Government.
  The Central Government's consent is required if the business is moving its Registered Office.
- The Central Government must resolve the issue in 60 days and make sure that all parties involved in the business have approved the location move.
  • Modification of the Object Clause: A unique resolution must be approved in order to modify the object clause. The authorities must validate the modifications. The record
- which, along with a printed copy of the amended memorandum, attests to the changes made by authority, should be submitted to the Registrar.
  If the business is publicly traded, the change must be announced in the newspaper in the city where its registered office is situated. The company's website must also note the modifications to the object clause.
  • Modification of the Liability provision: The Memorandum's Liability provision cannot be changed without the written approval of each and every member of the business. The directors of the firm may have unlimited liability by changing the liability provision. Regardless, the shareholders' responsibility cannot be infinite.

By passing a special resolution and providing a copy of the resolution to the Registrar of Companies, changes to the liability provision can be made.

Change to the Capital Clause: An ordinary resolution may be used to change a company's capital

clause.
In addition to increasing its approved share capital, the firm may also:

1. Convert shares into stock;

2. Consolidate and divide all of its shares;

3. Cancel shares that have not been subscribed for;

4. Reduce the share capital of the shares that have been cancelled.
Within 30 days of the resolution being passed, the revised Memorandum of Association must be turned in to the Registrar.

DOCTRINE OF ULTRA VIRES

The Latin expression beyond vires is made up of the terms ultra, which means beyond, and vires, which means power. Therefore, an extra vires act is an action taken outside one's authority or power. The early nineteenth century saw the emergence of this theory. The ultra vires doctrine was created by the courts to guarantee that corporations only used their authority to carry out their stated goals and everything ancillary to them. The courts concluded that a corporation lacked the legal ability to act contrary to its objectives and that any such activity was, in theory, unlawful since the statute compelled the firm to incorporate a declaration of its objectives in the memorandum of organisation. A corporation is established under a general statute or special charter that specifies what the corporation may accomplish and how it may do it. or by implying that it might not take further actions.The authority of corporations as used by their directors or trustees to run their business is usually the subject of questions concerning the applicability of the notion of supra vires. It was formerly believed that not even all shareholders could ratify an ultravires act. However, it was later decided that a business could engage in activities that were logically related to its declared goals. It is obvious that a business needs a highly comprehensive memorandum of association, one that is painstakingly written to include information about the company's near-term prospects.
That being said, there is ongoing debate on the legal ramifications of supra vires transactions.

EFFECTS OF THE DOCTRINE OF ULTRA VIRES

The question that naturally arises when a company's objects forbid it from acting in a way that is outside of its jurisdiction is: What would happen if the transaction went through despite the objects' restrictions? The courts have determined the solution to this question through the application of the doctrine of ultravires.The court has applied the concept on the following common grounds: the contract was invalid, the corporation lacked the authority to make it, and the party dealing with the corporation was charged with notice of the corporation's limitations. What would happen in the event of an ultravires transaction is the question that remains unresolved. Let's attempt to respond to this query:-

1) IMPACT ON A DIRECTOR'S LIABILITY IN A CORPORATION If a director goes above their authority or engages in an ultra vires transaction, they will be held personally accountable

for the ensuing consequences unless the company's members approve the transaction. This is the case because a corporation with restricted objects cannot grant its directors or other agents the power to instruct the company to engage in any transaction that is not intended to further or attain those objects, or that is only tangentially related to doing so. .) INJUCTION This is the privilege that this doctrine bestows on a company's shareholders or members. Any member may file a motion with the court for an injunction relief on the grounds that the business is engaging in an ultra vires transaction. The court may give such an injunction based on the merits of the case. DISPUTE ABOUT TRANSACTIONS If someone enters a transaction on behalf of the firm without having the legal authorization to do so, the company has the right to reject it. However, there is one caveat to this rule: if the firm's board approves the transaction, it becomes legally enforceable against the company. The board, which effectively has the power to decide whether or not to commit the company to a contract, will have the last say over the third party.

CONCLUSION –

The Companies Act of 2013 has undergone several recent revisions that impact the memorandum of association, as we have seen. The only objects clause has been added in place of the necessity for supplementary and other objects, however this has no bearing on the scope of the ultra-vires doctrine. Third parties that participate in good faith but lack understanding of the company's objectives are the only ones who are vulnerable, as demonstrated by the discussion that there is no basic rule laying the basis for ultra-vires transactions. Legislative protection for those legitimate third parties has not been granted by the legislature. Similar to England, following the 1972 and 1989 amendments, the legislature expressly gave third parties acting in good faith the statutory protection. Although the legislature was anticipated to provide the same level of protection, it did not.

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