

Meaning of Memorandum of Association

The Memorandum of Association is considered as the constitution of a company. It provides the foundation to the structure or the building of the company. The memorandum of association is defined as a company's charter. It defines the limitations of a company's powers.

- Particular parts of the memorandum can be altered by the company whenever and however required.
- The memorandum of association enables shareholders, creditors and investors to know the permitting range of the company.
- It regulates the company's external affairs.

Importance of Memorandum

The memorandum of association comes with its own importance –

- It defines the limitations of the company.
- The whole structure of the company is built on the basis of the memorandum.
- It defines the scope of activities of the company.
- It sets out a company's written goals.

Clauses of Memorandums

The memorandum of association contains the following clauses –

The Name Clause

- A company (being a separate legal entity) must have a name.
- The name of a company should be unique and should not resemble the name of any other company.
- It should not contain words like king, queen, emperor or names of any government bodies.
- A public company is required to have the suffix 'Limited' at the end of its name.

- Private companies are required to have the suffix 'Private Limited' at the end of their names.
- The name of the company must be painted outside every place where business of the company is to be carried out.

Registered Office Clause

- Every company must have a registered office.
- The location of the office can be intimated to the registrar within 30 days of incorporation.
- With intimation to the registrar, a company can change its place in the same town.
- However, for changing the place of the office in a different town in the same state, a special resolution must be passed.
- To change the location of the office from one state to another, various reforms are needed to be performed on the memorandum.

Object Clause

- It determines the rights, powers and sphere of the activities of a company.
- It should be defined carefully as it is difficult for the clauses to be altered later on.
- The company cannot incorporate any activity, which is not present in the object clause.
- The subscribers to the memorandum choose the object clause.
- Shareholders are protected by the object clause as it ensures that the funds raised for the undertaking will not be used by any other undertaking.

Liability Clause

- It states that the liabilities of the shareholders are limited to the value of the shares owned by them.
- The shareholders are liable to pay the unpaid balance of their shares.
- The liabilities of the members may be limited by guarantee.
- It also contains the amount that every member of the company undertakes to contribute to the assets of the company in the event of winding up.

Capital Clause

- It states the total capital of the proposed company.
- The total number of shares of each category should be present in the capital clause.

- The exact nature of any special rights and privileges enjoyed by any shareholders must be mentioned in the capital clause.

Association clause

- The names and signatures to the memorandum of association is contained in this clause.
- At least 7 persons should sign the memorandum in case of public companies.
- At least 2 persons should sign the memorandum in case of a private company.

Contents of the Memorandum of Association

The contents of the Memorandum of Association are detailed out below.

Purpose of Memorandum

- Shareholders must know the field of business in which their money is going to be used and the risks involved in the investment.
- Outside allies of the company must also know the objects of the company.

Printing and Signing of Memorandum

- The memorandum of association should be divided into paragraphs and should be numbered consecutively before printing.
- At least one witness should be present while a subscriber signs the association.

Form of Memorandum

- The Memorandum of Association should be in the form B, C, D, or E tabular form in accordance with the Companies Act, 1956.

Contents of Memorandum

The following clauses should be included in the Memorandum of association of each and every company.

- The word “limited” or the word “private limited” are required to be added as suffixes at the end of the name of a public company or a private company respectively.
- The main objectives of the company.
- The objectives auxiliary to the main objectives of the company.

Shares capital

In case of a company having its capital in shares,

- Each subscriber shall take at least one share and shall write his name opposite to the number of shares he takes.
- A company limited by guarantee should ensure that each member contributes a certain sum to the assets of the company.

Doctrine of Ultra Vires

- A company can invoke all its powers as allowed by the Companies Act, 1956.
- Everything else is Ultra Vires (“Ultra” means beyond and “Vires” means power).
- A company acting Ultra Vires means it is acting illegal in the eyes of the law.

Ultra Vires by the Directors

- If a transaction is made by a Director beyond the power of a Director but within the power of the company, the shareholders can rectify it in a general meeting.
- Any irregularities can be cured by the consent of the shareholders, if the act is within the reach of the company.