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# A RESEARCH ON IMPORTANCE OF MEMORANDUM OF ASSOCIATION IN A COMPANY

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**ABSTRACT**
An important step to the formation of a company is to prepare a document called the memorandum of association. It has been defined in Section 2(28) of the Companies Act 1994 as, "Memorandum of association means the memorandum of association of a company as originally framed or this Act." The Memorandum of Association is the first constitutional document of a company containing fundamentals such as the name, the company's objects and powers, and its original share capital. Memorandum is one of the most important documents of a company., "It is the document of great importance in relation to a proposed company." Its importance lies in the fact that, it contains the fundamental clauses which have often been described as the conditions of the company's incorporation .The MOA is accessible to the public and describes the company's name, physical address of registered office, names of shareholders and the distribution of shares. The MOA and the Articles of Association serve as the constitution of the company. The MOA is not applied in the U.S. but is a legal requirement for limited liability companies in European countries including the United Kingdom, France and Netherlands, as well as some Commonwealth nations.

**KEYWORDS**: company, Memorandum, association, clause, certificate

## INTRODUCTION

The Memorandum of Association is an archive(Bombay Burmah Trading Corporation 1908) which sets out the constitution of a company is in this manner the establishment on which the structure of the company's assembled. It characterises the extent of the company exercises and its relations with the outside world(Barbados. Tourist (Development) Association Limited. Companies Act, n.d.).

The initial phase in the development of an company's(Pennington 2001) to set up a record called the notice of affiliation. Truth be told, notice is a standout amongst the most fundamental pre-imperatives for consolidating any type of company under the Act(Gupta, Gupta, and India 1966). This is confirm in Section 3 of the Act, which gives the method of joining of an company's states that an company right be shaped for any legitimate reason by at least seven people, where the company o be framed is an open company(Davies 2010) ; at least two people, where the company o be shaped is a privately owned business; or one individual, where the company o be shaped is a One Person Company(Hannigan 2015, 2012) by buying in their names or his name to a reminder and consenting to the necessities of this Act in regard of its enlistment(Sinha 2015). To buy in intends to add one's mark or stamp an archive as an endorsement or validation of its substance.

As per Section 2(56) of the Companies Act, 2013 "reminder" implies the notice of relationship of an company's initially encircled and changed now and again in compatibility of any past company(Dignam and Lowry 2014) aw or this Act(Dr. L. Usha et al. 2012).

Article 4 of the Act indicates in clear terms the substance of this essential report which is the contract of the company . (Dr. L. Usha et al. 2012)The reminder of relationship of an company contains the items to seek after

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which the company's(Davies 2010; Tyagi and Kumar 2003) framed It demonstrates the objects of development as well as decides the extent of its activities past which its activities can't go. "THE MEMORANDUM OF ASSOCIATION", watched Palmer, "is a report of extraordinary significance in connection to the proposed company "(Rohatgi and India 1961). The aim of the research is to know about the contents of Memorandum of Association and proceedings in Memorandum of Association. The objective of the study is to study on contents of Memorandum of Association, to know about the proceedings in Alterations in Memorandum of Association and to know about the declaration and issue of Memorandum.

## OBJECTIVES

The objective of the study is to study on contents of Memorandum of Association, to know about the proceedings in Alterations in Memorandum of Association and to know about the declaration and issue of Memorandum.

## METHODOLOGY

The research methodology use is both doctrinal and empirical,and the sample size is 50 responses from the respondent. The statement of problem with respect to this study is analysed in the light of different personal codified laws, constitutional provisions and other relevant statutory provisions which is consonance with this study. Through this study the researchers is hopeful that the findings of this study will help the legislature in bringing changes in the provisions witness in this study.

## RESULTS AND DISCUSSION

### CHAPTERIZATION

To study on contents of Memorandum of Association

Section 4 of the Companies Act expresses that the update of relationship of each organisation must contain the accompanying statements(Kuchhal 2009) –

1.Name Clause – According to the primary condition the reminder must express the name of the organisation by which it needs to be known subjected to the accompanying limitations:
The name of the organisation must not be indistinguishable with a current organisation.
No organisation will have the name which is bothersome in the supposition of the administration.
The name must not deceive people in general. For instance, an organisation won't be permitted to utilise a name, which is restricted under the Emblems and Names (Prevention of Improper Use) Act, 1950.
The organisation must not utilise any names which propose any association with the legislature or state Patronage without the earlier endorsement of the administration.
The name of a privately owned business(Judge and Moore 2014) constrained by shares, must end with 'Private Limited'

2. Situation or Registered Office Clause – This condition requires the notice to specify the name of the state in which the enrolled office of the organisation is to be arranged. An organisation must have its enlisted office prepared inside 15 days from its joining and inside 30 long stretches of its fuse, the check of its enrolled office ought to be finished. This is done with a specific end goal to settle the habitation of the organisation. It must be noticed that the house is the place of enlistment of the organisation and might possibly be the home of the organisation. (Kumar, n.d.)Living arrangement of the organisation will be the place from where the administration and control of the business is done.

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3. Objects Clause – The protest proviso decides the reason for which the organisation has been set up and it decides the limit of the organisation. An organisation isn't lawfully qualified for direct any business movement that isn't particularly specified in its protest statement. The items are arranged into three classifications: fundamental question, auxiliary protest, and different articles that will be sought after to achieve the primary protest. Anyway the accompanying focuses must be noted while planning Objects provision:
The objects of the organisation must be expressed particularly and must not be vague explanations.
The objects of the organisation must not be unlawful .
They should not be against the arrangements of the organisations demonstration .
They should not be against people in general strategy of the nation .

4. Liability Clause – The fourth provision of update of each organisation expresses the obligation of its individuals, i.e. regardless of whether the risk of its individuals is constrained by offers, or restricted by ensure or is boundless. In the event of organisation constrained by shares, individuals can't be called upon to pay more than what stays unpaid. In the event that his offers are completely paid, the obligation of investors is nil.
If there should be an occurrence of organisation constrained by ensure, the risk condition must express the sum every part needs to pay at the season of the liquidation of the organisation.
If there should arise an occurrence of boundless organisation, the risk of individuals is boundless and individual resources of the individuals can be utilised.

5. Capital Clause (just if there should arise an occurrence of an organisation having share capital)- This statement requires all organisations constrained by obligation to specify the measure of capital with which the organisation is framed. The capital of the organisation must be isolated into littler settled esteem units which are known as offers. There is no legitimate point of confinement on the measure of offer capital. An organisation can't issue share capital surpassing the sum said in the capital condition.

6. Association and Subscription Clause – According to this condition the update must say the measure of approved offer capital and the measure of offers taken by every supporter/part. The accompanying are the statutory necessities with respect to membership .
The reminder must be marked by every endorser within the sight of no less than one witness who bear witness to the marks.
Every supporter must take no less than one offer; and
Every supporter must compose the quantity of offers held by him

7. Succession Clause (just on account of OPC) – According to this provision the update must express the name of the individual who will end up being the individual from the organisation in case of death of the endorser.

To know about the proceedings in Alterations in Memorandum of Association

Alteration of Conditions
Change of names.(Gupta, Gupta, and India 1966) An organisation may change its name by a unique goals and with the endorsement of the local government connoted in composing however the difference in name which about includes the cancellation or expansion of the word private (Dine 1998)on the transformation of an open organisation into a privately owned business or the other way around doesn’t require the endorsement of the focal government.
Change of registered office this fundamental includes
change of register office starting with one place then onto the next place in a similar city or village.(Rohatgi and India 1961)In this case a notice is to be given inside the 30 days after the date of the change to the registrar who will record the same.
change of enrolled office starting with one town then onto the next town in a similar state. For this situation an extraordinary goals is required to be passed and the general gathering of the investors(Hyde 1940) and a duplicate of it is to be loaded up with the enlistment centre in 30 days then inside 30 long periods of the expulsion of the workplace however see must be given to the recorder of the new area of the workplace.

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Change of registers office starting with one state then onto the next state. An organisation may by uncommon goals change the place of its registered office(Usa 2009) starting with one state then onto the next state for specific purposes allude to in segment 17. (Rohatgi and India 1961; Sinha 2015)These reasons for existing are the same as in the event of change of articles and are talked about under the heading adjustment of items.

Procedure of Alteration
Exceptional goals. An uncommon goals will be passed at a general gathering in order to change the place of enrolled office starting with one state then onto the next.

Affirmation by the organisation law board. The modification will not produce results until it is affirmed by the organisation law board on appeal
Notice to influenced parties. Before affirming the adjustment the organisation law board will be fulfilled that adequate notice has been given to each individual whose intrigue will be influenced by the change(Vogelaar and Chester 2013) and that the assent of the lenders of the organisation has been acquired or obligations or cases have been released or anchored
Notice to enlistment centre. The organisation law board will cause see off the request of for affirmation of the change to be served on the recorder. (French 2017)The recorder will likewise be given a sensible chance to show up under the steady gaze of the organisation law board and express his protests and proposals if any as for the affirmation of the change
Intensity of the organisation law board to affirm change optional. (van Rossum, n.d.)The organisation law board may affirm the change on such terms and conditions as it supposes fit.
Rights and interests of the lenders to be dealt with. The organisation law board will have respect to the rights and interests of each class of the individuals and the banks of the organisation.

To know about the Declaration of Memorandum of Association

Name clause
The name provision expects you to express the lawful and perceived name of the organization. You are permitted to enroll an organization name just in the event that it doesn't bear any likenesses with the name of a current organization. Your organization name must end with "restricted" on the grounds that the planning of a MOA is a legitimate prerequisite for constrained obligation organizations as it.

Registered Office Clause
The enlisted office statement expects you to demonstrate the physical area of the enrolled office of the organization. (Dignam and Lowry 2016)You are required to stay with every one of the registers in this office notwithstanding utilizing the workplace in taking care of all the active and approaching correspondence. You should set up an enlisted office preceding starting business exercises.

Objective Clause
The target condition expects you to abridge the fundamental destinations for building up the organization with reference to the prerequisites for shareholding and utilization of budgetary assets. You likewise need to state auxiliary targets; that is, those destinations that are required to encourage the accomplishment of the principle goals. (Dignam and Lowry 2016; Singh 1966)The destinations ought to be free of any arrangements or affirmations that contradict laws or open great.

Liability Clause
The risk proviso expects you to express the degree to which investors of the organization are subject to the obligation commitments of the organization in case of the organization dissolving. You should demonstrate that investors are at risk just their shareholding or potentially to their duty to add to the disintegration endless supply of an organization restricted by ensure.

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Capital Clause
The capital provision expects you to express the organization's approved offer capital, the diverse classes of offers and the ostensible esteem (the base esteem per share) of the offers. You are likewise required to list the organization's benefits under this condition.

Association Clause
The affiliation statement affirms that investors bound by the MOA are eagerly partner and shaping an organization. You require seven individuals to sign a MOA for an open organization and at the very least two individuals for a MOA of a privately owned business. You should lead the marking within the sight of witness who should likewise attach his mark.

DATA ANALYSIS:

Age.* Are companies incorporated under the companies Act 2006 required to have a memorandum of Association?

Independent Variable:

In this with comparison to age wise it is questioned whether companies incorporated under the companies Act 2006 required to have a memorandum of Association.
Since p value 0.504 is greater than significance level of 0.05,null hypothesis is accepted therefore there is no association between two variables

Age. * Whether memorandum of association can be altered or 2t?

Independent Variable:

In this with comparison to age wise it is questioned whether memorandum of association can be altered or not.
Since p value 0.859 is greater than significance level of 0.05,null hypothesis is accepted therefore there is no association between two variables.

Marital status * Are companies incorporated under the companies Act 2006 required to have a memorandum of Association?

Independent Variable:

In this with comparison to marital status companies incorporated under the companies Act 2006 required to have a memorandum of Association?
Since p value 0.523 is greater than significance level of 0.05,null hypothesis is accepted therefore there is no association between two variables
Marital status

* Whether memorandum of association can be altered or 2t?

In this with comparison to marital status Whether memorandum of association can be altered or not
Since p value 0.812 is greater than significance level of 0.05,null hypothesis is accepted therefore there is no association between two variables

SUGGESTIONS:

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The memorandum of association should not be abolished, and the memorandum of association and articles of associations should not be clubbed together.

The memorandum of association should not lay down the powers but only the objects of the company, and if the powers are mentioned in the memorandum, then these should be used only to effectuate the objects only, and if directors take the company beyond those powers, causing financial loss to the company, then the directors should refund to the company the entire amount spent in, due to activities beyond those powers.

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**CONCLUSION**

A Memorandum of Association is a document of vital importance in the incorporation of a company. It should be drafted with utmost sincerity. To amend and alter the name of the organisation, the office of registration, object clause, the authorised share capital of the company and any other legal liabilities, the company is required to a follow a complicated legal procedure as mentioned in the scope of this article. All other social responsibilities and supporting activities and range of other related activities should also be clearly stated in the Memorandum of Association to provide flexibility to undertake new projects as and when the opportunities arise. Hence it is advisable to present the company's scope of activities in a more generic manner instead of mentioning any particular area of focus.

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