

### 3. MOA and AOA and Alteration.

- Q → what do you understand by memorandum of association
- memorandum of association is a legal document which describes the purpose for which the company is formed and therefore identified the possible scope of its operation beyond which its action cannot go. It defines as well as confines the powers of the company. If anything is done beyond these powers that will be ultra vires of the company and go void.
- Q "MOA is the charter of the company" comment. Explain the clauses of memorandum.
- memorandum of Association is a legal document which describes the purpose for which the company is formed.
- As per section 2(56) of the Act, memorandum means the memorandum of association of a company as originally framed and altered from time to time in pursuance of any previous company law or this Act
- memorandum of association (MOA) consists of the following clauses
- A) Name clause
  - B) Registered office clause
  - C) object clause
  - D) liability clause
  - E) subscription clause
- Q what is registered office?
- Registered office means the office address which is mentioned for correspondence to ROC
- it is mentioned on the situation clause of memorandum of association.
- This clause connotes the names of the states in which the registered office of the company is situated. This helps to determine the jurisdiction of the ROC.

Q Explain the procedure brief for ~~something~~ <sup>shifting</sup> of Registered office from the jurisdiction of one registrar of companies to another registrar within same state.

→

i) Rule 28 of companies (incorporation) rule, 2014 states, an applicant seeking confirmation from the R.D. for shifting the registered office within the same state of ~~the~~ jurisdiction of one ROC to another ROC with the form INC-23 with the fee and following documents.

ii) Board resolution of the board of director

iii) special Resolution of the member.

iv) A declaration given by the key managerial personnel or any two directors that the company has not defaulted in payment of dues to its workmen and has either the consent of its creditors for the proposed shifting or has made necessary provision.

v) declaration not ~~to~~ to seek change in the jurisdiction of the court where case for prosecution are pending.

vi) Acknowledged copy of intimation of chief secretary of the state as to the proposed shifting and the employees interest is not adversely affected consequent to proposed system.

vii) The R.D. shall examine and either approve or rejecting the application within 15 days of receipt of application.

Q What do you understand by Ultra virus

→ ultra virus is the latin term made up for two words ultra which means beyond and vires means authority  
ultra virus acts are any acts that lie beyond the authority of a company to perform

- ultra vires Acts divided into three divisions
  - ↳ ultra vires to the Companies Act
  - ↳ ultra vires to the memorandum of association
  - ↳ ultra vires to the Article of Association

- In Ashbury Railway Carriage and iron co. vs Riche
  - The company entered into the contract to finance the construction of railway line and after some time company repudiate the contract.
  - Riche sued Company for damages of breach of contracts
  - it was held that the contract was ultra vires hence it was null and void. the court said that even shareholders cannot rectify such contract.

Q9 what is the importance of object clause of memorandum. if company ... be the consequences.

- under section 4(1)(c) all companies must state in their memorandum the objects for which the company is proposed to be incorporated and the matter considered necessary in furtherance.

→ It defines the objects for which the company is proposed to be incorporated and any matter considered necessary.

- The purpose of the objects clause is to enable the persons dealing with company to know its permitted range of activities

- object clause restricts the powers of a company while defining the reason of incorporation

→ A company cannot do anything which beyond its clause

→ Any act contrary to it will be treated as ultra vires to MoA.

ce The Power of altering the articles is wide, yet it is subject to large number of limitations:

→ Any Company which intend to make any change in its articles, will have to comply with the Provisions of section 14 of the Act, along with any other applicable Provisions of the Act.

→ A company may either alter its Article in accordance with the above Provisions-

- a) by adoption of new set of article
- b) by addition/insertion of new clause
- c) by deletion of a clause
- d) by amendment of a specific clause
- e) by substitution of a specific clause.

→ limitation on Power to Alter Articles: -

- a) Articles may not exceed the Powers given by MOA.
- b) must not be inconsistent with Provisions of Act.
- c) Alter must not substitute any fraud on minority
- d) Alter of articles cannot operate retrospectively
- e) Alteration must be bonafide for the benefit of company
- f) Alteration not be inconsistent with any alteration made by the tribunal.

@ discuss the extent to which articles of association binds.

a) The members to the company.

→ The MOA and Article constitute a contract binding on the members. The members, as members are bound to the company. Each member must therefor observe the Provisions of the MOA and Articles.

Company to the members'

b) → Since the articles constitute a contract binding on the company to its members in their capacity as members, a member can bring an action against the company for infringements by it, of MoA and AoA.

member bound to company.

c) → As between the members inter se each member is bound by the articles to the other members but that does not mean the memorandum and articles create an express contract, among the members of company. A member of a company has no right to bring a suit to enforce the articles in his own name.

Company not bound to outsiders

d) → The term outsider signifies a person who is not a member of the company even if he is a director or a solicitor to the company.

Even in regard to members, the articles bind the company to them in their capacity ~~to them in their~~ as members.

Q Distinguish between.

memorandum of <sup>association</sup> article-	Article of Association
- memorandum of association is the charter of the company and defines the fundamental conditions and objects for which the company is granted incorporation.	Articles of association are the rules and regulations formed to govern the internal management of the company.
→ memorandum of association cannot include any clause contrary to the provisions of companies Act.	The articles of association are subsidiary both to the companies Act and the memorandum of Association.
→ The memorandum generally defines the relation between company and shareholders	The articles regulate the relationship between company and member and between member inter se.

Q The articles may contain provisions for entrenchment" comment upon statement and explain the significance of the entrenchment provision.

→ The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedure that are more restrictive than those applicable.

→ The provisions for entrenchment referred in section 5(3) shall be made either

### on formation of Company

- a) by amendment in the articles agreed to by all members of the company.
- b) in the case of a Private company or by a special resolution in Public company.

→ notice of entrenchment shall be given to registrar in form SPJCE T, along with fees for new company and existing company shall give notice in form MGT 14 within 30 from entrenchment.

### Q meaning and significance of Indoor management.

→ The principle of indoor management operates to protect the outsiders against the company. It is also known as TURQUAND Rule.

→ If an outsider whose actions are in good faith and has entered into a transaction with the company can have a presumption that procedural requirements have been complied by the company.