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# Difference between MOA and AOA

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VIKAS RAMDULAR GUPTA<sup>1</sup>

## ABSTRACT

*Memorandum of Association and Articles of Association are very important documents. They help the owners to run the company with ease and help in streamlining the business. While one handles the relations of the company with the outsiders such as creditors and other stakeholders, the other regulates internal management. However, articles have always been subordinate to the memorandum. The fact that articles are to be framed in consonance with the five clauses of the memorandum exactly validates this point. Additionally, unlike Articles of Association, the memorandum must be compulsorily registered at the time of incorporation.*

*Since establishing a company is no cakewalk, the entrepreneurs wishing to start a new company must keep all the intricate details in mind and form the MOA and AOA. Companies in India should have both AOA and MOA as they guide the company on various matters. They also aid the company in management; therefore, it should be drafted diligently in such a way that they provide flexibility to the company to expand further.*

*Memorandums and Articles are to be maintained by them as they guide the company on various matters. They also help in the proper management and functioning of the company throughout its life. That is why every company is required to have its own memorandum and articles. Hence, they are indispensable for any private or public limited company.*

## I. INTRODUCTION

Every entrepreneur is excited about the first step of starting a business, which is giving it a legal identity by getting a company registered. Companies are governed through legal documents that pan out the dos and don'ts for it. Commonly known as company charter, Memorandum of Association (MOA) and Articles of Association (AOA) define company's scope of work and its internal management. Drafting of these documents is one of the most critical steps in Private Limited Company registration process.

Memorandum and Articles are supreme legal documents forming the company's constitution. They are indispensable, and the foundation of a company stands on it. Therefore, drafting them requires utmost precision and clarity. Let us look into the meaning and importance of articles of association and memorandum of association.

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<sup>1</sup> Author is a student in India.

## **II. WHAT IS MOA AND AOA?**

Memorandum of Association (MOA) is a document that contains all the fundamental data which are required for the company incorporation. Articles of Association (AOA) is a document containing all the rules and regulations that govern the company.

The step of Memorandum of Association (MOA) and Articles of Association (AOA) comes in when you wish to take your business as a separate entity and register it as a private or public limited or if you are incorporating it.

### **(A) Memorandum of Association**

The MOA is considered as the supreme document of the Company. The MOA has to be drafted very carefully as the AOA also has to comply with MOA. Moreover, the Company cannot go against anything that is mentioned in the MOA. The Memorandum of Association (MOA) has the following information in it:

As per the Companies Act, 2013, a memorandum covers the following essentials;

#### **A. Name Clause**

- Is usually written in the opening paragraph of the article.
- States the name under which the company functions.
- States whether the company is a private limited or a public limited.

Now, there are certain key points to keep in mind while choosing the name of the company.

They are;

- Having a unique name and not identical to an existing company.
- Not having any offensive words, connotations, or “sensitive” expressions that may offend any cultural or religious community.
- Not indicating a connection with the government or local authorities unless you have a permission to do so.

#### **B. Situation clause**

This clause mentions the State in which a company has its registered office. If the future demands changing of registered office address, then the same must be updated in it.

#### **C. Object Clause**

This clause defines the purpose for company formation. This is usually not altered or changed. Hence drafting of this clause is very crucial and should be done with precision and expertise.

The company cannot carry on any activity that is not part of object clause of MOA. Such activities are called Ultra Virus (beyond powers) and cannot be ratified even by members.

#### D. Liability clause

This clause states the liability of members of the company. It can be limited either by shares or guarantee. This clause is omitted in case of an unlimited liability.

#### E. Capital Clause

This clause specifies the maximum amount of capital a company can raise along with its distribution into shares. The company can only secure a specified capital amount mentioned in this clause. Any special rights or privileges are given to shareholders are mentioned here.

#### F. Subscription clause

This clause has the names, addresses and the details of its first subscribers. A private limited company needs at least two members. Public limited companies will have a minimum of seven members. It is mandatory for these subscribers to take at least one share.

### **(B) Articles of association**

The Articles of Association (AOA) is to draft the rules and regulations that the company has to follow and the layout of the internal management of the Company.

Moreover, AOA should be drafted in such a way that it should not violate anything that is mentioned in the MOA. The AOA sets the structure under which the Company is to be administered. The following are the points that are to be described in the AOA:

Contents of Articles of Association:

#### A. Details regarding the shares of a company

- Classes and valuation of shares.
- Transfer, conversion, Lien, and forfeiture of shares.
- Rights attached to the shares and rules about the alteration of capital.
- Rules regarding the minimum subscription and conversion of fully paid shares into stock.

#### B. Details regarding directors' rights, duties, and their removal

- Director's appointment, powers, and duties. Borrowing rights of the Board of Directors and the procedure to remove them.

#### C. Details regarding holding and conducting meetings

- Conducting Meetings, maintaining minutes, and sending out notices. It also states rules regarding voting rights and proxy that includes quorum required with the percentage of votes with directors. It mentions the accounts & audit, and appointment and remuneration of auditors.

#### D. Process and rules regarding winding up of the company

It is possible to make alterations in the articles if that benefits the company. But that should not be in contradiction with any third-party contracts. This alteration is done by passing a special resolution by filing a copy of it with the Registrar, within 30 days of its passing. Such alteration should not, in any way, increase the liabilities of its existing members.

### III. DIFFERENCE BETWEEN MOA AND AOA

	<b>MoA</b>	<b>AoA</b>
1.	Defines the constitution of a company.	A set of rule and regulations governing the company's working.
2.	Defines the objectives, powers and constraints of the organization.	Describe powers, duties, rights and liabilities of individuals associated with the organization.
3.	Six clauses are mandatory.	Its drafting is as per the requirements of the organization.
4.	It is a mandatory document for all the companies.	Can opt for Table A instead of AoA in public limited company by shares.
5.	Filing at the time of company registration.	Filing at the time of company registration is optional.
6.	A supreme legal document for company and subordinate to Companies Act.	A subordinate to the MoA.

	<b>MoA</b>	<b>AoA</b>
7.	A dominant document that helps drafting AoA.	Any article in this document that contradicts to the MoA is considered null and void.
8.	Cannot be amended with retrospective effect.	Can be amended retrospectively.
9.	Section 2 (28) of the Companies Act 1956 defines it.	Section 2 (2) of the Companies Act 1956 defines it.
10.	It is subordinate to the Companies Act.	Subordinate to the Companies Act, as well as is memorandum.
11.	Defines the objectives of a company.	Defines regulations with which the company will achieve objectives defined in MOA.

#### **IV. CONCLUSION**

Memorandum of Association and Articles of Association are very important documents. They help the owners to run the company with ease and helps in streamlining the business.

Properly defined functions and rules increase efficiency and transparency. Hence, they are indispensable for any private or public limited company.

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