

MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION: A COMPARATIVE ANALYSIS

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Abstract: Memorandum and articles are two fundamental documents in a company. They are called public documents inter-linked with each other and required to be registered with the Registrar of a company at the time of its formation where there is any ambiguity or where the memorandum is silent on any point, the article serves to explain or supplement the memorandum and thus, becomes complementary and supplementary of one another.

INTRODUCTION

Memorandum and articles are two fundamental documents in a company. They are called public documents inter-linked with each other and required to be registered with the Registrar of a company at the time of its formation where there is any ambiguity or where the memorandum is silent on any point, the article serves to explain or supplement the memorandum and thus, becomes complementary and supplementary of one another. Beyond this, there two documents have nothing in common and they do differ from one-another in following manner:

Memorandum of Association defines the scope of the companies activities. It is the document that spells out the constitution of the company. It is one of the most essential and fundamental documents for getting a registered company incorporated. According to section 2(56) of the companies Act, 2013 “memorandum” means the memorandum of association of a company as originally framed or as altered from time to time in pursuance of any pervious company law or of this Act. Therefore the Act specifies in unequivocal terms the contents of this important document which is a chapter of the company. It contains the fundamental provisions of the company’s constitution. It contains the essential conditions upon which a company is incorporated.

The main purpose of M/A of a company is two folded. First, the intending shareholders before making investment in the company must know the purpose for which it is going to be utilized and what risk he is going to take in making the investment. Secondly, any one dealing with the company should know without any doubt what the permissible range of enterprise of the company is.

Articles of Association (A/A) as per section 2(5) of the Act are the bye-laws or rules and regulations that govern the management of internal affairs and conduct of the business of a company. It regulates the internal management of the company. It defines the powers of the officers and establishes a contractual relation between the company and its members and members

inters. This contractual relation governs the ordinary rights and obligations incidental to membership in the company. It is a document that mentions the regulations for a company’s operation including the process for appointing directors and how financial records will be handled. The Subscribers to the M/A are also the signatories of A/A and are given a free hand to decide and determine its contents. It is to ensure that maximum flexibility is granted to the companies in determining how to operate in the best possible manner and to keep statutory intervention to the minimum. Therefore it can be said that articles are integral to the survival of a company because without such governing rules and regulation it will be impossible to hold in harmony the diversity of relation under which they have to function.

Comparative Analysis between M/A and A/A

The important comparisons between M/A and A/A areas under:

(1) As to Alteration :

M/A is an unalterable document. The Act provides that the company can not after the conditions contained in memorandum except in the cases and in the mode and to the extent express provisions have been made in it. But these are certain procedure and norms by which the contents Government/Company Law Board/Tribunal as the case may be. Besides, the approval of the shareholders in the general meeting either by way of ordinary or special resolutions is also required.

Whereas, A/A are regarded as the alterable document. A company can easily charge conditions mentioned in it at any time. The Act provides that subject to its provisions and to the conditions contained in M/A, a company may, by special resolution after or add to its articles. But like M/A, these are also certain limitations to the alteration of the A/A, still the whole A/A can be altered unlike the M/A.

(2) As to Subordination

M/A controls the entire affairs of a company. It contains the fundamental pillars upon which the edifice of a company business stands. It is the charter and defines the reason for existence of a company. It prescribes the area beyond which a

company can not go.

Whereas, A/A is the sub-ordinate to M/A. These are the internal regulations of the company; they only regulate the relationship between company and the members and amongst members themselves.

Thus briefly, it can be said while memorandum lays down the scope and powers of the company, the articles govern the ways in which the object of the company is to be carried out. In case of any conflict between these two documents, the M/A shall prevail.

(3) As to importance:

M/A has primary importance and is a primary document for the incorporation of the company.

Whereas A/A has the secondary importance in the formation of the company, though it is also a primary document containing regulations to manage the internal affairs of a company. It is nothing to do with the incorporation of a company.

(4) As to compulsion:

M/A is a compulsory document for the formation of company as it sets out its constitution. It is infact the foundation on which the entire structure of the company is located.

Whereas A/A is an optional document for the formation of the company. There are the internal regulations which govern the management of the internal affairs of a company.

(5) As to Classes :

M/A has ordinarily six clauses namely.

- (a) Name Clause (b) Registered office clause (c) Object clause
- (d) Liability Clause
- (e) Capital Clause and (f) The Association or Subscription Clause

Whereas A/A have many clauses.

(6) As to legal effect:

Any act beyond the limit of M/A is illegal, void, ultravires and altogether of rectification.

Whereas any act beyond the limit of A/A is not illegal but only irregular and may be ratified or confirmed by the shareholders.

(7) As to Registration :

M/A is to be registered in case of company limited by shares.

Whereas it is not mandatory to register A/A, A company may adopt the model specified in Table 'A' of Schedule-I of the Act so as to avoid the formalities of the registration.

(8) As to object :

M/A is a legal document defining the objectives of a company that is incorporated.

Whereas A/A contains the procedure through which objective of a company are achieved. It lays out how the tasks of a company

are to be accomplished within the organization, including the process for appointing directors and how financial records will be handled.

(9) As to relation:

M/A defines the relationship between company and outsider.

Whereas, A/A defines the relationship between management and shareholders of a company, company and members and members inter-se.

(10) As to scope :

M/A has wider scope covering vast range of clauses & does to make the structure of the company.

Whereas, A/A have lesser scope containing bye-laws and regulations only to manage the affairs of internal matters in a company. So it has narrow scope.

CONCLUSION:

M/A and A/A are two important documents in a company like the constitution which is considered as fundamental in the governance of any country. A nation developed/developing/under developed needs a constitution to regulate and run its administration, similarly a company needs M/A and A/A to get registered and run its business smoothly. Besides, the companies Act also plays foundational role in the formation of a company.

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