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A COMPARATIVE STUDY B/W AOA & MOA **UNDER COMPANY LAW**

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ABSTRACT

When a company gets registered they are required to submit the two most important documents which are Memorandum Of Association & Article Of Association, without submitting these documents registration of a company cannot be done. So it is important to understand all the aspects of these documents, In this paper we would be having a comparative study of the MOA & AOA under the Company Law.

INTRODUCTION

A company is artificial person with separate legal entity and having its perpetual succession and common seal. So when group of people who wish to form a company come together to carry on some business so when these people decide to get there company registered with the registrar they are required to submit some documents which includes MOA & AOA without which registration cannot be done, We would be understanding both the documents in detail. A company must prepare certain preliminary documents before they go to registrar for its incorporation and needs to be submitted with incorporation form of the company, both MOA and AOA are indispensable and it's a basis of company's foundation and therefore a company must draft it with utmost clarity as well as precision.

RESEARCH METHODOLOGY

This paper is descriptive and the research is based on secondary sources for a proper and better understanding of MOA & AOA under the company's act. Secondary sources of information like websites, journals, and company law books are used for the research.

REVIEW OF LITERATURE

The memorandum of association and articles of association are the most two essential and crucial documents document for setting up of the company as MOA contains all basic details of the company that are available for the outsiders and whereas the AOA is the document with all rules and regulations designed by the company. While MOA is the Constitution for the company and objects on which company is incorporated while AOA is governing internal affairs, both these documents are submitted to registrar of company when company goes for registering it as an artificial person having separate legal entity. Both these documents are critical for a company's governance as it helps to clarify roles and responsibilities within the company and so that there is misuse and abuse of power by any shareholder, director of the company, Judiciary have also played an important role in establishing the harmony between both thses documents.

MEANING OF MOA

Memorandum of Association is basic document required at time of company's registration, it is also known as the charter of the company, It is a written document that defines the purpose for which the company is established also lays down the objectives beyond which company's actions cannot go, so it contains power& objective of the company, it is a public document which is opened for public inspection as it enables the shareholders, creditors and those people who are dealing with the company so they would be aware of permitted range of company.

CONTENTS OF MOA

As per companies act 2013 U/S 4 states about the important contents of the Memorandum, they are specified below:

NAME CLAUSE

It is the first essential content of memorandum is the name clause, in this the name of the company is mentioned and name chosen should not be identical with the names of the existing companies that is already registered. If it is public company, they have to use word Limited and in case of private company, the word Private Limited.

REGISTERD OFFICE

Under this clause of the memorandum, company have to mentioned that where the company is situated and it is the place where statutory books of company are kept, where business is operated

and where all communication to the company would be done. Every company must have its redistered office within 30 days of its incorporation.

OBJECT CLAUSE

It is the most critical point of the memorandum as in this clause only we would mention the main reason or objective of setting up of our company is specified and it sets the limits of operation of the company, the object of the company should be well defined while mentioning the aim od company for which it is incorporated, it allows shareholders to know for which purpose there investments are used, also f company's action goes beyond the mentioned objective then the activity of the company shall be Ultra Vires. It safeguards shareholder's money protection that they are only utilixed for business purposes and are not in risked in other ventures.

LIABILITY CLAUSE

This clause of memorandum defines the limitation on the liability of members also providing protection to the shareholders from being held liable for any loss in the company. There are two forms of limited liability:

A company limited by shares in this liability is limited by memorandum to the amount remaining unpaid on shares held by them, this liability can be enforce anytime during the existence of company or winding up of company.

A company limited by guarantee in this liability is limited by memorandum to the amount guaranteed by them and this type of liability can only be enforced at time of winding up of company and not before, and MoA states the amount guaranteed by each member.

CAPITAL CLAUSE

It is only for those companies who have share capital, In MOA indicates the amount of capital with which the company is registered it is known as registered capital. The name and the number of shares that members have must also be mentioned.

ASSOCIATION CLAUSE

MOA must be signed by atleast 7 members in case of public company and 2 in case of private company, by people who desires to form a company are called subscribers and they must hold atleast 1 share and must be signed in presence of at least 1 witness.

NOMINATION

In case of one person company this clause is important as nominee should be registered in the event of death of subscriber with written consent of nominee.

SUBSCRIPTION & SIGNING OF MOA

In company there are subscribers and they are the first shareholder of the company, they come together with an intent to form a company. For a public company minimum 7 or more subscribers are required whereas for a private company minimum 2 or more subscribers are needed. The memorandum of the company should be signed by all the subscribers, and also mention all important particulars like name, address, occupation and shares he is subscribing to.

ALTERATION OF MOA

Alteration in company's memorandum means any addition, substitution to it, the company has a right to alter its memorandum but only to the limit given under the companies act, like for change in name clause can be done after passing of special resolution and for making changes in address of registered office the company needs the approval of the central government and whereas an alteration in capital clause can be done after passing an ordinary resolution.

MEANING OF AOA

Articles of association is another most important document which is required at time of registration of the company, it contains all the rules and regulations framed by the directors of the company and it governs the management of internal affairs of the company and conduct of its business. This document is subordinate to Memorandum of Association. It is a rulebook that regulates the internal affairs of the company.

NATURE OF AOA

As said it is a rulebook for governance of internal affairs of the company and company is managed and governed as per the articles of company it includes like directors, general meetings, Accounting and administration, shareholders, and shares, and transfer of shares.

CONTENTS OF AOA

As per section 5 of companies act provides the contents that has to be included in the Articles of association of the company for governing the internal affairs of the company so the mentioned

content of AOA must be as per the provisions of the companies act are as follows:

- Management decisions
- The different classes of shareholders
- Appointment of Directors
- The powers and rights of Directors
- Borrowing powers of Directors
- Share certificates issuing procedure
- The voting of the Directors and Chairman
- The Dividend policy of the company
- The creation of reserves
- The alteration of share capital
- Issue and transfer of shares
- Valuation of Intellectual Property that company owns.
- Transmission clause relating to the transfer of title of share by insolvency, succession, death, etc.
- Forfeiture and surrender of shares
- The board meetings procedure and hoe special resolution will be passed
- Arbitration clause in case of disputes
- Accounts and audits of a company
- Common seal of company clause
- Procedure for winding up of company with terms and conditions to be foolowed at that time.

SIGNING OF AOA

The articles of association of a company to be signed by each signatory or member of the memorandum, in the presence of one or more witnesses with there own personal details and also all the subscribers must mention there personal details like name, address, occupation etc.

SCOPE OF AOA

It plays a vital role in administration of the company and because of which articles of association cannot exceed or be in contravention of memorandum of association, it is a legal document describing rules and regulations of company which are binding on the members of the company. The company can also add rules as per their wish but only after the signature of all members and

after it is approved by every shareholder prior to its enactment.

IMPORTANCE OF AOA

It is an important statutory documents of a company as it is beneficial for the internal governance of a company, also it can be used as good first step in regulating internal affairs of the company, it is also a vital document for shareholders. In many countries, the articles of association are also needed funds for the company, which is an artificial personality.

REGISTRATION OF AOA

This document of company is registered alongside the memorandum of association, it need to be submitted to registrar of companies for the incorporation of the company as per the Section 7 of the companies act and in case alteration as per a section 14 a printed version of the altered articles along with the approval of the tribunal shall be filed ti registrar within fifteen days of the alteration and its approval.

ALTERATION OF AOA

The Board of Directors should be informed and a meeting is organised and date and time to be informed The articles of company can also be altered and such alteration is within the bounds of the memorandum of association, a company can turn from private company into a public company such alteration is done in the form of omitting or removing the clauses and shall be filed with the registrar within 15 days of passing such resolution for alteration. The AOA can be altered as per steps provided in the articles of association. Can also includes after passing of a resolution of at least 75% of the votes in favour of the alterations in the general meeting of shareholders, it can also be altered by the National Company Law tribunal. Any alteration should not be unlawful and needs to be passed with special resolution to be presented before the registrar and it should not violate the provisions of the companies act and provisions of memorandum of association and that alteration should not increase the liability of the company,

OBJECTIVE OF AOA

As memorandum of association is the document that contains fundamental elements on which the company is incorporated whereas the articles of association act as a complementary document to the memorandum with below mentioned objectives:

- By regulating the relationship between the company and amongst there members as well.

- It is a governing document that helps in regulating internal affairs of the company with certain specified rules and regulations.
- It clarifies the legal rights and obligations of the different classes of shareholders and the director of the company
- It gives clarity in procedures and rules that company has to follow and which should be accessible by the shareholders of the company.

BREACH OF AOA & MOA

It is an document for governing internal affairs of a company so any breach of articles by the company will have to provide with granting injunctions and for Breach of MOA any act done beyond the scope of it is said to be void The doctrine of *ultra vires* in the case of the objects clause is the perfect example. The directors or shareholders actions beyond the provisions as it are known as ultra vires act and affecting party can seeks for injunction for such act.

COMPARISION BETWEEN MOA & AOA

1. Memorandum contains conditions upon which the company is granted registration whereas article of company deals with internal regulations of the company
2. MOA contains objects and powers of the company whereas AOA provides regulations by which those powers are to be carried into effect.
3. MOA can not be easily altered in this the company needs to follow a strict procedure for its alteration whereas AOA can be easily altered compared to memorandum of company.
4. MOA regulates the relationship of the company with the outsiders, as objects and powers of the company are made available for the outsiders whereas the AOA regulates the internal affairs of the company as the rules and regulation in it describe procedure for internal affairs followed by the company.
5. MOA establishes the scope beyond which company's action are void and ultra vires and in AOA establishes rules and by laws for company's working.
6. MOA cannot be in contravention to the companies act and it act as subsidiary of the companies act and AOA is both subsidiary to the companies act and the memorandum of the company.
7. Any conduct beyond the object mentioned in MOA are ultra vires and cannot be ratified even by the shareholders and in AOA any action beyond the provisions of articles of

company can be ratified by the shareholder as long as it is not in contravention to Memorandum of company.

8. MOA lays down the scope within which the AOA is to function and AOA sets rules and by-laws based on how company's conduct its workings.
9. MOA is an informative document for the benefit of the public, creditors and shareholders and AOA acts as a rulebook that governs the relationship of company and its members, and also amongst members.
10. MOA has primary importance and is a primary document for the incorporation of the company and AOA has secondary importance in the formation of the company but it is also a primary document.
11. MOA is drafted in terms with provisions of companies act and it is the leading document of the firm and after this no other document or filing is required to contain any other information.
12. Registration of MOA with the registrar of company is the mandatory requirement at time of registration of company but AOA registration to the registrar is voluntary.
13. MOA as it is a primary document outlines the companies relation with the third party whereas AOA defines the relationship within the members of the company.
14. MOA has 5 clauses are required to be add in the memorandum of the company whereas the AOA can be made according to the needs of different companies.
15. MOA has a high level of inflexibility in term s of alterations in it as it is subject to strict regulatory control and need to be passed by an special resolution and in AOA there is more flexibility as alterations can be done nwith the approval of shareholders and with ordinary resolution.

CASE LAWS

Economic Hotels India Services Pvt Ltd v. Registrar of Companies (2020)

In this case, the company of the appellant filed a petition before NCLAT stating that special resolution passed was having some typographical error as the result NCLAT rejected its application court also stated that the resolution passed was unanimous in voting but also had typographical error and special resolution in meeting turned into an unanimous ordinary resolution but as it was duly registered with the registrar and it sound fine and hence the appeal was allowed.

Ashbury Railway Carriage and Iron Co. Ltd. V. Riche (1875)

In this case only the doctrine of ultra vires came into effect in house of lords as stated that object clause of memorandum is an important and fundamental document that determines the powers and object of the company for which it is incorporated, and if company's action goes beyond the provisions of memorandum of the company it is considered as Ultra Vires.

Messer Holdings Ltd. V. Shyam Madanmohan Ruia (2019)

In this Supreme Court of India held that memorandum of the company cannot be used to cross statutory obligations and it have to avoid compliance with statutory requirements or to engage in activities that are prohibited by law.

CONCLUSION

Both MOA & AOA are the two most important documents in a company and which needs to be submitted to the registrar of the company and it is like a constitution which is fundamental for governing any company and they need to registered with these two documents to run their business smoothly and as per the provisions of the companies act. MOA serves as a document that is for informing the outside world about the company's purpose and object and AOA complements MOA by stating rules and by laws for governing the internal affairs of the company. So both AOA & MOA forms the constitution of the company providing a better framework understanding how the company functions in its internal affairs and external activities, these documents are submitted at time of registering a company when it goes for incorporation and plays a crucial role in governance and conduct, They also help in the proper management and functioning of the company throughout its lif (Memorandum of Association and Articles of Association: Meaning and Explanation)

References

Memorandum of Association and Articles of Association: Meaning and Explanation. (n.d.).

Legal Bites .

<https://enterslice.com/learning/an-analysis-on-memorandum-of-association-under-the-companies-act/>

<https://blog.ipleaders.in/articles-of-association-under-indian-company-law/>

<https://blog.ipleaders.in/articles-of-association-under-indian-company-law/>