

COMPANY LAW

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Introduction

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There are there basic legal documents issued by a company these are.

- (i) Memorandum of association.
- (ii) Article of association.
- (iii) Prospectus.

Memorandum of Association

Under the existing law a limited company can be formed by preparing certain legally specified documents and filing the same with the registrar of companies

The first essential document to be prepared and filed with the registrar and without which a company cannot be incorporated is named as **Memorandum of Association.**

Introduction

Memorandum of association is one of the basic documents of the company. It is known as charter of the company. It sets out the limits outside which company cannot go, memorandum of association defines the constitution of the company. It contains the fundamental conditions upon which a company is registered.

Memorandum of Association

- Memorandum of Association is a public document, and every person who deals with the company is presumed to have a sufficient knowledge of its contents and provisions.

Memorandum of Association

Definition:

It is a document which sets out the constitution of the company. It is a foundation on which the structure of the company is based.

Memorandum of Association:

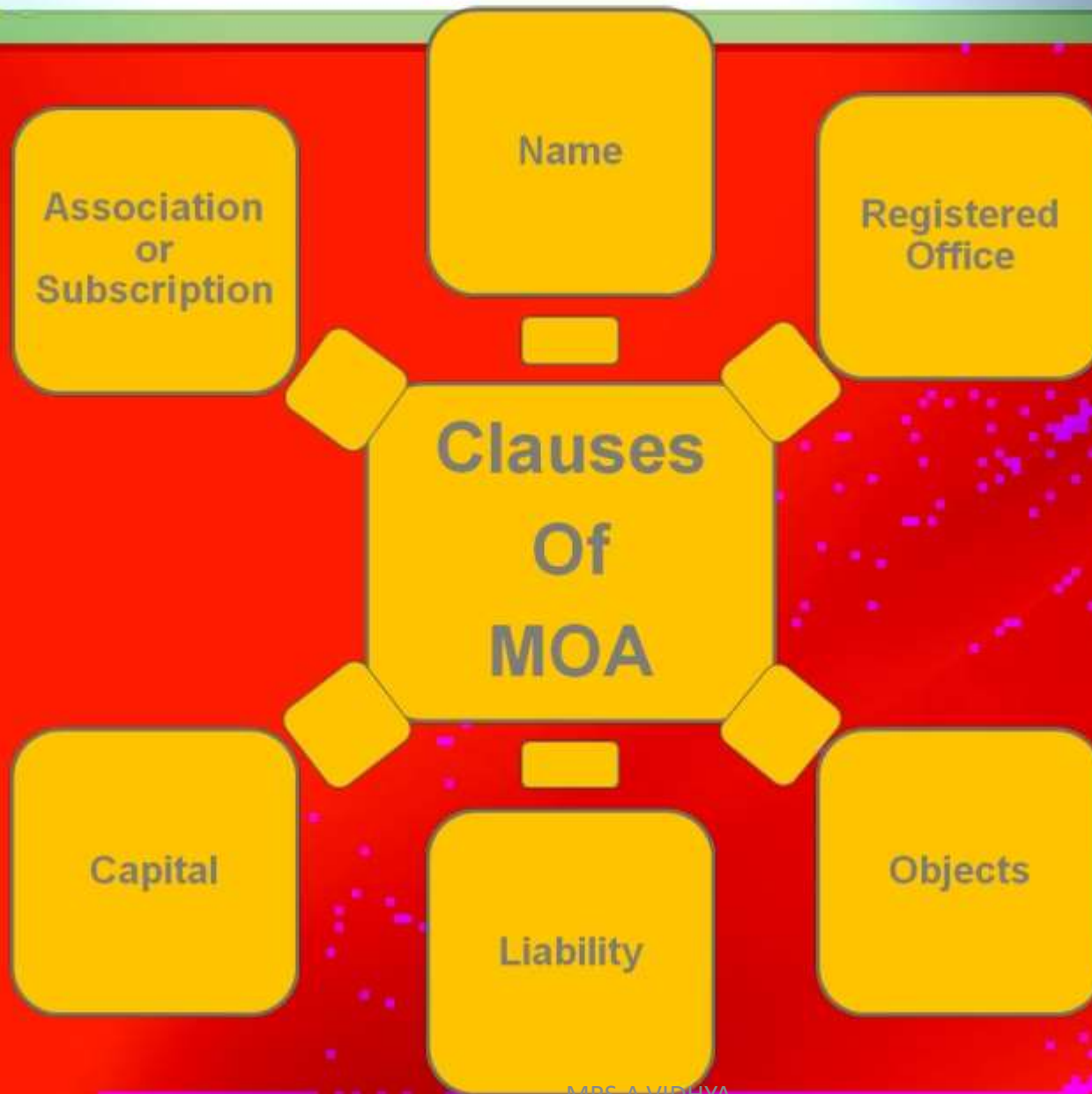
Importance:

The memorandum of association is the charter of the company. it defines the limitation and powers. It is a document which regulate the external affairs of the company.

Purpose:

The main purpose of memorandum of association is to enable share holders, creditors and all those who concerned with the company to know what is permitted range of the enterprise.

Clauses of memorandum of association:



Name Clause:

- This clause states the name of the company.
- A company may select any name but it should not resemble the name of any other company.
- Name should not be undesirable.
- Name should not be prohibited by any law.

Name Clause:

Name should end with the word:

- i. 'limited' on case of public company.
- ii. '(private) Limited', in case of private company.
- iii. '(guarantee) Limited', in case of company limited by guarantee.

Name Clause:

Appearance of Name:

The name of the company must appear or every office or place of business of company in a conspicuous manner and on all cheques, bills, notices, advertisement, etc of the company.

Name Clause:

Change of name of the company:

The name of the company can be changed at any time subject to the following conditions:

- (i) A special resolution is passed.
- (ii) Approval in writing of the registrar is obtained.
- (iii) Registrar notified the new name and issues a certificate.

Situation clause:

It is also known as **Registered Office Clause**. The memorandum must state the name of the place of business of the company. The company must have a registered office and its place must be notified to the registrar.

Situation clause:

(a) Change of place of registered office:

(i) Form Province to Province:

Registered office of the company may be changed by passing a special resolution and obtaining the confirmation of the commission.

(ii) From town to town in the same province:

The place of registered office of the company may be changed from one town to another town with in the same province by special resolution and a notice to the registrar without any confirmation of the commission.

Object clause:

The statement of objects defines the sphere of the company activities. It determines and restricts the powers of the company. The object clause offer protection to the shareholders by ensuring them that amount collected for undertaking is not risked in any other undertaking.

Object Clause:

(i) Scope of objects:

The company can have any object provided that it is not contrary to law.

(ii) Act done outside the objects:

The company cannot do any thing outside the powers specified in the object clause.

Liability clause:

The fourth clause in a memorandum of association is a statement that liability of the company is limited to the extent of the shares purchased by them.

This clause contains the notice of liability of members of company. It is essential for companies in which the liability of its members is limited.

Liability clause:

- In case of company limited by shares: the liability of its members is limited by shares.
- In case of companies limited by guarantee: the liability of its members is limited by guarantee.

Capital Clause:

The clause must state the amount of the capital and the way in which it is to be divided into shares. It must be stated in this clause as to what funds are necessary to set the business going or, If its proposed to buy on old concern, what sum is wanted as its price and what is addition, is wanted to keep the business going.

Capital Clause:

The capital as mentioned is called **authorized** or **registered** capital. the capital is divided into shares of a certain value which is specified in the capital clause, for example, The authorized share capital of the company shall be Rs. 5,000,000 consisting of 5,000,00 equally shares of Rs, 10 each.

Association and subscription clause:

This clause contains a declaration by the subscribers that they are desirous of forming a company and agree to have number of shares written against their respective names.

Signature and Attestation

Each subscriber must sign the memorandum in the presence of at least one witness who shall attest the signature.

Time place for filing memorandum of association:

Memorandum of association is to be filed with the registrar at the time of formation of a company.

Requirement of MOA:

- Memorandum must be printed
- It should be divided into paragraphs
- Each paragraph should be consecutively (serially) numbered
- It should be signed by the required number of subscribers (three in case of public company and one in case of private company)
- Subscriber must sign in the presence of at least one witness

Requirement of MOA:

- Signature of each subscriber must be attested by witness
- Every subscriber must add his address, description and occupation
- Witness should write his address, description and occupation
- Memorandum must be stamped to Stamp Act.

Alteration in memorandum of association:

Memorandum of association is considered as unalterable document. but it can be amended by passing special resolution and with sanction of court of central government.

Alteration of Memorandum:

Under the law the alteration of MOA is not dependent in the pleasure and sweet will of the members of the company. It can be altered only by adopting the alteration procedure laid down in the companies ordinance.

Alteration of Memorandum:

Preliminary Discussion:

Preliminary discussion at board meetings and with company's advisers to determine the best course to be adopted and the precise nature of the desired alteration.

Stock Exchange Requirements:

Where company's share are desired to be quoted on a stock exchange.

Alteration of Memorandum:

Settlement with Registrar:

- Can any matter be settled before hand with the registrar e.g. whether a new name will meet to his approval.

Notice:

- Printing of notice of general meeting, explanatory circulars etc.

Routine of Meeting:

- Routine of holding necessary meeting arrangements with the press, filing of copies of special resolution.

Alteration of Memorandum:

Share Certificate:

Whether new share certificates are to be issued or old certificates are to be called in for suitable alteration.

Resolution:

The printing of resolution required to be attached to the memorandum and to be registered with the registrar.

THANK YOU