RESEARCH PAPER

Importance and Role of Articles of Association and Memorandum of Association in Companies under the corporations Act, 2013

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Received: 24th May, 2026; Revised: 20th June, 2026; Accepted: 30th July, 2026; Available Online: 10th August, 2026

ABSTRACT

The two basic, founding documents of a company are Memorandum of Association and Articles of Association. The Memorandum of Association gives a company its legal identity, name, registered office, objects, liabilities of shareholders and the company's powers and capital structure, and the Articles of Association govern the internal affairs, rights of the shareholders, powers of the directors and procedures and governance of the company regarding shares. These documents define the legal rights and restrictions and the internal procedures of a company. The Memorandum mainly governs the relationship of the company with the outside world, whereas the Articles govern the relationship between the company, its members and its officers. The Memorandum is covered by Section 4 of the Companies Act, 2013 and the Articles by Section 5 of the Companies Act, 2013. The provisions of the Act override any provisions inconsistent with it contained in the Memorandum or Articles as provided in Section 6. This paper explores the definition of MOA and AOA, legal recognition of MOA and AOA, significance of MOA and AOA, role of MOA and AOA, contents of MOA and AOA, modification of MOA and AOA, judicial interpretation of MOA and AOA, and practical implications of MOA and AOA in Companies Act, 2013. It states that these are not "formalities" of incorporation, but rather vital documents of corporate governance, statutory compliance, investor protection and business certainty.

Keywords: *Memorandum of Association, Articles of Association, Companies Act 2013, corporate governance, ultra vires, company incorporation, shareholder rights.*

How to cite this article: Shantanu, Arora T, Khubber N, Importance and Role of Articles of Association and Memorandum of Association in Companies under the Companies Act, 2013 Int J Drug Deliv Technol. 2026;16(80s): 1970-1975; DOI: 10.25258/ijddt.16.80s.234

Source of support: Nil.

Conflict of interest: None

1. INTRODUCTION

A company is a legal person that is established by law. It has separate legal personality from its members, directors and promoters as soon as it is incorporated. But this is a limited legal personality. The company operates under the Companies Act, 2013 and within the confines set by its constitutional documents. The two most important documents in this regard are the Memorandum of Association and Articles of Association.

The Memorandum and Articles are at the core of incorporation and governance in the Companies Act 2013. The Memorandum of Association is the subject of Section 4 of the Act and the Articles of Association of the company are covered by Section 5 of the Act. The Act also prescribes the forms of Memorandum to apply for different types of companies (Tables A to E in Schedule I) and the possibility of including applicable model articles prescribed under Schedule I into the Articles, which may include provisions for the management of the company.

The Memorandum of Association can be termed as the charter of the company, since it outlines the extent of the company's activities and authority. It contains the name of the company, the state in which the company has its registered office, the objects of the company, the liability of the members, the share capital and the subscription clause. The Articles of Association, however, form the internal rule book of the company. They provide for the transfer of the shares, meetings, voting rights, appointment and powers of directors, the payment of dividends, borrowing powers, internal administration of affairs, etc.

What is important about these documents is that they establish certainty. Those looking outside to the company can consult the Memorandum to see the legal objects of the company. The Articles give Members the information they need to know their rights and obligations. The extent to which a director's powers are granted may be set by the Articles. These documents can be reviewed by regulators to ensure adherence to statutory regulations. As such, MOA and AOA have legal, managerial, governance and protective roles.

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2. MEANING OF MEMORANDUM OF ASSOCIATION

The Memorandum of Association is the main document of a company's constitution. It is the essence of the company and the boundaries of its authority. Memorandum" means the memorandum of association (as it stands and as it has been amended from time to time) of a company as it is first framed or amended from time to time pursuant to any previous company law or the Companies Act, 2013.

In Section 4, the Memorandum must contain the name of the company, the State in which the registered office is to be located, the objects of the company (if any), the liability of the members and, where there is share capital, the capital clause. It also involves subscribing by anyone who wants to create the company.

The Memorandum is therefore not only an incorporation document, but a document of limitation as well. It communicates the company's "cannots" and "can do. An act committed by a company outside its scope of activities may be considered as ultra vires. The doctrine of ultra vires was elaborated in Ashbury Railway Carriage and Iron Co. Ltd. vs Riche, where it was ruled that an act beyond the scope of objects mentioned in the memorandum is unlawful and cannot be ratified by shareholders.

3. THE MEANING OF ARTICLES OF ASSOCIATION (AOA).

The internal law of the company is the articles of association. The Regulations for the management of the company are contained in the Articles as provided in Section 5 of the Companies Act, 2013. They may also cover matters covered under the Act and other matters which it is considered appropriate for the company's internal management, so long as they are not inconsistent with the Act.

The Articles regulate the relationship between the company and its members, among members and between the company and its directors or officers. They work similar to "bye-laws" of the company. The scope of the company is defined in the Memorandum, whereas the scope of operating the company is explained in the Articles.

The Articles can include conditions about transfer of shares, forfeiture of shares, company's lien over shares, powers of directors, powers of general meetings, voting, quorum, declaration and payment of dividends, borrowing powers and use of company's seal. Thus, the Articles offer procedural certainty and minimize intra-organization conflicts.

4. THE ANGLE BETWEEN THE MOA AND AOA

MOA and AoA are two documents that are very similar but different in nature. The Memorandum has more importance than the Articles. The Memorandum is stronger than the Articles which are subordinate to both the Memorandum and the Companies Act, 2013. The Memorandum shall prevail in case of any conflict with the Articles. Moreover, under section 6 of the Companies Act, 2013, the Act takes precedence over the Memorandum and Articles in case of any conflicts.

The Memorandum outlines the relationship between the company and the outside world and the Articles outline the relationship between the company and its members. The Memorandum deals with very basic issues like name, objects, registered office, liability and capital. The Articles deal with administrative and managerial matters such as meetings, directors, voting, dividends and share transfer.

The Memorandum is somewhat 'sticky' because changes to its provisions tend to require statutory process and approval. The Articles are also fairly flexible and can be changed through a special resolution, with the limit of the Act and the Memorandum. Hence, the Memorandum is a document which assigns a legal nature and capacity, whereas the Articles are documents that give the machinery for operation.

5. THE MAIN ELEMENTS OF THE MEMORANDUM OF ASSOCIATION OF THE COMPANIES ACT 2013 ARE:

The Memorandum generally contains the following clauses:

5.1 Name Clause

The name clause is where the name of the company is written. For the purposes of a public limited company the word "Limited" must appear at the end of the name and for a private limited company the words "Private Limited" must appear in the name, except for Section 8 companies. In addition, Section 4 prohibits the registration of names identical to the name of another company or too similar to it, and names that are undesirable, from the Central Government's point of view.

The name clause is crucial as it provides the company with a legal entity. It also serves to prevent confusion, misrepresentation and deceptive similarity to the public.

5.2 Registered Office Clause

The registered office clause is where it specifies a state where the registered office of the company will be. The registered office is significant since it specifies the jurisdiction of the Registrar of Companies as well as the address where statutory correspondence ought to be sent.

5.3 Object Clause

The object clause is one of the most important clauses of the Memorandum. It provides the purpose of the organization and subjects that are essential for the continuation of the purpose. The Companies Act, 2013 omits the previous dichotomy between the main objects and the ancillary objects and other objects and makes the object clause easier to read. The object clause now is directed to the objects to be sought after after incorporation, and matters required for their furtherance.

The object clause safeguards the interests of shareholders and creditors by ensuring that funds are only used for the purposes authorised under the object clause. It also assists outsiders with knowing if the business is authorized to do certain transactions.

5.4 Liability Clause

The liability clause indicates whether or not the liability of the members is limited. If the company is limited by shares, each member's liability is limited to the unpaid amount of the share he or she holds. If the company is limited by guarantee, then the members' liability only extends to what they agreed to pay on winding up the company.

This is an important clause as it outlines the financial responsibility of members.

5.5 Capital Clause

In case of a company having share capital, the Memorandum must state the amount of share capital with which the company is registered and its division into shares of fixed amount. This clause makes it clear about the share structure of the company.

5.6 Subscription Clause

It is a declaration from the subscribers that they desire to establish the company and that they are willing to become the shareholders of the company, which is included in the subscription clause. It is a document that represents the primary agreement of promoters to join the society.

6. ARTICLES OF ASSOCIATION—CONTENTS

The internal rules for the management of the company are stated in the Articles of Association. They can contain information about the following issues:

Share capital and variation of rights is the first major topic of the Articles. The Articles may provide for the issuance of shares, classes of shares, rights with respect to shares, changes in capital and share certificates.

Transfer and transmission of shares represents the second area. Restriction of transfers of the shares is important in private companies, where the close holding nature of the company is preserved.

The third area is lien, calls and forfeiture. The Articles may provide the procedure through which the company can make calls on unpaid share capital, enforce lien and forfeit shares in case of default.

The fourth area is meetings and voting. Articles control general meetings, board meetings, quorum, proxies, voting rights and voting resolutions. This is a key requirement for democratic corporate decision-making.

Directors and management is the fifth area. The Articles set out the qualifications, powers and duties of directors and how they are appointed and removed. They could also include clauses about the delegated or committees of managers and the managing director.

Dividend and reserves make up the sixth area. The Articles can provide for the distribution of profits, the establishment of reserves and the declaration of dividend in accordance with the Act.

The 7th area is winding up and indemnity. The Articles may contain provisions of their own about distribution of assets and liability protection for officers acting in good faith.

Therefore, the articles are the operating manual of the company.

7. IMPORTANCE OF MEMORANDUM OF ASSOCIATION

The Memorandum of Association is crucial as it establishes the legal existence of the company. A company must be incorporated with the issuance of a Memorandum in order to be incorporated. It is the basis of the company's name, legal form and objects and capital structure.

Secondly, the Memorandum sets the size of the company. A company is limited in its power to go beyond the objects of the company. The concept of ultra vires is to safeguard the creditors and shareholders from any use of the company money by the directors without authorization. In Indian law also, the courts have held that the acts not enumerated in the Memorandum are invalid and cannot be ratified.

Thirdly, the Memorandum safeguards the shareholders. The investors invest in the company on the trust that they will achieve the purpose mentioned in the Memorandum. Shareholders have a right to object the use of the funds for unrelated purposes by directors.

Fourthly, the Memorandum is a protection to creditors and outsiders. Creditors can review the object clause and capital clause before they enter into a deal with the company. It informs them about the legitimate range and economic framework of the company.

Fifthly, the Memorandum provides statutory discipline. It is filed with the Registrar of Companies, thus making it a public document. The contents are deemed to be the company's constructive notice to anyone dealing with the company.

Sixthly the Memorandum helps corporate governance. It clarifies the fundamental organisation of the company, avoiding arbitrary growth of corporate power and accountability.

8. THE SIGNIFICANCE OF ARTICLES OF ASSOCIATION

Articles of Association are also of critical significance as they govern the everyday operations of the company. While the Memorandum creates the company, the Articles run the company.

The Articles include internal rules of governance. They decide on the appointment of directors, the procedures of meetings, voting and decision making.

Secondly, the Articles defend shareholders' rights. They control voting rights, entitlement to dividends, transfer of shares, minority rights and class rights. This is especially true in closely held companies and private companies where there are frequent disputes within the company.

Thirdly, the powers of the directors are defined by the Articles. Directors have no powers outside of those granted by the Act and Memorandum and Articles. This provides accountability for management.

Fourth, the Articles establish procedural certainty. If the internal rules are clearly written, there will be no disagreements on meetings, transfer of shares, quorum, voting etc.

Fifth, the Articles are flexible. The Articles are subject to statutory restrictions on amendment by special resolution, as opposed to the Memorandum. This enables companies to tailor their corporate governance framework to meet business requirements.

Sixth, the Articles promote corporate democracy. They offer ways for members to engage in decision-making and to manage.

9. THE LEGAL EFFECT OF MOA AND AOA

The Memoranda and Articles are legally binding. Upon registration, they become parties to the company and its members, as if they were signed by each member. This implies that the company may apply the Articles to members and members apply the rights under the Articles to the company.

This binding effect is subject to the Companies Act 2013, however. The provisions of the Act are clearly set to take precedence over the Memorandum and Articles in section 6. Thus, no company can make an exemption in its constitution that contradicts the Act.

There is also the doctrine of constructive notice that arises out of the legal effect of MOA and AOA. These documents are public documents presented to the Registrar and is presumed that outsiders dealing with the company know these. Meanwhile, the law of indoor management safeguards outsiders because they may reasonably rely on the fact that internal processes have been followed if they had been satisfied that they had been followed.

10. SPECIAL PRIVILEGES OF LANDLORDS OF SLAVES

The concept of ultra vires is closely related to Memorandum of Association. Ultra vires translates to "beyond powers." An act of a company that goes beyond its objects as set out in its Memorandum is ultra vires and unenforceable.

The classic case was Ashbury Railway Carriage and Iron Co. Ltd. v. Riche - the House of Lords ruled that a contract outside the objects of the company was unenforceable and therefore could not be ratified by all shareholders.

The doctrine works to ensure the protection of shareholders and creditors. Money that is invested among shareholders is invested because of the objects. Lenders extend credit to companies with the expectation that they will be deployed appropriately for the company. The fact that companies can do something outside their objects could put both shareholders and creditors at risk.

The doctrine has been tempered through modern company law, however, which provides for a wider scope of object clause and incidental powers. The object clause has been simplified under the Companies Act, 2013 and companies typically tend to have broad objects. However, the doctrine is still of relevance due to the fact that the company is required to act within its objects and in accordance with its statutory powers.

11. CLEARING UP CONFUSION ON MEMORANDUM AND ARTICLES

The Memorandum and Articles are not in perpetuity. They can be modified as per the procedure provided in the Companies Act, 2013.

If the clause is altered, the alteration of Memorandum is altered. Special resolution and approval of Central Government in certain cases for change of name. Special resolution and approval is necessary for change of registered office from one State to another. Special resolution for change of object clause is also needed and must be registered with the Registrar. Whereas, in some situations, protection of dissenting shareholders may also apply.

Modification of Articles is relatively straightforward. A company may make changes to its articles by passing a special resolution as per provision of section 14 of the Companies Act, 2013. However, the alteration must not violate the Act, the Memorandum or any other law. It also needs to be bona fide in favor of the company generally.

Article altering powers are crucial, as business conditions change. A company may require a change in its governance provisions to accommodate investors, changes to management or the issuance of additional classes of shares, or to meet regulatory requirements.

12. HUMAN RESOURCE MANAGEMENT IN COMPANIES.

Corporate governance is the system of direction and control of companies. MOA and AOA are important parts of corporate governance because they provide the legal and procedural structure of the authority of a company.

The Memorandum guarantees that the company will continue to pursue its authorised objects. It helps to prevent the wrongful use of company resources. The Articles govern the distribution of power within the company, between shareholders and directors. They help in establishing the appointment of directors, the conduct of board meetings, obtaining approval of shareholders and handling disputes.

Good Articles can solve Governance Failure. Clear rules on quorum, voting, transfer restrictions, board powers and conflict of interest, minority protection can decrease uncertainty, for example. Likewise, a properly worded Memorandum will prevent future conflicts about scope of business.

Investors nowadays will scrutinize the Articles prior to any investment. Close attention is paid by venture capital investors, private equity investors and shareholders of the private company to reserved matters, affirmative voting rights, transfer restrictions, drag-along rights, tag-along rights and exit provisions. Thus, AOA is not just a legal document, but also a commercial governance tool.

13. THE IMPORTANCE OF MOA AND AOA IN PROTECTION OF STAKEHOLDERS

MOA and AOA serve different stakeholders in different ways.

These documents are helpful for shareholders to have certainty on business objects, voting rights, rights to dividends, transfer rights and management control. The Memorandum provides creditors with an idea of the object and liability of the company. The powers and procedures of directors are outlined in the Articles. The Articles can provide clarity of internal authority and administrative organization for employees and officers. The documents assist regulators to keep track of compliance.

The private companies are particularly important because of the power of the Articles to control restrictions on transfer of shares and to maintain control within the existing company. In public companies, the Articles set out a governance structure for more extensive involvement of shareholders and a greater accountability of boards.

Therefore, MOA and AOA are used as stakeholder protection documents.

14. PRACTICAL RELEVANCE OF MOA AND AOA IN MODERN COMPANIES

In modern corporate practice, MOA and AOA are important at every stage of the company's life. At incorporation, they are necessary for registration. The MCA's electronic incorporation system has also facilitated electronic filing of e-MOA and e-AOA through prescribed forms.

During business operations, the Memorandum determines whether a proposed activity falls within the company's objects. During funding rounds, investors examine the Articles to ensure that their rights are protected. During disputes, courts and tribunals interpret the Articles to determine the rights and obligations of parties. During restructuring, merger, conversion or winding up, both documents become relevant.

A poorly drafted MOA or AOA can create serious problems. Narrow object clauses may restrict business expansion. Ambiguous Articles may create shareholder disputes. Missing provisions on share transfer may cause conflict in private companies. Weak governance provisions may allow misuse of powers by directors or majority shareholders. Therefore, careful drafting of MOA and AOA is essential.

15. JUDICIAL APPROACH

Indian courts have consistently recognised the importance of the Memorandum and Articles. Courts have treated the Memorandum as the document that defines the company's powers and have applied the doctrine of ultra vires where companies acted beyond their objects. In *Gajadhar Prasad Choudhary v. State of Bihar*, the court referred to the principle that an act beyond the objects mentioned in the Memorandum is ultra vires and void and cannot be ratified.

The judicial approach shows that while companies enjoy separate legal personality, they cannot function outside the boundaries created by law and their constitutional documents. Courts also recognise that Articles regulate internal management and bind members and the company. However, any provision contrary to the Companies Act is void because the Act has overriding effect.

16. CONCLUSION

The Memorandum of Association and Articles of Association are the foundation of company law under the Companies Act, 2013. The Memorandum defines the company's legal identity, objectives, liability and capital structure. It determines the company's relationship with the outside world and limits the scope of corporate activity. The Articles regulate the internal management of the company and provide rules for governance, meetings, shares, directors, voting and shareholder rights.

The importance of MOA lies in its role as the charter of the company, while the importance of AOA lies in its role as the internal rule book of the company. Together, they ensure legality, transparency, certainty and accountability. They protect shareholders, creditors, directors and other stakeholders. They also support corporate governance by clearly distributing powers and responsibilities.

Under the Companies Act, 2013, these documents are not merely procedural requirements for incorporation. They are continuing legal instruments that guide the company throughout its existence. A well-drafted Memorandum and Articles can prevent disputes, support compliance, attract investment and strengthen governance. Therefore, MOA and AOA remain indispensable to the structure and functioning of companies in India.

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