

**The Doctrine of Ultra Viras:
Its Reform Under Section 20 of
The Malaysian Companies Act 1965**

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CHAPTER V

RELATIONSHIP BETWEEN OBJECTS AND POWERS IN THE MEMORANDUM OF ASSOCIATION

A.	What is Memorandum of Association	37
B.	Implied Powers	39
C.	Express Powers	41
D.	Evasion of Ultra Vires Doctrine:	
	1. Multifarious object clauses	43
	2. Fusing objects with powers	44
	3. Subjectively worded object clauses	44
E.	Judicial Curbs on Evasion:	
	1. Ejusdem Generis Rule	45
	2. Substratum Rule	45
F.	Section 19 - Malaysian Companies Act 1965	46

CHAPTER VI

REFORM OF THE ULTRA VIRES DOCTRINE

A.	Reform in U.K.	50
B.	Reform in Malaysia	54
C.	Effect of Section 20	59
D.	Hankesbury Development Corpn. Ltd. v. Landmark Finance Pte. Ltd (1969)	60

CHAPTER VII

CONCLUSION	64
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CHAPTER I

INTRODUCTION

This paper is designed to discuss about the origin and course of the doctrine of ultra vires in company law. It attempts to state the law which determines the extent to which statutory provisions of the Malaysian and the United Kingdom Acts is adequate to validate transactions ultra vires the company. The scope of this paper is restricted so as to discuss, only in relation to section 20 of the Malaysian Companies Act 1965.

Generally the term "ultra vires" has been defined by A.R. Biswas¹ as "beyond the scope, power or authority of any company corporation or statutory body. It implies the absence of capacity or power of the person to do any act. It is not necessary that an act to be ultra vires must be illegal; it may or may not be."

The English Courts has used the term "ultra vires" in its strict sense as referring to those acts which are beyond the powers of the company itself to do due to being outside the objects clause in the memorandum of association of the company. This paper has nothing to do with:-

- i) acts or transactions of a company which are prohibited by the Malaysian Companies Act or any other law.

- ii) acts or transactions of a company which are within the powers or competence of the company but are beyond the powers of their directors.

It has been suggested by Phillip Pillai² that two questions arise in any ultra vires transaction:

- a) whether the transaction is in fact ultra vires on the construction of the memorandum of association and,

- b) the consequences of it being ultra vires.

This paper is not intended to deal with instances where the officers of a company have acted beyond their powers but such excess is within the competence of the company. It should be noted that such exercise of powers is termed as excess of authority rather than ultra vires. The first question is one of construction which still avails in Singapore and Malaysia and is common to questions arising in United Kingdom and Australia. The second question has undergone a radical alteration and development by the :