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A Legal Excursion into the Consequences and Effects of the Doctrine of Ultra Vires in Nigerian Corporate Governance

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ABSTRACT
There is a statutory limit to the contractual and transactional powers and capacity of a company. This is enveloped in the ultra vires doctrine conundrum that sets out the limits and scope of the powers of an incorporated company and delimits the remainder of acts executed by the company in excess of such delineated powers as beyond the limits of the powers of the company. There are a number of effects of this corporate power-delimiting rule and consequential opinionated controversies. This paper seeks to take a legal cursory look and an appraising excursion into the effects and consequences of the doctrine in Nigerian corporate law practice and examines the purports of the sustained relevance of the doctrine as an integral power-specificity construct of Nigerian companies and their Directors. It concludes that the effect of the doctrine seems to be considerably whittled down by statutory intervention and calls for a comprehensive reform of the attendant enabling legislations.

1.0 Introductory Background

Historically in company law the world over, companies were precluded from readily changing, varying, modifying or altogether adding to its object clause a new business not within the anticipated contemplation of the business promoters during the process of company incorporation[1]. They were also not allowed to do any transaction not expressly permitted in their business objects as contained in their memorandum, it is of no consequence that such acts are incidental or closely associated to the ones in which they are so empowered to execute and undertake, so far as they are expressly stated in the business objects as those the companies have inherent powers to carry, they stood statutorily outside the powers of the company. But in recent times, these prohibitive and restrictive lines seem to be disappearing in Nigerian corporate governance at the advent of statutory reforms like the provisions of the Nigerian Companies and Allied Matters' Act, CAMA.

This made the *ultra vires* doctrine which otherwise prevents companies from exceeding the limits of their powers in the exercise of their statutory duties and the company agents from exceeding their authority on transactions the company is not empowered or authorised to undertake to appear to be losing its grip, relevance and effectiveness in the scheme of regulatory checks and balances in corporate governance, this poses a severe problem as nothing would seem to be *ultra vires* the company or its agents (Directors or officers) any longer, so far the company is empowered by law to simply obtain such powers by modifying its object clause which will in turn enable the company's agents to authorise such powers conferred by the company's newly reviewed capacity as entrenched in its altered object clause.

The concept of *ultra vires* which literarily means acting beyond legal capacity, positing that a company which becomes a legal personality by virtue of its incorporation cannot carry on business beyond the object contained in its Memorandum of Association or any other enactments for the time being in force in Nigeria, which was introduced in a bid to protect the interests of the members and creditors of the company will therefore be seen to be rendered ineffective so long as the law empowers the company to simply amend its object clause in order to accommodate the extended powers.

In the opposing vein, it also however became apparent that the strict application of the principles of the *ultra vires* doctrine had also occasioned more hardship than good to innocent third parties who deal with the companies without sufficient due diligence and unwary investors on one hand and it is capable of reducing the company's powers and capacity for growth and development by limiting it to its object clause and nothing more without allowing it to undertake businesses that are closely related to its business objects.

[1] Gower, L.C.B, *Principles of modern Company Law*, 4th ed., (London Stevens & Sons, 1979)

At about the turn of the last century, courts began to recognize the unfairness of the strict application of the *ultra vires* doctrine, thus, subsequent statutes and decided cases greatly attempted to remedy this ill, thereby giving greater concession to the innocent parties dealing with the company. But the persistent application of the doctrine of constructive notice made the harsh effect of the doctrine still evident and the efforts of the court made birthed very little impact, if at any all.

In the same vein, the statutory twist introduced by subsection (3) of section 39 of CAMA 2004 that makes valid any act or transfer of property undertaken by a company even though not executed in furtherance of the powers and objects of the company remains another challenge that seems to suggest the irrelevance of the *ultra vires* doctrine. The section expressly provides:

"*Notwithstanding the provisions of subsection (1) of this section, no act of a company and no conveyance or transfer of property to or by a company shall be invalid by reason of the fact that such act, conveyance or transfer was not done or made for the furtherance of any of the authorised business of the company or that the company was otherwise exceeding its objects or powers.*"

The introduction of the provisions of subsection three as above, into the Nigerian companies' legislation seems to have altered to a great extent the application of the *ultra vires* doctrine in Nigeria with a view to establishing its current place in limiting companies' powers and exploring the level of its continuous usefulness in corporate governance in Nigeria. This is therefore considered in this paper with a view to determining whether or not the doctrine was effective or not.

3.0 The Effect of *Ultra vires* Doctrine on the Company

The *Ultra vires* doctrine was intended and invented to ensure the protection of shareholders and creditors of a company by limiting the acts of the company to its stated object as contained in the company's memorandum[1]. It is therefore not in any way out of good intention and expectation for one to think that only the company can invoke the doctrine of *ultra vires* in a bid to ensure protection of itself, and that when a court declares a contract *ultra vires* the objects of the company, the idea should be to prevent expending the capital investments of the company on activities that have not been agreed to by the shareholders. This may be part of the reality with regards to the doctrine, but this is in no way totally correct.

Application over time has revealed that the *ultra vires* doctrine does not operate only against the interest of other parties transacting with the company over an *ultra vires* subject, but also that of the company. Thus, the other party to the contract as much as the company can invoke the *ultra vires* doctrine to escape liability from a transaction when he considers it profitable to himself to so do. For example, in the *Ifeakandu's* case[2], the Supreme Court of Nigeria accepted the defendant's plea of *ultra vires* without making a judicial pronouncement on the impropriety on his part. He therefore escaped liability for his contractual obligation under the transaction without reimbursing the company for the training he had freely received at the expense of the company. It should be noted that a decision like this one would usually lead to unjust depletion of the company's assets and an unfair treatment of one party at the expense of the other. This would not have rightly been in agreement with the correct intendment of the doctrine which is to limit the powers of the company in order to prevent an unjust and lack of cautious dealing with the company by innocent contractual third parties without having a full knowledge of the company's capacity to undertake the transaction.

It is therefore the considered opinion of this writer as well as that of some other scholars[3] that were Ifeakandu's case to be decided under the Companies and Allied Matters Act, CAP C20, LFN 2004, serious thought would have been given to the consequential boomerang effect of the *ultra vires* doctrine with a view to making the rule more meaningful by holding that the third party cannot plead that the transaction was *ultra vires* in a bid to escape liability.[4] The interest of justice would have been considered.

The aim of the doctrine is therefore to save shareholders and third parties from undue exploitation by the company, by protecting the creditors of the company, in that the creditors are able to keep track of the company's

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[1] Gower, *supra.*

[2] *Continental Chemists Ltd.v. Ifeakandu* (1960) 1 All E.L.R.

[3] Orojo O, *Nigerian Law and Practice* (London, Sweet and Maxwell), 1976, pp.101-115 @ p 70.

[4] Adefi, O.M, Idubor R, '*Trends in the Concept of Ultra vires: The Nigerian Rethink*', Global Journal of Politics and Law Research Vol.3, No.3, pp.121-128, June 2015 Published by European Centre for Research Training and Development, United Kingdom (www.eajournals.org), 121 ISSN 2053-6321(Print), ISSN 2053-6593 Available Online @ <http//:www.eajournals.org.html> Accessed 15th August, 2017.

fund and shareholders and that they know their monies are applied only in pursuit of the object of the company as specified in the memorandum. This realisation has however culminated in a number of consequences. They include that the doctrine has a reverse effect as the company can declare that such contract was void on the basis that the company did not have power to enter into such contract and the third party will be left without any remedy or further protection and Companies drafted very broad, clumsy and incoherent objects in its memorandum and parties contracting with the company had trouble knowing what the exact objects of the company were in that it covered almost every business, profit-making venture and the limitations of such business objects.[1]

3.1 Current position of acts carried out by the company in light of the *ultra vires* doctrine

Under the modern trend of company law practice, it is important to note that contracts between a third party and a company will not be void solely for reasons that the contract is *ultra vires* the company, on the other hand, such contract will be binding on and enforceable between the parties[2]. However, on an internal level as part of the corporate governance and boardroom regulation of the company, the doctrine is rendered applicable when directors acting outside the object of the company act unlawfully and can therefore be held liable for any loss incurred by the act or that of the other directors by the shareholders and creditors.

3.2 Rights of the Other Party under the *Ultra vires* Doctrine

It is pertinent to note that the *ultra vires* transaction cannot vest rights in the transferee or divest the transferor of its rights. The question therefore arises as to whether the third party has any rights and remedies on an *ultra vires* transaction in which purported transfer of property are made. As for contracts that are executory. It is a simple matter as they cannot be enforced but the problem arises where the contract had been fully executed by the unwary party. The decisions handed down by the courts would seem to establish the following principles.

First, if money is lent to a company on an *ultra vires* borrowing and the company uses it or part of it to pay off legitimate indebtedness the lender is entitled to equity to rank as creditor to the extent which the money has been so applied[3]. In other words, he is subrogated to the right of the legitimate creditors who have been paid off and subject to them.

Secondly, the lender in an *ultra vires* loan transaction has the right at common law and in equity to trace his money since the money has always been his own as the company cannot be a party to an *ultra vires* act,[4] even if the money is used to purchase a particular asset, he is entitled to recover the property purchased.[5]

Thirdly, the third party may have a personal claim against the Directors or other agents of the company for restitution. It is also possible that a lender can sue in deceit where the authority is wilfully misstated or on a breach of implied warrantee of authority. The problem here is that he will be confronted with the doctrine of constructive notice of the memorandum of association. [6]It seems however that the Directors will only be liable if the misrepresentation is that of fact rather than law.

The above stated are therefore the judicial attempts to mitigate the harshness of the *ultra vires* doctrine by making remedies available to the third party to recover his property.[7]

3.3 The Doctrine of Constructive Notice and its emergence under the Nigerian Company Law

A contract *ultra vires* a company is void and it has been said that the *ultra vires* contract cannot become *intra vires* by reason of estoppels, lapse of time, ratification, acquiescence, or delay**.**[8] Persons dealing with the company, even if they do not have actual notice of the company's powers because they have not inspected the memorandum, have constructive notice of the powers, i.e. they are rightly deemed and presumed in law to know them, because the memorandum, like most of the documents registered with the Registrar of companies is open

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[1] Dharmaratne K, '*The development of the ultra vires doctrine in company law – case study analysis*' <http//:www.cgblaw.co.za/articles.html Accessed 15th August, 2017.
[2] Orojo, *supra.*
[3] Orojo, *supra*.
[4]*Sinclair v. Brougham* (1914) AL. 398.
[5] *Ibid.*
[6]*Chery v. Colonial Bank of Australia* (1869) L.R. 3 p. C. 24 24 (1875) L.R.7 H.L.869 at p.893.
[7] *Ibid.*
[8] 1875) L.R.7 H.L.869 at p.893.

to public inspection and is presumed to have been inspected or assumed to be inspected by anyone desirous of dealing with the company.

Accordingly, if they make a contract which is to their knowledge, actual or constructive, *ultra vires* the company, and the company takes the point, they cannot enforce it[1]. If they have supplied goods or performed services under such a contract, they cannot obtain payment, and if they have lent money, the general rule is that they cannot recover it. This is largely because the whole essence of registering a company is to limit its powers to that which is stated in its memorandum, limit its liability to the capacity of the shares taken by the investors and create a distinct legal personality for the company, beyond that of its statutory members, whilst protecting the members and the diligent creditors alike, thus, to allow the very thing for which the company was created to disallow would be tantamount to defeating the entire reasons for incorporation.

In any case, money or other property which can be traced into any particular asset of the company or the proceeds of sale of that asset can be claimed, because the company is deemed to hold it as a trustee for the person from whom it was obtained to share in the distribution of surplus assets after the creditors are entitled to prove and winding costs have been provided for.

3.4 Rights of the Company under *Ultra vires* contracts

In cases of *ultra vires* contracts, a company can lawfully recover its property which is still in the hands of a third party. The company also claims against the directors for breach of trust[2]. But a company cannot recover its money or other property which it has spent or disposed of for an *ultra vires* purpose. But a director, who parts with the company's money or property for an *ultra vires* purpose will be liable to the company for the loss it has sustained, even if he acted in good faith, because the company itself cannot legally authorize him to do an *ultra vires* act. Accordingly, where an *ultra vires* issue of share has been made, and the company becomes solvent, the subscribers are entitled to recover their money[3].

The question that arises then is that where an act is clearly outside the legal capacity of a company and the director does same; can the company query such act thereafter after it had initially allowed it?

Directors are held liable for breach of their fiduciary duty only with regards to an *ultra vires* act. This breach can be used as a ground to void the contract. It is however important to include that the erring director could escape liability for entering into an *ultra vires* act if either the company was passive or the shareholders decided to ratify the act. Thus it can be argued that the object itself does not determine the capacity of the company but can be seen as imposing a duty on a director to protect the interest of internal parties within the company.[4]

3.5 Conflicting positions on the *ultra vires* doctrine

It is clear from the afore-mentioned that the judicial attitude to the application of the *ultra vires* doctrine and the attempt to evade and altogether circumvent same had been inconsistent. It has been shown also that with regards to the doctrine, it was primarily designed to protect the company against itself or rather against its own organs, so as to safeguard the interest of its members and creditors[5]. But then, the attendant inconsistent reaction to the company's attempt at evading the consequences of the doctrine's application now appear to have reversed this prime objective of the doctrine as creditors' and shareholders' interest are now at a peril and in serious jeopardy, hence the clamour for reformation of the doctrine or a total abrogation of same by various scholars. Pennington in support of the total abrogation of the doctrine wrote as follows:

"A more speedy way of achieving justice would be to abolish the ultra vires rule altogether as a ground for invalidating contracts and disposing of property. It would then operate only within the Company, as between Directors and shareholders, by enabling shareholders to restrain Directors from entering into proposed ultra vires contracts, and by enabling the Company to recover damages from Directors for losses sustained as a result of ultra vires acts already carried out."[6]

Other scholars, while appealing that the doctrine be retained though reformed, also appealed that the doctrine of constructive notice be removed because of the hardship and injustice it wrought on innocent third parties. Gower disagrees with this abrogation perspective, he supports that the rule be open to such reforms like alteration of objects and placing some statutory restrictions on ultra vires transactions[7]. He opines that the extent to which the

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[1] *Cotman v Brougham* [1918] A.C. 514.

[2] Mayson S.W, French D and Ryan C, (1998) *Company Law*, 15th ed, Sussex, Style Publishing Ltd, p. 241-243.

[3] Gower, *supra.*

[4] Orojo, *supra*.

[5] Gower, *supra.*

[6]Pennington's *Company Law* (4th edn., 1979) at p.108.

[7] Gower, *supra.*

ultra vires rule would amount to a practical restraint would largely depend to some extent on the ease with which a company can amend its memorandum and articles and in particular, its object clause, whilst stating that making it easier to alter company objects or other provisions in the memorandum does nothing to protect third parties or the company unless steps are taken before an otherwise *ultra vires* transaction is entered into.

Part of the suggested reforms would then be seen as relaxing the initial rigidity of the memorandum which subjected the alteration of company objects in the United Kingdom in all cases to the consent of the court, but later allowed by a special resolution[1]. This capacity to alter the memorandum and articles would thus appear to have sufficiently reduced if not completely obliterating the effectiveness of the *ultra vires* doctrine.

4.0 Examining the *ultra vires* doctrine in Nigeria under the Companies and Allied Matters Act, CAP C20, LFN 2004

Section 39 (1) of CAMA provides that a company shall not carry on any business not authorised by its memorandum and shall not exceed the powers conferred upon it by its memorandum or this Act. If this was all that the Act provided for, there would have been no need to undertake this research and attempt to answer the research questions set out in this study. However, the twist introduced by subsection (3) of section 39 of CAMA makes all the difference and sets the stone for the rational enquiry to test the continued effectiveness of the *ultra vires* doctrine. Section 39(3) CAMA provides as follows:

"*Notwithstanding the provisions of subsection (1) of this section, no act of a company and no conveyance or transfer of property to or by a company shall be invalid by reason of the fact that such act, conveyance or transfer was not done or made for the furtherance of any of the authorised business of the company or that the company was otherwise exceeding its objects or powers.*"

The introduction of the provisions of subsection three as above, into our companies' legislation altered to a great extent the application of the *ultra vires* doctrine in Nigeria. The current state of the doctrine in Nigeria with relation to the provision cited above will thus be considered.

In Nigeria, like many other jurisdictions, the doctrine had been severely criticised and was recommended for complete abrogation on the basis that it had outlived its usefulness. However, as an alternative to its total eradication, reforms were introduced to remove the harsh operation of the *ultra vires* doctrine through legislative and statutory reforms. Part of the reforms is what culminated in the enactment and inclusion of this subsection that seems to exclude the doctrine in the operation of property transfer even when executed to prosecute *ultra vires* transactions. It still remains to be found to what extent the Companies and Allied Matters Act had affected the *ultra vires* rule? This is even more controversial and interesting considering the fact that the Companies and Allied Matters' Act allows for the alteration of the memorandum and articles of association of a company, including its object clause. This in itself makes a complete mockery of the doctrine as the company which is statutorily forbidden from exceeding its powers appear to be clandestinely given the power to ratify the acts done by powers it was not given by the Act and given the power to extend the powers to other acts it was previously not given power over.

However, since an incorporated company is a creation of statute and therefore derives its capacity and powers from the statute. Subject to sections 27 and 39 of CAMA and other provisions relating to the capacity of a company to carry on business in Nigeria, the company can do any such acts as falling within the ambit of its authorised business as stated in the object clause of the company's memorandum of association. This is because the object clause also performs a directory role of indicating the purpose for which the company was incorporated.[2]

The Companies and Allied Matters Act, despite the contrary opinions, recognises the importance of ensuring that a company only carries out its authorised business or objects. [3] What is controversial about the situation is only the fact that despite this capacity to carry out only its authorised objects, it seems to be empowered to ratify those acts it is not authorised to carry out or empowered to increase its powers via alteration of its object clause to those acts it was previously unauthorised to carry out.

4.1 Statutory Interventionist Reform by CAMA on the Application of the *Ultra Vires* Doctrine in Nigeria

CAMA has introduced some important reforms on the application of the *ultra vires* doctrine in Nigeria. These includes among other things:

(1) The abolition of constructive notice. CAMA had abolished constructive notice of registered documents of a company. Thus, the mere stamping and registration of the memorandum of association of a company does not constitute notice of the contents of the same with regards to members of the public.

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[1] Section 5, United Kingdom Companies' Act, 1948.
[2] *Ibid*.
[3] Section 39(1) of CAMA.

In furtherance of this assertion, section 68 of CAMA provides as follows:

"Except as mentioned in section 197 of this Act, regarding particulars in the register of particulars of charges, a person shall not be deemed to have knowledge of the contents of the memorandum and articles of a company or of any other particulars, documents, or the contents of documents merely because such particulars or documents are registered by the Commission or referred to in any particulars or documents so registered, or are available for inspection at an office of the company".

Thus, constructive notice can no longer be invoked in Nigeria as a correct basis to invalidate an *ultra vires* act.

(2) Section 39(1) and (2) of CAMA, rather than abolishing *ultra vires* doctrine seemed to have validated it, though limiting its operation to internal relation within the company. The introduction of S. 39(2) CAMA gave the position of the doctrine in Nigeria another twist. It provides among other things that a breach of the provisions of S. 39(1) CAMA may be asserted in any proceedings under ss.300-313 or under section 39(4) CAMA. Sections 300-313 provides for the right of minority members of the company to seek redress where the company, among other things engage in an *ultra vires* act.[1]

Similarly, section 39(4) empowers any member creditor whose debt is secured by fixed or floating charge to apply to the Federal High Court for an order of injunction to prevent the doing of such act *ultra vires* the object of the company or powers as bestowed on the Directors of the company.

(3) By virtue of Section 39(4), members of the company or holders of any debenture secured by a floating charge over the company's asset are entitled to bring an application of injunction in a bid to prohibit the breach or continued act in breach of section 39(1) CAMA. It must be added also that this is only in relation to such acts, conveyances, transactions entered into by or on behalf of the company with another party which had not been carried out, though *ultra vires*. It is equally instructive to note that this will not apply to an already completed act. [2]

(4) Where also the act, though *intra vires* the company, is *ultra vires* the Director or officer of the company carrying out such act, Section 39(2) and (4) also empowers shareholders and holders of any debenture secured by a floating charge over the company's asset to bring an application for an injunction against the erring officer.[3]

These provisions are aimed at ensuring that the capital invested in the company by its members and creditors are employed only to facilitate the authorised business of the company or object(s) of the company. This thus serves as a protection for the members and the creditors of the company named in Section 39 (4) CAMA.

CAMA further bestowed upon the members, though in the minority, the right to bring action against the company personally or in representative capacity seeking for an injunction or a declaration restraining the company for entering into any transaction which is illegal or *ultra vires*.[4] One of the reasons this present author believes is responsible for vesting such right in the minority is because the majority always carries the day and are most often times than not, the one about to embark on *ultra vires* transaction as the controlling part of the company, to which the minority is thus given the right to lawfully object to.

The climax of the reformation brought about by CAMA on the effect and application of the doctrine is as contained in Section 39(3) of CAMA. It is to the effect that acts of the company in relation to conveyance or transfer of property, where such act, conveyance or transfer was not done, or made in furtherance of any of the authorised business of the company or that the company was otherwise exceeding its objects or powers, unless objected to before same was executed, is valid. The implication of this provision is that all *ultra vires* transactions involving a company now have a legal force once it had been fully or substantially performed. None of the party can therefore hide under the guise that it is a nullity.

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[1]The capacity of the minority shareholders to seek for judicial redress when the company engages in an ultra vires act is one of the exceptions to the rule in *Foss v. Harbottle* as codified under section 299 CAMA which came as an integral form of minority protection. The exceptions recognized under common law are specifically provided under section 300(a) – (f) CAMA. In relation to the *ultra vires* doctrine, section 300(a) is the most applicable which provides for Entering into any transaction which is illegal or *ultra vires*. See likewise the cases of *Hogg v. Cramphorn, Hutton v. West Cork Railway*. It should however be noted that by section 300 & 301 CAMA, the only remedies available here are declaration and injunction only as there is absolutely no entitlement to damages; and the action would be a personal action under section 301(1) or a representative action under section 301(2) CAMA. However the court may award him costs whether his action succeeds or not. This is further supported by section 301(3) of CAMA.

[2] Section 300(a) of CAMA.

[3] *Taylor v. Num* [1985] B.C.L.C. 237

[4] Sections 300-312 of CAMA.

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4.2 Legal Position on the Possible Alteration of the business objects of a company

The object or business clause of a company determines the kind of business a company can be involved in. It sets out the powers and capacity of the company and bestows all the powers of a natural person of full capacity on the company. Even though the over-burdening effect of the *ultra vires* doctrine has been ameliorated by provisions of CAMA, the doctrine in Nigeria can still arguably be said not to have been totally abolished.[1] Thus, the object clause is an essential clause in the memorandum as it serves as a guide to the company and otherwise sets out its agenda and operative capacity. The foregoing leads to the fact that when a company is no longer interested in its object clause because it is not doing well in that business and intends to alter it, a lot of issues are involved.

This position can be better appreciated from the view of an investor who invested in a company because it is into car manufacturing as its business, later, the company desires to venture into the production of bombs. It can be safely submitted in this instance that the one who commits his funds into a car manufacturing company with the expectation of booming dividends and profits could not have intended to be a sudden shareholder in a bomb-manufacturing company with the possibility of high risks including security implication and the danger of the company's activities being proscribed by the government.

Similarly, where a bank lends out money based on an object clause that sets out the activities of a company, it would be unjust to surprisingly find out that the company had altered its objects to accommodate riskier ventures not within the knowledge and contemplation of the bank at the time it availed the company the loan and became one of its debenture holders or creditors. An oil company cannot be said to cater to same risks as a transportation company or a meat-production company. S. 45(2) of the Companies and Allied Matters' Act, 2004 provides for the alteration of the business objects of the company as set out in the memorandum. It provides that the business which the company is authorised to carry on or if the company is not formed for the purpose of carrying on business, the objects for which it is established may be altered or added to, in accordance with the provisions of section 46 or of Part XV of this Act. Section 46 of the Act prescribes the mode of alteration of the business objects.

4.3 Mode of Alteration of Companies' Business Objects

By virtue of Section 46(1) of CAMA 2004, a company can at a meeting of which its notice has been duly given to all members, (whether or not otherwise entitled to such notice of meeting), by special resolution alter the provisions of its memorandum with respect to the business or objects of the company, provided that if an application is made to the court in accordance with this section for the alteration to be cancelled, it shall not have effect except confirmed by the court. Those who can make an application for alteration to the court to be cancelled are holders of not less in aggregate than 15 percent of the nominal value of the share capital or 15 percent of the company's members if not limited by shares and holders of not less than 15 percent of the company's debenture holders who have not voted in favour of the alteration[2]. The procedural step to be followed to alter the business objects is as follows:

a. Board of directors' resolution proposing the alteration (in whole or in part) in the object of the company.
b. Notice in writing – 21 days is to be given to all members of the company (even when not entitled to) and debenture holders secured by floating charge – s. 46(1) & (6).
c. Passing of special resolution for alteration of object - s. 46(1)
d. Application (if any) by - s. 46(2)(a)(b)

- Shareholder(s) holding at least 15 percent in nominal value of the company's issued share capital or 15 percent of the company's members for companies not limited by shares, but limited by guarantee.
- Debenture holder(s) holding 15 percent of company's debenture entitling them to object.

Application is to be made within 28 days of passing the resolution. The court can make an order confirming the alteration or cancel it[3] - s. 46(4)

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[1] Section 38 and 39 of CAMA.
[2] Section 46(2), CAMA, CAP C20, LFN 2004.
[3] Section 46(4), CAMA, CAP C20, LFN 2004.

e. When upon application, the court confirms the resolution or otherwise within 15 days, the company is to deliver to Corporate Affairs Commission.
i. Certified True Copy of the order refusing to confirming the resolution
ii. Certified True Copy of the order confirming the resolution and a copy of altered memorandum - s. 46(7)(a)(i)(ii)
f. If no application is made, the company after 28 days elapsed within 15 days deliver to the commission a copy of resolution passed - s. 46(7)(b). Corporate Affairs Commission can do one of the two things:
1. If satisfied, demand delivery of altered memorandum
2. If not satisfied, give notice in writing of its decision to the company.

An appeal can be made to the Federal High Court by the person aggrieved within 21 days of giving the notice. Section 46(4) provides for the orders to be made by the Federal High Court upon application and they include: to cancel the alteration; confirm the alteration in whole or in part; adjourn proceedings in order that an arrangement may be made for purchase of the interests of dissenting members; and make or give directions or orders expedient for facilitating or carrying into effect any such arrangement. It is instructive to note that restriction of powers of a company in its alteration has the same procedure as alteration of its objects.

5.0 Conclusion

It is therefore concluded that the effect of the *ultra vires* doctrine appears to have been considerably whittled down by statutory intervention most especially the combined provisions of the Companies and Allied Matters' Act as the Act unwittingly allows the companies to vary and modify its business objects by following set rules, carry out incidental transactions via the omnibus clause and protect those who transact with the company on otherwise *ultra vires* transactions especially on property dealings whilst disallowing companies from evading their contractual obligations on the basis of the *ultra vires* doctrine.

6.0 Recommendations

It is hereby recommended that a comprehensive reform of the attendant enabling legislation for regulating the operations of Nigerian companies, the Companies and Allied Matters Act is desired in order to set the record straight on the controversy surrounding the *ultra vires* doctrine.

Companies should be prevented from unilaterally altering and modifying their business objects to suit their whims and caprice and precluded from evading their voluntarily entered contractual obligations on the grounds that the transactions are *ultra vires*.

Companies should make integrity and honesty the core components of their business operations and learn to live up to their corporate responsibilities whether or not the transactions emanated from ultra vires transactions or not.

Further and better research is hereby advocated to determine the proper limits of the powers of companies and their Directors in order to enhance the robust discourse on the power objects in Nigerian corporate governance.

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