



CAIIB PAPER-4

Module-D Unit-18

**BANKING REGULATIONS AND
BUSINESS LAWS (BRBL)**



CAIIB Paper 4 (BRBL) Module D Unit 18-Memorandum of Association And Articles of Association

Memorandum Of Association

As per Section 4(1) “The memorandum of a company shall state—

- **The name of the company** with the last word—Limited in the case of a public limited company, or the last words—Private Limited in the case of a private limited company
- **The State in which the registered office of the company is to be situated**
- **The objects for which the company is proposed to be incorporated and any matter considered necessary**
- **The liability of members of the company, whether limited or unlimited etc.**

It is thus a document of great significance as it embodies the fundamental rules regarding the constitution and scope of activities of a company. The purpose is to enable the creditors and those who deal with the company to know the permitted scope of its activities.

Name Clause

- A company is a legal person and hence it must have a name to be identified. A company cannot have a name which in the opinion of Central Government is undesirable. A name is undesirable when it is identical with or too nearly resembles the name of another company.
- If the company is with limited liability the last word of the name should be “limited” and in case of a private company the last words should be “private limited”.
- However, the Central Government has powers to permit by licence a company not to use the words private limited or limited as the case may be, if the company is formed for promotion of arts, commerce, science, religion, charity or any other useful objective and the company intends to apply its income, if any, in promoting its objects and to prohibit the payment of any dividend to its members.

Registered office clause

- This clause must mention the name of the State in which the registered office of the company is situated. It is to be noted that the address of the registered office is not to be mentioned. Only the name of the State is required to be mentioned.
- A company shall from the date on which it commences business or within thirty days after the date of incorporation, whichever is earlier, have a registered office to which all the communications and notices may be addressed.
- Notice of the situation of the registered office and of every change therein is to be given within thirty days after the date of incorporation of the company or after

the date of the change as the case may be to the registrar of companies who shall record the same.

Objective clause

- It should clearly state the objectives for which the company is established (incorporated) and the nature of business it can undertake/carry on.
- Choice of the objectives is left with the subscribers to the memorandum of association who incorporate the company. Although the ownership of the corporate capital is vested in the company itself, in reality the capital is contributed by the shareholders. It is therefore very essential that the objectives of the proposed company must be intimated to the shareholders so that they can decide in which business areas they want to invest their money.
- A company can have any lawful objectives. This means that a company cannot have objectives to carry on activities prohibited under the law.
- The objectives clause, of the memorandum of association of a company are to be classified and stated under two sub-clauses as '**main clause**' and '**other objectives**'.
- The **Main Objectives clause** must contain the main objectives which are to be pursued by the company immediately on incorporation and objectives which are incidental or ancillary to the attainment of the main objectives of the company. The **Other Objectives clause** must contain other objectives which are not included in the above clause.

Liability Clause

- If the company is to be incorporated with limited liability the liability clause must state that the liability of the members shall be limited by the unpaid amount on shares.

Capital clause

- In case of companies having a share capital this clause must state that the amount of share capital which the company will be authorized to raise and the number and the value of shares into which it is divided.

Association or subscription clause

- The memorandum of association concludes with a declaration of the subscription that the persons who have subscribed their signatures intend to form themselves into an association in accordance with the Memorandum of Association.

Articles Of Association

- The Articles of Association, is the second important document of a company and is described in Section 5 of the Companies Act 2013.

- It consists of a set of rules/regulations and bye laws made by the company for internal management of the company and for carrying out the objects of the company embodied in its Memorandum of Association.
- As per Section 5(5) “Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed”

EFFECT OF MEMORANDUM AND ARTICLES

- As per Section 10 of the Companies Act 2013, Subject to the provisions of this Act, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member, and contained covenants on its and his part to observe all the provisions of the memorandum and of the articles.
- All monies payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

Distinction Between MOA And AOA

- The memorandum of association contains the fundamental activities (objects) for which the company is incorporated. The conditions are introduced for the benefit of the creditors, the shareholders, and the outside public. The articles of association are the internal regulations of the company and they provide the manner in which the company will be managed.
- The memorandum of association is a dominant instrument as it states the purposes of the company and the reasons for which it has come into existence. The articles of association are always held to be subordinate to the memorandum of association because the articles of association are merely the internal regulations of the company while the memorandum of association states the objects of the company beyond which the company cannot go. Clauses in the memorandum of association (e.g. change of registered office in another State or the objects clause) can be altered only by a special resolution passed by the company and with the approval of the Central Government. Any terms of the articles of association can be altered by a special resolution and no approvals are required from the Central Government or any other authority.
- If a company commits an act in contravention of the memorandum of association (e.g. a company having objects only to manufacture biscuits starts activities of bottling of milk without proper amendments in the objects clause) then the acts done and liabilities arising there from are not binding on the company and the same cannot be ratified by the company. If a company does something in contravention of the provisions of its articles of association, it is only a procedural irregularity and the same can be ratified by the shareholders at a general meeting and thus rectified.

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