THE DOCTRINE OF ULTRA VIRES

A COMPARATIVE STUDY OF THE (LAW)

POSITION IN MALAYSIA AND THE UNITED KINGDOM

BY

HAMIDAH BTE MOHD. AKIB

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Signature of Author :

Certified by : .....

(MR. U.K. MEHONI)

SUPERVISOR

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PREFACE

Ultra Vires in Company law simply means an act beyond the power of a company. The doctrine applies because of the statutory requirement for the specification of the objects of the company in the Memorandum. A company having specified its object is required by the doctrine to keep its activities within the specify object. As a result of the doctrine, complication has arise between acts of the Company and those acts of its "organ" i.e. the Directors.

The object of this paper is to provide a comparative study of the doctrine of ultra vires in Malaysia and the United Kingdom. The paper is not intended to provide a Comprehensive study of all the topics within its title, on the contrary I have been deliberately selective, concentrating on an extended discussion of the genesis, development and present ambit of the ultra vires rule and how it affects our Companies law to a certain extend.

In the preparation of this paper I have received the most valuable help and guidance from my project Supervisor, Mr. U.K. Menon and I am deeply indebted to him. And I also wish to express a special note of thanks to my colleaques for their assistance and advice in approaching the subject matter of this paper. But for the views expressed and for the errors and omissions I alone remain responsible.
Lastly, due to the difficulty in obtaining the primary source substancial reference has been made to Gower, L.C.B., Modern Company Law, 4th. Edition and Awther Singh, Company Law of Singapore and Malaysia, Volume 2.

Hamidah Mohd. Akib
ITM, Shah Alam.

CONTENTS

CHAPTER I

THE DOCTRINE OF ULTRA-VIRES
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INTRODUCTION

One consequence of the artificial nature of a company as a legal person is that inevitably it can act only through the agency of a natural persons. Another consequence is that a company incorporated by or under a statute can pursue only those objects which are expressly or implicitly conferred upon it, implied powers being restricted to those which are reasonably incidental to the accomplishment of its authorised objects.[1] The impact of these upon the outside world involves a consideration of the ultra-vires doctrine. As a result of complexity and confusion, arises from the multiplicity of the interests involved in the operation of a corporation, it may be useful to set these out[2].

Firstly the company itself is a separate legal entity.[3] The essential feature of separationess is despite appearance even the "one-man company" is different in law from that one man e.g. the Board of Directors is not the company and even the one and only surviving shareholder of a company is not the company. The company is a separate entity. Secondly, the Directors of a company appear to be agents, trustees, employees or even owners but these are only different ways of looking at that complex of rights, duties and responsibilities and liabilities which we label Directors: Directors are not company. Thirdly, the shareholders in one sense own the company, and in a partnership they would all have the right to manage the business, yet their rights are restricted to voting at meetings, receipt of dividends if declared and the receipt of information about the state of the company and their liability is usually restricted to the paying up of the amount unpaid (if any) on their shares. Finally an interest of a different nature is that of the class of creditors whose interest

are in conflict with the others especially when a company is in financial trouble. Thus when discussing the capacities of companies and the ultra-vires doctrine, we will find that the case law reflects these diverse interests.

A. THE ULTRA-VIRES DOCTRINE

The Memorandum of Association and the Article of Association form two of the most important documents in the Constitution of a company[4]. The Articles together with the Memorandum must be registered with the Registrar on the formation of a company. The doctrine of ultra vires applies because of the requirement for the specification of the objects of the Company in the Memorandum. A company having specified its objects is required by the doctrine of ultra vires to keep its activities within the specify objects. Thus, when an act is performed or a transaction carried out which though legal in itself, is not authorised by the objects clause in the memorandum of association, it is said to be ultra vires (i.e. - beyond the power of) the company.

The ambit of the doctrine is very wide. It not only applies to company law but also to administrative law. In administrative law, the doctrine simply means "excess of power, abuse of power and procedural ultra-vires[5]. The object of administrative law is to provide a control over the administration by an outside agency strong enough to prevent injustice to the individual. Whether or not an authority has exceeded its powers depend upon the Court's interpretation of the Acts of Parliament to restrict the powers of the states official. While in company law its purpose is 2 fold. First to protect the investor in the company so that they might know the objects for which their money is to be employed: and secondly to protect creditors of the company by ensuring that its funds, to which alone they could look for payment in the case of a limited company, were not dissipated in unouthorised activities[6].