

The “Doctrine of Ultra Vires” and its subsequent development in the frame work of Company law.

Introduction:

The phrase *Ultra vires* is a combination of Latin words which refers to “beyond the powers”. If an act requires legal authority and it is done with such an authority, it is characterized in law as *intra vires* literally meaning “within the powers” and if it is done without such authority, it is *ultra vires*. Acts that are *intra vires* may equivalently be termed “valid” and those that are *ultra vires* “invalid”. The *ultra vires* doctrine typically applies to a corporate body, such as a limited company, a government department or a local council so that any act done by the body, which is beyond its capacity to act will be considered void. Although a corporation is an entity recognized by the law, having a separate personality, the analogy with a real person can plainly never be completed or complete one. There are, as we have seen, some attributes which a corporation in the nature of things cannot have (race or sex), and there are some acts which it cannot perform (marry); to these natural limitations (which effects the capacity of all corporations) the law has by the doctrine of *ultra vires*, added further artificial limitations, which applies only to the corporations created by statutes.

Origin of the Doctrine.

This doctrine was first introduced in respect of statutory companies¹, such as railway etc. which grew rapidly in number significantly during the first half of nineteenth century. The companies before 1855 were usually gigantic in nature and were governed by the rules of partnership. The rules of partnership were considered sufficient to protect the investors, during early days this doctrine has no philosophical support and it was based on the view that a company after incorporation is conferred on legal personality only for the purpose of the particulars, stated in the object clause of its memorandum, and transactions not authorized specifically, expressly or by implication must be taken to have been forbidden, but this view was not followed during early days and contrary to it, the view that a company has all the powers of a natural person unless it has been taken away expressly or by necessary implication was given a huge support, the *Ultra vires* principle never formed part of common Law of many European Countries² and as a step in the direction of harmonization a partial reform of the law was introduced by the European Communities Act 1975. The fact that the company could not only be restricted from doing an *Ultra vires* act at the suit of his member but any contract entered into by the company beyond its power was void and could not be enforced and was finally settled in one of legendry case Teller vs. chichester Midhurst Rail company 1867³. In spite of the power full dissenting Judgment by the Blackburn⁴ who sought to restrict the application of the Doctrine to action brought by the member against the company through injunction. The theories behind the application of *Ultra vires* rule as regarded registered companies were laid down by the House of Lords in Ashbury Railway Carriage & Iron co v Riche 1875⁵. The *ultra vires* act or transaction is different from an

¹ Companies formed by the Special Act of Parliament.

² Specially, German Democratic Republic, Poland, Czechoslovakia, Hungary, Bulgaria, and Romania

³ The Brighton Railway”) was a railway company in the United Kingdom from 1846 to 1922. ... inland towns/cities of Chichester , Horsham , East ...

⁴ Kari Boto née Blackburn (30 March 1954 – 27 June 2007) was a BBC reporter and ... response to the coroner 's judgment, describing Blackburn

⁵ Ashbury Railway Carriage and Iron Co Ltd v Riche (1875) LR 7 HL 653 is a UK company law.

illegal act or transaction, although both are void, an act of the company which is beyond its objects clause is *ultra vires* and therefore is void, even if it is legal, Similarly an illegal act will be void even if it falls within the object clause, unfortunately the doctrine of *ultra vires* has often been used in connection with illegal and forbidden acts. It should be born in mind that there are some cases which are differently decided keeping in view the doctrine of *ultra vires* in its sections 35⁶.

In the context of ultra vires doctrine there was a case, which can be regarded as the proof or evidence of its application. In the case of Ashbury Railway and Iron Co- v Rich it was described that,

“a company incorporated under the companies act has power to do only those things which are authorized by the memorandum of association. Anything not so authorized, expressly or by implication, is ultra Vires”.⁷

The above mentioned case laid down a precedent that a company or its directors or even its shareholders cannot ratify or made effective to the act which has been done beyond the scope of an object Clause mentioned in memorandum of Association at any cost. Further it was also urged that the act which is beyond the objects clause cannot be validated by the subsequent agreement. However this doctrine was made much clearer in the case of A.G. vs great Eastern Railway Co⁸: In this case the House of lords affirmed that the doctrine of *ultra vires* ought to be reasonable and not unreasonable understood and applied and whatever may fairly be regarded as incidental to or consequential upon those things, which the legislature has authorized, or ought not to be held by judicial construction, to be ultra Vires, it would mealy be void in allowing the company and its business which is incidental or which is ancillary to its object clause. The contract beyond the object clause of the company's is an *ultra vires* contract and cannot be enforced against the company, in the case of Re Jon Beau fore (London) Ltd in 1953. It was held that the company was not liable to claim for the aforesaid claimants because the money was taken from them for the business of veneered panels which was admittedly *ultra vires* the object of the company, the court held that the memorandum is a constructive notice to the public and therefore if an act is ultra vires, it will be void and will not be binding on the company and the outsider dealing with the company cannot take a plea that he had no knowledge of the contents of memorandum.

Scope of the Rule.

The phrase Ultra vires “should be restricted to those cases where the transaction is beyond the capacity of the company and therefore wholly void”⁹. The question whether the making of a particular contract is or is not Ultra vires of the company depends upon the terms of the

⁶ The court finds that any tribunal that has the power to rule on matters of law implicitly has the power to rule on Constitutional matters, including s. 35 aboriginal rights matters. The court canvasses arguments that aboriginal rights are somehow different from other constitutional rights, either in their complexity, state of flux, or precedential import, but rejected all such proposals as not providing a workable principled distinction between areas that are generally agreed to be within the competence of inferior tribunals (e.g. the factual determination that a person is an Indian) and those that would putatively not be within the tribunal's jurisdiction.

⁷ Ashbury Railway and Iron Co- v Rich 1875.

⁸ Abergavenny railway station (Y Fenni) is situated southeast of the town centre of ... of the Great Western Railway during the Grouping of 1923.

⁹ *Rolled Steel Products (Holdings) Ltd v British Steel Corp* [1986] 1 Ch. 246, 303, per Browne-Wilkinson L.J. (see also Slade L.J. 297). The phrase should not therefore be used to refer to situations where directors abuse or exceed their authority or where the transaction is illegal.

company's memorandum of association, which must state the company's objects¹⁰. Explaining the rule Lord Wrenbury¹¹ said:

“The purpose, I apprehend, is twofold. The first is that the intending incorporator who contemplates the investment of his capital shall know within what field it is to be put at risk. The second is that anyone who shall deal with the company shall know without reasonable doubt whether the contractual relationship into which he contemplates entering with the company is one relating to a matter within its corporate objects.”

As was stated by Browne-Wilkinson L.J. in *Rolled Steel Products (Holdings) Ltd v British Steel Corporation*¹²:

“The question whether a transaction is outside the capacity of the company depends solely upon whether, on the true construction of its memorandum of association, the transaction is capable of falling within the objects of the company.”

At common law the doctrine is not dependent on the person dealing with the company having notice of the company's lack of capacity; it operates regardless of the third party's state of knowledge as regards the contents of the company's objects clause. In a number of cases it was held that where a company exercised a power which it undoubtedly possessed but for a *purpose* which was Ultra vires, and this purpose was known to the party dealing with the company, the contract would be Ultra vires in the sense of being outside the capacity of the company and hence void¹³.

It has been repeatedly asserted that the Ultra vires doctrine must be reasonably applied, and that any contract made by a company which may fairly be regarded as incidental to or consequential upon those things which are authorized by the memorandum is not, unless expressly prohibited, to be held Ultra vires¹⁴. This depends on the circumstances of each case. Thus a trading corporation has implied power to borrow money either upon security or otherwise, to sell its property, to purchase the subject matter of its business, or to compromise claims made by or against it.

It is a breach of duty for directors to enter into an Ultra vires transaction since as fiduciaries they must keep within the limit of their powers arising from the limit on their principal's capacity¹⁵. The reform of Ultra vires so as to ensure security of transactions does not require that

¹⁰ Companies Act 1985 s.2(1)(c). It has been said that a wider construction ought to be given to the memorandum of association of a commercial company than to the statute creating a company with special powers: *Att-Gen v Mersey Ry* [1907] 1 Ch. 81, 106 (reversed [1907] A.C. 415), but see *Charles Roberts & Co Ltd v British Railways Board* [1965] 1 W.L.R. 396, at 400. See para.9-028 on the current position with respect to objects clauses.

¹¹ *Cotman v Brougham* [1918] A.C. 514, 522; *Hazell v Hammersmith and Fulham LBC* [1992] 2 A.C. 1, 36-37; *Westdeutsche* [1996] A.C. 669.

¹² *Rolled Steel Products (Holdings) Ltd v British Steel Corp* [1985] Ch 246

¹³ *Re Lee, Behrens & Co* [1932] 2 Ch. 46; *Re Jon Beauforte (London) Ltd* [1953] Ch. 131. cf. Insolvency Act 1986 s.238(5); *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] A.C. 669.

¹⁴ *General Auction Estate & Monetary Co v Smith* [1891] 3 Ch. 432.

¹⁵ *Re Faure Electric Accumulator Co* (1889) 40 Ch D 141; *Ferguson v Wilson* (1866) L.R. 2 Ch. 77; *Northern Counties Securities Ltd v Jackson & Steeple Ltd* [1974] 1 W.L.R. 1133; *Bowstead and Reynolds on Agency*, 18th edn (2006), paras 8-033, 8-036, 8-038.

a director's duty to the company to act within its objects should in any way be modified. Section 171(a) provides that a director must act in accordance with the company's constitution.

The doctrine of ultra vires in uk.

Section 2(1)(c) of the united kingdom Companies Act 1985 describes that the memorandum of the company must have the object clause which states the object of the company. It also made illegal to act beyond the powers prescribed in object clause. When companies' act 2006 was passed it contains the rules regarding the capacity of the directors to bind the company where they may be acting outside their powers to the powers of the company. It also addressed the issue if someone acts ultra vires; the Section 40¹⁶ chapter 6 of Companies Act 2006 applies. It is pertinent to mention here that the exception for acts involving directors or connected persons is depicted in section 41¹⁷. These provisions, which almost completely abolish Ultra vires, have the effect that once an act has been done by a company, that act can only very rarely be challenged on the Ultra vires basis so as to upset the rights of third parties. A company which owes its corporate existence to statute has not the inherent common law powers of chartered corporations. Indeed, it has only capacity to enter into contracts authorized by the objects clause in its memorandum of association, or, in the case of companies not registered under the Companies Act 1985, by the terms of its special Act. Thus, it was held in Ashbury Railway

¹⁶ Power of directors to bind the company

(1) In favor of a person dealing with a company in good faith, the power of the directors to bind the company, or authorize others to do so, is deemed to be free of any limitation under the company's constitution.

(2) For this purpose—

(a) a person "deals with" a company if he is a party to any transaction or other act to which the company is a party,

(b) a person dealing with a company—

(i) is not bound to enquire as to any limitation on the powers of the directors to bind the company or authorize others to do so,

(ii) is presumed to have acted in good faith unless the contrary is proved, and

(iii) is not to be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the company's constitution.

¹⁷ 41 Constitutional limitations: transactions involving directors or their associates

(1) This section applies to a transaction if or to the extent that its validity depends on section 40 (power of directors deemed to be free of limitations under company's constitution in favour of person dealing with company in good faith). Nothing in this section shall be read as excluding the operation of any other enactment or rule of law by virtue of which the transaction may be called in question or any liability to the company may arise.

(2) Where—

(a) a company enters into such a transaction, and

(b) the parties to the transaction include—

(i) a director of the company or of its holding company, or

(ii) a person connected with any such director,

the transaction is voidable at the instance of the company.

(3) Whether or not it is avoided, any such party to the transaction as is mentioned in subsection (2)(b)(i) or (ii), and any director of the company who authorized the transaction, is liable—

(a) to account to the company for any gain he has made directly or indirectly by the transaction, and

(b) to indemnify the company for any loss or damage resulting from the transaction.

(4) The transaction ceases to be voidable if—

(a) restitution of any money or other asset which was the subject matter of the transaction is no longer possible, or

(b) the company is indemnified for any loss or damage resulting from the transaction, or

(c) rights acquired bona fide for value and without actual notice of the directors' exceeding their powers by a person who is not party to the transaction would be affected by the avoidance, or

(d) the transaction is affirmed by the company.

(5) A person other than a director of the company is not liable under subsection (3) if he shows that at the time the transaction was entered into he did not know that the directors were exceeding their powers.

(6) Nothing in the preceding provisions of this section affects the rights of any party to the transaction not within subsection (2)(b)(i) or (ii).

But the court may, on the application of the company or any such party, make an order affirming, severing or setting aside the transaction on such terms as appear to the court to be just.

(7) In this section—

(a) "transaction" includes any act; and

(b) the reference to a person connected with a director has the same meaning as in Part 10 (company directors).

Carriage and Iron Co Ltd v Riche¹⁸ that any contract outside the scope of the objects clause is Ultra vires of the company and void, even if the whole body of shareholders in the company assents to it¹⁹. A member of a company²⁰ is entitled to an injunction to restrain the company and its directors²¹ from entering into and Ultra vires contract or otherwise acting outside the powers of the company, e.g. criminally. Although ss.35-35C of the Companies Act 1985 (originally s.9(1) of the European Communities Act 1972) greatly reduced the importance of the Ultra vires doctrine, the provisions did not completely abrogate the effect of the doctrine, and there were some situations (although these were rare) where the common law doctrine had relevance. More importantly, as stated earlier, some knowledge of the common law is needed in order to understand fully the statutory modifications of the Ultra vires doctrine. Accordingly, to the Companies Act 2006²² the concept of the doctrine of Ultra Vires has fully changed.

Exceptions:

Fundamental changes were introduced to the doctrine of Ultra vires and the role of objects clauses in a company's constitution by the Companies Act 2006. Section 8 of the 2006 Act²³ provides that a company's memorandum must merely state that the subscribers to it wish to form a company under the Act, agree to become members, and in the case of a company with a share capital, to take at least one share each. Thus the memorandum no longer contains an objects clause. A company's objects (if any) will be contained in a company's articles of association. Section 31(1) of the 2006 Act provides that “[u]nless a company's articles specifically restrict the objects of the company, its objects are unrestricted”. Provisions in the memorandum of pre-2006 Act companies (which would include objects) are now treated as provisions in the company's articles other than provisions required to be in the memorandum by s.8 of the 2006 Act. Where a company amends its articles to add, remove or alter its objects, notice must be given to the registrar and the amendment is not effective until it is registered by the registrar. The company's constitution binds the company and its members “to the same extent as if there were covenants on the part of the company and of each member to observe” its provisions. Section 171 of the 2006 Act imposes on the directors a statutory duty to act in accordance with the company's constitution (which would cover any objects) and the shareholders have standing to enforce such a duty. The Ultra vires doctrine has sometimes been invoked to explain the invalidity of certain types of contracts entered into by companies, though in truth these appear to have little to do with the contractual capacity of companies. For example,

¹⁸ *Ashbury Railway Carriage & Iron Co Ltd v Riche* Also known as: *Riche v Ashbury Railway Carriage & Iron Co Ltd* House of Lords 07 June 1875, (1873-74) L.R. 9 Ex. 224, (1875) L.R. 7 H.L. 653; and see *Att-Gen v Great Eastern Ry (1880)* 5 App. Cas. 473; *Wenlock (Baroness) v River Dee Co (1885)* 10 App. Cas. 354; *L.C.C. v Att-Gen [1902]* A.C. 165; *Att-Gen v Mersey Ry [1907]* 1 Ch. 81; [1907] A.C. 415; *Re Jon Beauforte (London) Ltd [1953]* Ch. 131; *Parke v Daily News Ltd [1962]* Ch. 927.

¹⁹ “An Ultra vires agreement cannot become *intra vires* by means of estoppel, lapse of time, ratification, acquiescence, or delay”: *York Corp v Henry Leetham & Sons Ltd [1924]* 1 Ch. 557, 573; see also para.9-024

²⁰ But not, in general, a creditor: *Mills v Northern Ry of Buenos Aires Co (1870)* L.R. 5 Ch. App. 621; *Cross v Imperial Continental Gas Association [1923]* 2 Ch. 553; *Lawrence v W. Somerset Mineral Ry Co [1918]* 2 Ch. 250; contrast *Maunsell v Midland G.W. (Ireland) Ry (1863)* 1 Hem. & M. 130. See also *Charles Roberts & Co Ltd v British Railways Board [1965]* 1 W.L.R. 396 (action for declaration by business competitor of a nationalised industry); and as to relator actions, see *Att-Gen v Crayford U.D.C. [1962]* Ch. 575.

²¹ *Hoole v G.W. Ry (1867)* L.R. 3 Ch. App. 262. The right to restrain prospective Ultra vires acts is based on the contract constituted by s.33 of the Companies Act 2006. A shareholder's standing to complain of past Ultra vires acts gives rise to more complex problems: see *Smith v Croft (No.2) [1988]* Ch. 114.

²² Proposals for the reform of the Ultra vires doctrine were put forward in a DTI consultative document: *Reform of the Ultra vires Rule: A Consultative Report* (1986). These were partly implemented by ss.108-109 of the Companies Act 1989.

²³ Memorandum of association

(1) A memorandum of association is a memorandum stating that the subscribers—

(a) wish to form a company under this Act, and

(b) agree to become members of the company and, in the case of a company that is to have a share capital, to take at least one share each.

(2) The memorandum must be in the prescribed form and must be authenticated by each subscriber.

prior to the Companies Act 1981, a contract by a company to purchase its own shares was void, and a contract by a company to provide financial assistance in connection with the purchase of its own shares was illegal and unenforceable. Again, a contract entered into by a company will not be binding on it if its directors have not been acting *bona fide* in the interests of the company in making the contract and this is known to the other party to the contract. But cases of this kind do not appear to involve questions of capacity and are explicable on other grounds..

Immunities.

- i) An act which is *intra vires* by the company but outside the authority of the directors may be ratified by the shareholder in the proper form;⁹
- ii) An act which is *intra vires* the company but done in irregular manner. May be validated by the consent of the shareholder.
- iii) If the company has acquired any property through investment, which is *ultra vires*, the company right over the property shall still be secured.
- iv) While applying the doctrine of *ultra vires*, the effect which is incidental or consequential to the act shall not be invalid unless they are expressly prohibited.
- v) There are certain acts under the company law, which though not expressly stated in the memorandum, are deemed impliedly within the authority of the company and therefore they are not deemed to be *ultra vires*. For example, a business company can raise its capital by borrowing.
- vi) If an act of the company is *ultra vires* the articles of association, the company can alter its articles in order to validate the act however there is some restriction on such alteration.
- vii) The doctrine of estoppels usually precluded reliance on the defense of *ultra vires* where the transaction was fully performed by one party.
- viii) *A fortiori*, a transaction which was fully performed by both parties could not be attacked.
- ix) If the contract was fully executor, the defense of *ultra vires* might be raised by either party.
- x) If the contract was partially performed, and the performance was held to be insufficient to bring the doctrine of estoppel into play, a suit for quasi contract for recovery of benefits conferred was available.
- xi) If an agent of the corporation committed a tort within the scope of his or her employment, the corporation could not defend on the ground the act was *ultra vires*.
- xii) The doctrine is concerned with confining the activities of the company within its stated objects; it necessarily has the effect of restricting the company's powers.

Developed principles of the courts to reduce its hardship:

Power implied by the statute, Principles of implied and incidental powers, the addition of the powers conferred on it by the object clause of its memorandum, has the power to do all those acts which are.

“A” Necessary for,

“B” Incidental to

“C” Incidental to or consequential upon the exercise of these powers.

Thus the principle of implied and incidental power makes it clear that a company has not only the power on it by the object clause of its memorandum or the statute creating it, but also the powers eventual upon the powers so conferred for example a company formed for the object of carrying on a business of buying and selling coal, has capacity to purchase or hire trucks, carts and labor etc because they are necessary for the business of buying and selling coal. If a contract entered by the company which is *ultra vires* then: Action by members to restrain *ultra vires* act. The member of the company has the right to sue for the injunction to restrain the company or its directors from doing on *ultra vires* act, they may render a contract invalid “Right of other party” There are also the rights of other party to an *ultra vires* transaction; a person who has entered into an *ultra vires* contract with a company will obtain some redress in some circumstance as. The contract may be enforced, if the acts, though not specifically authorized by the memorandum, are fairly incidental to the company’s object as set out in the “Doucher “v” Gave²⁴ light and coke company”. The contracting party who cannot sue the company may sue the agent or the agents who negotiated the contract on behalf of the company (casually the directors) or for the breach of the warranty of authority. Money which is in a mixed fund with the company’s other money can be traced in equity. It has been held that the lender can sue the guarantor of an *ultra vires* loan on the contract of guarantee, if the guarantor has promised to pay, even though the contract is not enforceable. This seems to be at the root of the decision in Garrad “v” Sames²⁵ if the guarantor promise to pay is based upon the assumption that the company is legally bound to repay the *ultra vires* loan the guarantee may be void. *Exception to the rule:* the only two situations where third party rights could be called into question are where a director or connected person involved or where or where the third party is proved to have acted in bad faith. Example: strictly speaking, the doctrine of Ultra vires should apply only to objects, however the court on numerous occasions have found that the company has acted outside its powers and held the act to be Ultra vires.

Case: Hutton v. West Cork Railway Company (1883) 23 Ch D 654.

Facts: in that case the company was about to be dissolved. A resolution was passed to the effect that money would be paid by the company to its officials as compensation for loss of office and to other Directors who had never received remuneration for their work.

Decision: the court of appeal held that payment of this sort would be invalid, and one of the judges has given his famous remarks.

“the test ... is not whether it is *bona fide*, but whether, as well as being done *bona fide*²⁶”.

It must be noted that the decision related to the exercise of a power of the company; giving away money was something which the company had the power to do, but the court of appeal decided in this case that such a gift would be invalid if it were not exercised *bona fide* for the benefit of the company.

Rights of the Company where the transaction is ultra vires,

²⁴ Theft Auto 4 GTA4 is out and we gave it away to lucky winner wolfstrider! ... But, The Game Show, where can I read more about this douche.

²⁵ Ian Garrad, became interested in the success of the AC Cobra, which mounted a small-block V-8 engine in the small AC Ace.

²⁶ Lord Justice Lindley was a prolific author, widely known for his work on partnership and company law.

The company may under the principle of tracing be able to recover from the other party the property which has passed under the *ultra vires* transaction, provided it is still in his possession, Colife Brook & Co. “V” Black Burn Building Society “1884” and a borrowing beyond the power of the company (beyond the object clause of the memorandum of the company) is called *ultra vires* borrowing. *ultra vires* with regard to its consequences would be reliable that only those activities will be void which are, which are essential after the fulfillment of the object? Statedly at the main object clause of the memorandum. Incidental or consequential or reasonably within its permissible limits of business. Which the company is authorized to do by the Companies Act, in course of its business.

Role of the Directors.

Whether a contract is *Ultra vires* or not depends in principle on whether the memorandum does in fact authorize the transaction in question, and not on whether the directors think that it does. But where a memorandum states that the company can carry on any business which, in the opinion of the board of directors, can be advantageously carried on in connection with, or as ancillary to, its authorized business and the position is different. In such circumstances the *bona fide* opinion of the directors that a business can be advantageously carried on in connection with, or as ancillary to, the company's principal business will suffice to render the former business *intra vires*. The memorandum of a company may contain a statement that the powers of the company, or a particular power, must be exercised for “purposes of the company”. Normally the court will construe this as being a limitation on the powers of the directors and *not* as a “condition limiting the company's corporate capacity”.

Independent object clause.

Although the tendency of inserting an independent object clause has been criticized by the House of Lords in the following case, but the device was held to be valid and sufficient to exclude the “main object rule”, of constructions. “*Cotman V Brogham*” 1918 A.C 514. The court held the underwriting was not *ultra vires*.

“Bell House Ltd “v” City wall properties Ltd”.

The court held that, if there is such a close and the directors decided to carry on a business which can be carried on abundantly in connection with or ancillary to the main business will be “*Intra vires* and not “*Ultra vires*” even it has no relation with the main business of the company. The acceptance of such clause may be taken to mean the death of *ultra vires* doctrine because, a clause of this kind does not state any object but leave the object to be determined by the *bona fide* opinion of the board of directors.

Conclusion:

Under the common law if an act of the company was not authorized by the object clause in the memorandum it was *Ultra vires*. In United Kingdom the Companies Act 2006 sections 31²⁷ and

²⁷ 31 Statement of company's objects.

(1) Unless a company's articles specifically restrict the objects of the company, its objects are unrestricted.

(2) Where a company amends its articles so as to add, remove or alter a statement of the company's objects—

(a) it must give notice to the registrar,

(b) on receipt of the notice, the registrar shall register it, and

(c) the amendment is not effective until entry of that notice on the register.

(3) Any such amendment does not affect any rights or obligations of the company or render defective any legal proceedings by or against it.

(4) In the case of a company that is a charity, the provisions of this section have effect subject to—

(a) in England and Wales, section 64 of the Charities Act 1993 (c. 10);

(b) in Northern Ireland, Article 9 of the Charities (Northern Ireland) Order 1987 (S.I. 1987/2048 (N.I. 19)).

39²⁸ greatly reduced the applicability of *ultra vires* in corporate law. The UK Companies Act 2006 imperfectly abolishes the doctrine, leaving it open to; A share holder who discovers in advance that an Ultra vires action is planned and seeks an injunction. A member who alleges that there is a breach of duty by a director because he is acting Ultra vires, to raise the issue of Ultra vires, where upon the old case law may become relevant. Several modern developments relating to corporate formation have limited the probability that ultra vires acts will occur. Except in the case of non-profit corporations (including municipal corporations), this legal doctrine is obsolescent; within recent years, almost all business corporations are chartered to allow them to transact any lawful business. The Model Business Corporation Act of the United States describes that:

"The validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act."

The doctrine still has some life among non-profit corporations or state-created corporate bodies established for a specific public purpose, like universities or charities. According to American laws, the concept of *ultra vires* can still arise in the following kinds of activities in some states:

- i) Charitable or political contributions
- ii) Guaranty of indebtedness of another
- iii) Loans to officers or directors
- iv) Pensions, bonuses, stock option plans, job severance payments, and other fringe benefits
- v) The power to acquire shares of other corporations
- vi) The power to enter into a partnership

So we can conclude that the company laws on ultra vires has changed the company's actions, with certain provisions of the Companies Act 2006 coming into force on 1 October 2009. Prior to this date companies were required by company law to have a Memorandum of Association, however, newly formed companies still required to have a Memorandum of Association for registration purposes but it will not form part of their constitution, and will not contain an objects clause. Company law now states that a company may have unrestricted objects. This means a company is free to do business in any area they chose, and can diversify away from its original business. The principle of constructive notice does not apply and therefore, contracts made by a company with outsiders are enforceable. If a company formed after 1 October 2009 wishes to restrict its objects, it can do so by a special resolution to alter the company's articles of association. Legal advice from a commercial lawyer should be obtained to ensure any special resolution is made in accordance with the new rules. The Memorandum of Association of a company that existed before 1 October 2009 will be incorporated into its Articles of Association, and therefore, the objects clause will still be binding on the company. The company, if they wish to remove it, must remove the restrictive provisions from the Memorandum of Association by passing a special resolution. The company also has the option to adopt a new set of articles that

(5)In the case of a company that is entered in the Scottish Charity Register, the provisions of this section have effect subject to the provisions of the Charities and Trustee Investment (Scotland) Act 2005 (asp 10).

²⁸ A company's capacity

(1)The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything in the company's constitution.

(2)This section has effect subject to section 42 (companies that are charities).

do not contain the restrictive provisions. Company and commercial solicitors can advise on these restrictive provisions.

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