#### **TUMAINI UNIVERSITY DAR ES SALAAM COLLEGE**

**SCHOOL OF LAW AND JUSTICE**



**SUBJECT: LEGAL WRITING AND DRAFTING**

**PROGRAM: LLB III**

**LECTURE: MR KAYEMBA**

**TASK: GROUP ASSIGNMENT**

**GROUP NO: SIX**

| **NO** | **PARTICIPANTS** | **REGISTRATION NUMBER** |
| --- | --- | --- |
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**Question six (Group 6)**

**a) Discuss the meaning, usage and importance of a Memorandum and Articles of Association.**

**b) Draft or provide a sample of a Memorandum and Articles of Association.**

The Memorandum of Association sets out the fundamental conditions of a company upon which it is allowed to be incorporated. It defines the relationship of the company and the creditors, the outside public and also the shareholders. It provides members of the public the range in which the company business is permitted to engage. In the case of ***Ashbury Railway Carriage and Company v Riche[[1]](#footnote-0)*** It was held that where the memorandum limits a company's action the shareholders may make alterations to the company as they see fit. The memorandum is an important document for establishing a company. It serves several functions such as it provides for the basis of incorporation, it determines the areas of operations of the company, it defines the relationship of the company with outsiders and it is a charter of the company that can be altered at any time.

The purpose of having a memorandum is to enable shareholders to know how their funds are used and the risks involved in undertaking investments and also to enable the outsiders of the company to know the objectives of the company and whether the contracts[[2]](#footnote-1) they intend to make within the company objectives. In the case of ***Cotman v Brougham[[3]](#footnote-2)*** It was held that a person dealing with a company is entitled to assume that a company can do everything which it expressly authorized to do by its memorandum of association and will not need to investigate the equities between the company and its shareholders.

The promoters are required to prepare the memorandum of association in accordance with the requirements of the law in relation to the format and the contents. They can adopt any of the necessary tables found in the companies Act. Each type of company has specified documents shall be in the form of the specified regulations. The present regulations contain five Tables (A,B,C,D & E) of which table A is the prescribing model articles for private or public companies limited by shares. This is the most important table and it differs in its effect from others. Such a company does not register its articles and in cases that it does not, Table A will become the company's articles. Even if they register the articles, as long as they do not contradict Table A the provisions will be allowed[[4]](#footnote-3).

As compared to the model article in Table C (relating to a company limited by guarantee without a share capital), Table D (relating to a company not limited by guarantee and with a share capital) and Table E (relating to an unlimited company having a share capital) are merely models that cannot be adopted by reference and will not apply to fill missing parts in the registered articles. Tables C and D include model forms of memorandum depending on the type of company to which they relate including Table B (for a company limited by shares). The memorandum shall be printed in English[[5]](#footnote-4) and signed by each subscriber in the presence of at least one witness who will sign and provide information on their address and occupation[[6]](#footnote-5) if any.

The Articles of Association of a company are the rules and regulations formed for the purpose of internal management. According to Lord Justice Bowen, the memorandum of association contained the fundamental conditions upon which the company is allowed to be incorporated while articles of association were the internal regulations of the company and for the benefit of the shareholders. Lord Cains stated that the articles played a part subsidiary to the memorandum of association as they accept the memorandum as a charter of incorporation of the company and so accepting the articles proceed to define duties, rights and powers of the governing body between themselves and the company is to be carried in the mode and form in which changes in the internal regulations may be made from time to time[[7]](#footnote-6).

Articles of association of a company, as originally framed or as altered by special resolution, including so far as they apply to the company, the regulations contained in Table A in the first schedule to either of the repealed ordinances or in Table A in the section to the Companies Act[[8]](#footnote-7). The company may adopt all or part of the regulations contained in Table A to be its articles of association[[9]](#footnote-8). In case of special articles drafted by the company, they must be printed in english, divided into paragraphs, dated and signed by each subscriber[[10]](#footnote-9). The articles must be framed carefully so they do not go beyond the powers of the company. They should not violate any provisions of the companies Act which would make the provision null and void. This was observed in the case of ***Re*** ***Perneril Gold Mines Ltd case[[11]](#footnote-10)*** where the articles of association of the company provided that no petition for winding up could be presented unless the two directors consented in writing while the petitioner argued the conditions were fulfilled due to it being an issue of share capital. The court held the restrictions were invalid and the petition could be presented.The articles of association provides from many functions of the company which include: defining the duties, rights and powers of the governing body and the mode and form in which the business of the company is made.

The promoters and later members can indicate any rules they may wish to have as long as they are permissible. The expected contents in the articles of association include: a) Share

capital, rights of shareholders, and variation of the rights payments of commissions share certificates. b) Lien on shares c) Calls on shares. d) Transfer of shares e) Transmission of shares f) Forfeiture of shares g) Conversion of shares into stock h) Share warrants i) Alteration of capital j) General meetings and proceedings there at k) Voting rights of members voting and poll proxies. i)Directors their appointments, remuneration, qualifications, powers and proceedings of board of directors. m) Manager. n) Secretary. o) Dividends and reserves p) Accounts, audit and borrowing powers q) Capitalization of profits r) Winding up[[12]](#footnote-11).

**REFERENCES**

Mwakisiki, M.E. (2018). Company Law in Tanzania: A student Training Manual. Moshi:

Moshi Co-operative University.

**CASE LIST**

1. **Ashbury Railway Carriage and Company v Riche 1875 LR 7 HL 653**
2. **Cotman v Brougham [1918] AC 514**
3. **Re Perneril Gold Mines Ltd case [1898] 1 Ch. 122**

**STATUTES**

**The Companies Act, Cap. 212 [2002].**

1. 1875 LR 7 HL 653 [↑](#footnote-ref-0)
2. Mwakisiki, M.E. (2018). Company Law in Tanzania: A student Training Manual. Moshi:

   Moshi Co-operative University,p.62 [↑](#footnote-ref-1)
3. [1918] AC 514 [↑](#footnote-ref-2)
4. s.11{2) Cap.212 [↑](#footnote-ref-3)
5. S.4 Cap 212 [↑](#footnote-ref-4)
6. S.5 Cap. 212 [↑](#footnote-ref-5)
7. Mwakisiki, M.E. (2018). Company Law in Tanzania: A student Training Manual. Moshi:

   Moshi Co-operative University,p.71 [↑](#footnote-ref-6)
8. s.2(2) ibid. [↑](#footnote-ref-7)
9. S.11 ibid. [↑](#footnote-ref-8)
10. s.9(2) ibid. [↑](#footnote-ref-9)
11. [1898] 1 Ch. 122 [↑](#footnote-ref-10)
12. Mwakisiki, M.E. (2018). Company Law in Tanzania: A student Training Manual. Moshi:

    Moshi Co-operative University,p.73. [↑](#footnote-ref-11)