

A REVIEW OF COMPANY'S CONSTITUTION, CONTENT AND ITS ALTERATIONS UNDER CAMA 2020

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Abstract

The Companies and Allied Matters Act 2020 provides for documents which must be delivered to the Corporate Affairs Commission before a company can be registered in Nigeria. These documents include the Memorandum and Article of Association. The Memorandum of Association together with the Article is referred to as the Constitution, regulating its internal and external affairs. This study examined the provisions of The Companies and Allied Matters Act 2020 that regulates the content of the Memo and Article in the registration and management of companies in Nigeria. It further discussed the implications for compliance or non-compliance and subsequent procedures for alterations under the Act. Adopting the doctrinal research methodology, the study revealed that the requirements for the Memo and Article under CAMA 2020 is intended to meet the expectations of standard regulation of companies in Nigeria. However, enforcement gaps have limited the efficacy of the Memo and Article of Association in company management.

KEYWORDS: Company Constitution, Memorandum of Association, Article of Association, Content and Alterations.

Introduction

According to the law in most civilized nations, every company is mandated to have its constitution to regulate the activities of the company. To this end, the Memorandum and Article of Association are regarded as constitution of the company. However, the company's Memorandum and its Article of Association are two separate documents with different functions in the management of a company. To this end, one cannot replace or dispense with the other. As mandatory incorporation documents, the form, content and signatories to the Memo and Article of Association are regulated by CAMA. The memorandum is a primary document that aptly describes the company, clearly revealing its owners, objectives and status. Once registered, the memo becomes a public document accessible to all for inspection. Simply put, the memorandum governs the external affairs

and powers of a company. The Memorandum of Association must be signed by each subscriber of the company's shares and in the presence of at least one witness who shall attest to the signature.¹ It equally must be stamped as a deed².

On the other hand, the Article of Association governs the internal affairs of the company. Before CAMA 2004, the Article of a company can be filed separately from the memorandum because it was not mandatory for a company to file both constitutions. Nevertheless, the 2004 CAMA³ now made it compulsory for all companies to file both documents side by side.⁴ Memo and Article must now be filed together with the Corporate Affairs Commission (CAC) before registration can be granted.⁵

The Memorandum and Article of Association if well drafted are instrumental in achieving effective corporate governance compliance in every company,⁶ as they provide guidelines for conduct of the company and those acting on behalf of the company as they lay the basic framework for its governance through its life time.⁷ They were earliest in time considered on registration as public documents for which the now abandoned constructive notice rule was applicable.⁸ This constructive notice was later to be substituted by the indoor management rule pursuant to section 92 of CAMA 1990.⁹

The Memorandum of a Company and its Content

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¹ Section 27(5) CAMA 2020

² Section 27 (6) CAMA 2020

³ Section 33 CAMA, 2004

⁴ <http://www.nou.ed.ng/noun/noun-OCL/pdf2/MBA> 704 main content (lornougu). Pdf. Accessed 13 July, 2024

⁵ Section 36 CAMA 2020

⁶ S.P Dharmadhikari and P.D Kale, Study on the Inter-relation between the Corporate Governance Standards and Memorandum & Article of Association of Select Publicly Listed Companies in India, *International Journal of All Research Education and Scientific Methods*, Vol 9, Issue 7, July 2021.

⁷ Jwaalaa Suresh, Memorandum and Article of Association: Analysis of their Role in Corporate Governance as Foundation of a Company, 2022, *Int'l JL Mgmt. & Human*, Issue 6, No. 5 , p.539

⁸ N.C Ogbuanya, *Essentials of Corporate Law Practice in Nigeria*, 2010; Lagos, Novena Publishers Ltd, p. 202; A Ignatus, *Nigerian Company Law*, 1st ed., 1984, Graham Burn, Bedfordshire, p.62

⁹ Yakubu Mohammad, A Critical Appraisal on the Application of the Doctrine of Indoor Management to Memorandum & Articles of Association under CAMA 1990, *International Journal of Innovative Research in Education, Technology and Social Strategies*, Vol 8, No. 1, March 2021, p. 54: P.E. Oshio, The indoor Management Rule and Agency Principles in Nigeria *Company Law Modern Practice*, *Journal of Finance and Investment Law*, 2016, 9(1-2) p.70-87

The Memorandum of Association is a creation of statute with specific provisions on its form and content for the different types of companies recognized under the law.¹⁰ It is a significant document containing the fundamental provisions of the constitution.¹¹ For companies limited by shares, the Memorandum of Association must be as set out in table C and D or as circumstances admit.¹² The Memorandum of Association, whether for a public company, private company, company limited by guarantee or unlimited liability company, shall amongst other information disclose the name, registered office which must be in Nigeria, the authorized business or object of the company, Liability of the company (if any, and whether limited by shares or guarantee) and the type of company to be registered.¹³

Name of a Company¹⁴

The name of a company is as stated in the Memorandum of Association and must also appear in the Companies Register and Certificate of Incorporation.¹⁵ A company name to be acceptable and registered by the commission must not be Prohibited; Restricted or resembling an already registered company to prevent misleading of unsuspecting members of the public. A company's name must end with words describing its type.¹⁶ For instance, a private company which is limited by shares, it is written at the end as "Limited" or abbreviated as 'Ltd'. On the other hand, a Public Limited Company by shares, the end will be written thus: 'public limited company' or abbreviated "Plc" while company limited by guarantee is written at the end as 'Limited by Guarantee' or abbreviated 'Ltd/Gte'

Prohibited and Restricted Names

Where the name of a new company resembles or is identical to an existing company,¹⁷ or nearly resembles same as to be seen to deceive the public,¹⁸ the Commission will decline reservation and subsequent registration of such name. However, when the existing

¹⁰ See sec 21-24 CAMA 2020

¹¹ E. O. Akanki, *Essay on Company Law* (Lagos: University of Lagos, 1992) 42.

¹² Section 28 (a) CAMA 2020

¹³ Section 27(1) (a) to (f) CAMA 2020

¹⁴ Section 27(1)(a) CAMA 2020

¹⁵ Emeka Chianu, *Company Law* (Abuja: Law Lords Publications 2012) 164

¹⁶ Section 29 CAMA 2020

¹⁷ See *Niger Chemists Ltd v. Nigeria Chemist* (1996) 11 ANLR 171

¹⁸ See *Corporate Affairs Commission v. Ayedun* (2005) 18 NWLR (Pt 957) 391

company with such name is being dissolved and gives consent as required by the Commission, then the company shall be registered. While interpreting section 19 (1) of 1968 CAMA in *Nigerian Sewing Machine Manufacturing Co. Ltd v. The Registrar of Companies*¹⁹ the court noted that a name might not have deceived; but the possibility that it may do so that is relevant.²⁰

The Commission is determining whether a name is misleading or capable of misleading, considers the nature or extent of the company's activities, if the company is undesirable, offensive or contrary to public policy, or once again in the opinion of the Commission, if there is conflict with, or violation of an existing trade mark or business name that is registered in Nigeria. However, where the Commission inadvertently registers a company under a name identical with a previously registered company or nearly resembles it, and likely to deceive, the commission may direct the newly registered company to change its name within six weeks or other period of time as directed by the Commission.²¹ The company on its own, but with the approval of the Commission may change its name as provided for in sec 30 of the Act.²²

In registering a new company with the Commission, names with words such as Federal, National, Regional, State, Government, Municipal, or Chattered, or any other words that in the opinion of the commission, suggests or is calculated to suggest that it enjoys the patronage of government, government department, municipality and local government, are restricted. Other restricted names include Co-operative; 'building society' 'group' and 'Holdings'.²³ The use or inclusion of these words in company's names is not strictly prohibited; however, permission must be obtained before they are used.

Reservation of Names

Under the provision of CAMA, the name of a company to be registered can be reserved for up to a maximum of sixty (60) days pending registration and or change of a company's name.²⁴ During this company name reservation period, the commission in its opinion will

¹⁹ Suit No. FHC/L/1929/84 (Unreported)

²⁰ See *Lasisi v. Registrar of Companies* (1976) 7 SC 73

²¹ Section 30(1) CAMA

²² Section 30 (3) and (4)

²³ Section 30 (2) (d) CAMA

²⁴ Section 31(1) and (2) CAMA 2020

not register any other company in same name or in any other name that bears resemblance to the reserved name. The procedure for name reservation is now fully online on the Commission's website. The applicant is required to furnish two names in their order of preference together with the required applicant's information. The commission through its public search portal affords the applicants opportunity to run a preliminary search for a possible existing company previously registered with the commission. It is however worthy of note that the general search on the website is not conclusive that no company bearing similar or identical names exist.²⁵ The commission may withdraw an approval for name reservation where before completion of the registration, the name is discovered to be identical or nearly resembles an existing company²⁶ or where the name reservation was fraudulently, unlawfully or improperly procured.²⁷ Under CAMA 1990, upon registration, the registered name shall be engraved in a legible character on its seal; Paint or affixed with the Registration Number on the outside of every office or place in which its business is carried on, and in legible letters in a conspicuous position.

The company's name, address and registration number shall be mentioned in all business letters, notices, advertisements and other official publications. All bills of exchange, promissory notes endorsements, cheques and other moneys including goods purporting to be signed on behalf of the company must reflect the registered name.²⁸

The Registered Office of the Company

The Memorandum of Association must state the registered office which must be in Nigeria.²⁹ The registered office provides a known address of the head office, where formal document like legal processes³⁰ and other correspondence may be effectively served on the company.³¹ Where a Court process is to be served, it can be in the manner provided by the Court if any and other documents that might be served on the company, it will be sent to the head office or registered office or even by post to one or both offices.³²

²⁵ See www.caonline.org

²⁶ Sec 31(3)

²⁷ Sec 31(5)

²⁸ CAMA CAP C20 LFN, 2004 S.548(1), sec 729 is the equivalent section in CAMA 2020

²⁹ Sec 27(1) b, CAMA 2020

³⁰ Section 78, CAMA 2020

³¹ Such documents like the register of directors and secretaries, register of members, minutes books etc.

³² See the case of *Ekuma v. Silva Eagle Shipping Agencies Ltd* (1987) 4 NWLR (Pt.65) 472 CA

The Business or Object of the Company³³

The object clause of a company is the most important clause in the memorandum of association.³⁴ It states the purpose of the company formation.³⁵ Therefore the Memorandum of Association must define the object of the company, clearly stating authorised business(es) of the company.³⁶ The authorised object of the company must be legal,³⁷ otherwise, the registrar of the commission may refuse to register the company. In *Lasisi v. Registrar of Companies*³⁸ the court held that the registrar rightly refused registration on the ground that the object clause of the proposed company was *ultra vires*. The object clause must also be stated with some degree of particularity because the law does not permit a general statement such as ‘the company may transact any lawful business’³⁹ The Company’s powers are usually determined by the company’s objects. The common rule requiring the listing of a company’s object and invalidating contracts inconsistent with the listed objects in the memo was applicable in other commonwealth countries including India.⁴⁰ If the company does anything beyond its object limit clause, it will amount to exceeding its powers and acting *ultra vires*.⁴¹ Since the memorandum is a public document, the object of the company is written therein and therefore protects outsiders who want to deal with the company, assuring them of the powers and limits of the company. From the above it is clear the company’s object clause is of importance to the public and anyone who is interested in doing business with the company because it spells out the limits of the company’s powers. These powers must be in line with the authorised and lawful business of the company. The object clause of a company also protects the shareholders from unlawful and unauthorized investment by the managers of the company. At the same time, it protects third parties who wish to do business with the

³³ Section 27(1)(c) CAMA 2020

³⁴ E. O. Akanki, *Essay on Company Law* (Lagos: University of Lagos, 1992) 47

³⁵ Ehi Oshio, *Modern Company Law in Nigeria* (Benin: Lulu path Press, 1995) 46

³⁶ Section 27(1)(c) CAMA 2020

³⁷ Section 36 (1)(b) CAMA 2020

³⁸ (1976) 7 S.C. 73

³⁹ Y. H. Bhadmus, *Bhadmus on Corporate Law Practice* (Enugu: Chenglo Limited, 2009), 32

⁴⁰ Taushif Ahmad, Memorandum of Association in Company Law: A Study on Indian Judicial System, 2023, Int’l JL Mgmt. & Human, Issue 2, Vol 6 1529

⁴¹ See section 44(1) CAMA 2020

company, as the memorandum of association which is a public document reveals the extent of the company's powers.⁴² The object of the company may be altered provided the procedure under the Act is complied with.⁴³

Restrictions on the Powers of the Company

The Companies and Allied Matters Act provides for powers of the company.⁴⁴ The provision is to the effect that every company shall for the furtherance of its authorised business or object, have all the powers of a natural person. This is because the company needs power to achieve its object clause. This restriction clause is uncommon in the company's memorandum of association, except in some companies which intend to restrict these powers in certain matters.⁴⁵ The company's restriction powers can be altered just as the company object clause can be altered in accordance with the provisions of the Act.⁴⁶

Types of Company

The Memorandum of Association must state the type of company to be registered.⁴⁷ It therefore must reveal whether the company is a private,⁴⁸ public⁴⁹ or unlimited company.⁵⁰ More so, section 28 provides for the different forms of memorandum subject to section 27 of the Act. The form of a Memorandum of Association of companies limited by shares, Limited by Guarantee and Unlimited is as prescribed by the Company Regulation.⁵¹

Liability of Members

The Memorandum of Association also provides for the extent of liability of members for the different types of company.⁵² The limitation of liability of the members of a company is of utmost importance, hence, the Act made provision for it under section 47.⁵³ It is true that there is no express provision for the alteration of the liability of members and therefore

⁴² *Edokpolor and Co. Ltd v. Sem Edo Wire Industry Ltd* (1984) 7 S.C.119

⁴³ Sec 50(2) and sec 51 CAMA 2020

⁴⁴ Section 43(1) CAMA 2020

⁴⁵ Section 27(1) d CAMA 2020

⁴⁶ Sec 50(3) CAMA 2020

⁴⁷ Sec 27(1)e CAMA 2020

⁴⁸ Sec 22 CAMA 2020

⁴⁹ Sec 24

⁵⁰ Sec 25 CAMA 2020

⁵¹ See The Company Regulation 2021, Schedule 16- 22 on Sample of Memorandum of Association of different Types of Company.

⁵² Section 27(1)(f) CAMA CAP C20 LFN 2004

⁵³ Section 47(1) CAMA

it may be according to the provision in section 47⁵⁴. On the other hand, pursuant to section 49, a member will only be bound to the extent of his undertaking in writing in the event of any alteration in the memorandum or Article of association of the company⁵⁵. Therefore, no alteration in the memorandum or the article of association can compel a member to take shares than the number which he held at the date of the alteration or for him to increase his ability to contribute money. However, section 45(5)⁵⁶ is subject to this section.

The Subscription Clause

The subscription clause states the amount of authorised share capital with which the company is registered, if the company has a share capital.⁵⁷ It applies to company registered with shares; these shares are to be registered by the company. Such amount must not be less than N100, 000 in the case of a private company and N2, 000,000 in the case of a public company.⁵⁸ Therefore the clause must state the amount of shares which must be divided into fixed amount and value of each that must be stated in the memorandum. The subscribers of the memorandum shall share a total number of shares of not less than 25% of the authorized shares capital of such company. In addition, the number of shares subscribed to by each member shall be written against his name. When a subscriber holds any part or in whole of any shares subscribed by him in trust to any other, he shall disclose in the memorandum such fact and the name of the beneficiary too.

If the memorandum is for a company limited by guarantees, it shall disclose that the income and property shall not be shared among members, but applied solely towards the promotion of its objects and except as permitted by or under the Act. It equally must state the undertaking to contribute to the assets of the company in the event of its being wound up while he is a member or within one year after he ceases to be a member, for payment of the debts and liabilities of the company. The total amount under the Act shall not be less than N100, 000.⁵⁹

⁵⁴ Section 47(1) CAMA

⁵⁵ Section 49 CAMA.

⁵⁶ CAP C20 LFN 2004.

⁵⁷ Section 27(2)-(6) CAMA.

⁵⁸ Section 27(2) CAMA2020

⁵⁹ Section 26(12) CAMA 2020

The form of the memorandum according to the type of company must be as specified in the Act.⁶⁰ The constitution of the company, that is, the Memorandum and Article of Association must state the capital required and the rights attached to the shares owned by each member. Therefore, making alteration must be easier if need be.

Restrictions on the Powers of the Company

The limit of a company's powers is expressly stated in the Memorandum of Association. However, section 45(3)⁶¹ provides for any restriction on the powers of a company, and how it can be altered. The alteration of the powers of a company in the same manner the business or object clause is altered in accordance with section 46 of the Act.⁶²

Association Clause

The association clause is where the subscribers of the memorandum decide to endorse their desires to form the company, agreed to subscribe to a number of shares in the company's share capital and pay for such shares. The association clause also provides that members must state their names, address, occupation and the number of shares taken by each subscriber.⁶³ This part is actually the final part of the whole registration of a company.

Subscription of the Memorandum

The memorandum must be signed by each subscriber and must be in the presence of at least one witness who must also attest the subscriber's signature.⁶⁴ Furthermore, each subscriber must write opposite his name the number of shares taken,⁶⁵ handwritten in words and not in figures. The subscribers may all be nominees of one person who may be the sole owner of the shares or concern, while others may just be having nominal interest. In addition, a person may be subscribed by an agent.

Distribution/ Members rights to a copy of the Memorandum

⁶⁰ Section 28 CAMA. (The form of the Memorandum of Association shall be as specified in the Eighteenth Schedule of the Company Regulation 2021).

⁶¹ CAMA CAP C20 LFN 2004

⁶² Ibid.

⁶³ Y. H. Bhadrus, *Bhadrus on Corporate Law Practice* (Enugu: Chenglo Limited, 2009), 50.

⁶⁴ Section 27(5) CAMA 2020

⁶⁵ Section 27 (20 (C). CAMA 2020

A member is entitled to a copy of the Memorandum and Article of Association on request at a sum not exceeding N500 or lesser sums as prescribed by the company.⁶⁶ A company can and shall send a copy of the Memorandum or article of association if so required by any of its members. It can also send a copy of any document which alters the memorandum, but subject to payment of N500 in respect to the memorandum of the articles. Sub section 2 of same section,⁶⁷ Provides that if a company makes default in complying with this section, the company and every officer of the company who is in default shall be liable for each offence to a fine not exceeding N25.

Alteration of the Memorandum of Association⁶⁸

Section 50(1) to (5) of CAMA 2020 provides for the different alterations to the memorandum of association. These alterations includes the name of the company, the authorised business or object, registered office, restriction on the powers of the company, the share capital of the company and any other alteration in line with section 46 of same Act.

The Act provides for procedure for alteration of name, ⁶⁹ where a company inadvertently registered a company with a name that is identical with already existing company name or the name closely resembles same and likely to deceive, the company will be allowed to change name with the approval of the commission. The company will be given a period of six (6) months of its being registered under that name, to so change the name, while the company concerned will have to do the needful within six weeks from the date of the direction or such longer period as the Commission may allow.

Companies can also change their name through a special company meeting resolution but with a written approval from the commission. Failure to comply with the above procedure attracts penalty.⁷⁰

However, no approval is required if the change is substituting “public limited company” for “limited” or vice versa. In the words of the Act: “Any company may, by special

⁶⁶ Section 47(1) CAMA 2020

⁶⁷ Section 47(2) CAMA 2020

⁶⁸ Section 50 CAMA 2020

⁶⁹ Section 30 (1) CAMA 2020

⁷⁰ Section 30(2) CAMA 2020

resolution and with the approval of the Commission signified in writing, change its name”⁷¹ the name can also be changed when it is conversion and it is also by the commission approval. If it is not approved before or after the change the statute quo remains. Under section 28 of the United Kingdom Companies Act of 1985, it was held that there was no company in existence before the issuance of the company’s certificate.⁷² In that case a company changed its name, and before the certificate was issued, the company was carrying out business under the new name that have not be approved, because the change of the name will become effective when the certificate is issued. However, the director who authourised the business in question will be personally liable for any breach.

Business/Object of the Company

The business which the company is authorised to carry on may be altered⁷³ Section 51 of the Act provides for the alteration of a company business. This provision is after a special resolution from a meeting with notice to all members and any other person who is financially interested in the company. In any case, under the mode of alteration of business or object of a company provided for by the Act, the alteration will not be effective if there is a cancellation by a Court of competent jurisdiction in respect to the alteration.⁷⁴

Any alteration in a company’s memorandum or its article requires a special resolution and such resolution must be printed within 15 days from the day of the passing of such resolution, forwarded to the commission for registration.⁷⁵

Article of Association of a company

The Act makes it compulsory for all registered company to file their article of association.⁷⁶ The article may be a model article as stipulated under the Act⁷⁷ or a standard article. The article shall be contained in a single document and divided into well numbered paragraphs.⁷⁸

⁷¹ Section 30 (3) CAMA 2020

⁷² *Oshkosh B. Gosh Incorporated v. Dan Marbel Inc and Gaze* (Unreported) decided in the United Kingdom by Sir Neil Lawson on 11 Nov. 1987

⁷³ Section 50(2) CAMA 2020

⁷⁴ Sec 51 (1) – (11) CAMA 2020

⁷⁵ Sec 262(1) CAMA 2020

⁷⁶ Sec 32 (1) CAMA 2020

⁷⁷ Sec 34 CAMA 2020

⁷⁸ Sec 32(3) CAMA 2020

The article of association of a registered company regulates matters such as classes of share, their values and rights attached; Directors, their appointment, powers, duties, removal etc; Meetings and minutes, notices of meetings, quorum, voting pattern and other related matters; Accounts and Audit; Appointment and removal of secretary; Dividend and reserve; and Special provisions for winding up. The company is at liberty to include in the Article of Association any matters to be regulated by it, provided it is not in conflict with the provisions of the Memorandum of Association and CAMA 2020.

Members are entitled under the the Act to copies of memorandum and article of association, on application and payment of a fee⁷⁹. Failure on the part of the company or to supply copies of memo and article to member on request attracts penalty to the company and defaulting officers under the Company Regulations.⁸⁰

Alteration of Article of Association of a Company

The Article of Association can be altered as provided for in CAMA 2020. A special resolution is however required as well as compliance with conditions contained in the company's memorandum of association.⁸¹ Any alteration therefore, relates to the original article and enjoys same validity.⁸² We can see section 48 of the Act which read thus:

In the case of *Obikya v. Ezenwa*⁸³ it was revealed that the article of association can also be altered by other means apart from law. This means must be bona fide and must be in the interest of the company. See the case of *Alien v. Gold Reef of West Africa Ltd*⁸⁴ Where the alteration is not to sacrifice the interests of the minority to those of a majority without any reasonable prospect of advantage to the company...also a member is not at liberty to vote in such a manner as to oppress a minority holders of his or her fellow shares in the company, even if all members ordinarily is free to vote as he or she pleases.⁸⁵

⁷⁹ Sec 47(1) CAMA 2020

⁸⁰ Sec 47 (2) CAMA 2020

⁸¹ Sec 53(1) CAMA 2020

⁸² Sec 53(2) CAMA 2020

⁸³ (1964) 2 All LLR 133

⁸⁴ (1900) 1 CH 656

⁸⁵ *Side Bottom v. Kershaw* (1920) 1 CH at 162

Effect of the Memorandum and Article of Association of a Company

The Memo and Article of Association of a company aside been a public documents assessable to members on request and even outsiders who wish to transact with the company,⁸⁶ they also upon registration have the effect of a deed between the company and its members and officers on one hand, and between the members and officers themselves on the other hand.⁸⁷ Their provisions are to be strictly complied with by members and officers of the company.⁸⁸ Therefore, all monies payable by any member to the company under the Memo and Article shall be a specialty debt accruing to the company.⁸⁹

Aderemi, JCA in the case of *Ladejobi v. Odutola Holdings Ltd*⁹⁰ summarised the provision of the Act thus:

“A study of the article of association of a company leaves me in no doubt that they contain the rules and regulations by which the internal affairs of a company are governed... on the other hand the memorandum of article of association of accompany set out the objects constitution of the company. The memorandum and articles of association when registered therefore, becomes a contract between the company and its members and officers themselves...”⁹¹

It is worthy of note that where the memo and article are subsequently altered in accordance with the provisions of the Act, the new position as a result of the alteration becomes the extant contract between the parties identified under the Act. A member or an officer of the company can pursuant to sub section 4 of section 46 of the Act take an action in personal or representative capacity where other members are affected to enforce obligations under the memo and Article of Association.

Difference between the Memorandum and Article of Association

There is no doubt that the memo and article of association of a company are like two sides of a coin. Although jointly relevant in company incorporation and management, they however enjoy distinct application in the regulation of the affairs of the company. Though

⁸⁶ Sec 47, CAMA 2020

⁸⁷ Section 46(1) CAMA 2020; *Rayfield v. Hands* (1960) CH 1

⁸⁸ *Hickman v. Romney Mash Sheep Breeders* (1938) CH 708

⁸⁹ Section 46(2) CAMA 2020

⁹⁰ (2002)3 NWLR (Pt. 753)121 at 152 to 153

⁹¹ See *NB Investment W/A v. Omisore* (2006) 4 NWLR Pt 769 at 200

jointly referred to as the company's constitution, there exist some differences in their content.

Firstly, as touching the purpose of their formation, the Memorandum of Association purpose is to define the objectives of a company and the conditions for its incorporation. On the other hand, the article of association defines the rules and regulations that govern the internal management and relationship among members and officers of the company for achieving its objectives. Suffice it to say that the memorandum of association is a clear statement or presentation of the company's status and standing in dealing with outsiders, the article focuses on the democratic, fair and equitable allocation of power, roles and resources among insiders.

Furthermore, the statutory content of a memorandum of association are the six clauses specified in section 27 of the Act. The article of association can however be framed as per the discretion of the company.⁹² It is also mandatory to register the memorandum of association at the time of the company's registration with the registrar of companies. However, the article of association is not mandatory to file the document to registrar of companies.

This fact is why the memorandum of association of a company is a subsidiary of the companies Act, while the article is a subsidiary of both the memorandum and the companies Act. It is also an obligation for all companies to have memorandum. On the other hand not all companies can have article of association because a public company that is limited by shares can decide to opt out of company's article and opt to have table A as an option to article of association. In addition, the memorandum of association cannot be ratified if any acts are done beyond the scope of its objects by unanimous votes of the company's shareholders. This is because the act is considered *ultra vires* and the act is *void ab initio*. On the other hand acts that are *ultra vires* the article of association and not *ultra vires* the memorandum of association of the company can be ratified by a special resolution of the shareholders of the company.

Recommendations

⁹² The Act makes provision for the adoption of a model article by companies to which the article apply. See section 33 of CAMA 2020

For any company to be attractive to do business with a third party or the public at large, it is important not only to show evidence of incorporation with the CAC under the Company Laws, but to have a standard memorandum and article of association clearly revealing the status, powers, and the controllers of the company. The Companies and Allied Matter Act 2020 has elaborately provided a guide for these important documents, as well as procedure for their alterations where necessary. There is however an implementation gap as so much is expected of the companies in notifying the commission of their compliance with the relevant provisions of the Act.⁹³

It is therefore suggested that the Commission be more intentional in investigating compliance with the requirements of the Act in respect to the content of the memorandum and article of association. This is imperative because, many companies on the records or books of the company and the Commission are significantly different from the structure in operation.

When one holistically examines the dreaded section of the Act on *ultra vires*,⁹⁴ even though the section has been whittled down by sub section (3) thereof of the same Act, it would be ascertained that the true intention of the draftsmen is to ultimately prevent trading or transactions that are not defined and approved by the regulators. The whittling down of the *ultra vires* rule, have failed to yield results that satisfy all parties in corporate practice, because as a follow up the company is equally dreaded by investors, creditors and a third party dealing with such company. A cursory look at the dreaded section will drive home the point at hand.

Flowing from the above, where a company goes outside its powers to act or carry on business, the doctrine tends to shield it from liability and or make it suffer loss to some extent. Furthermore the constitutions of the company which is the memorandum and article of association are two separate documents which deal with all issues that bother on the external affairs and internal management of the company. Both documents should be merged as one and the same documents of the company since they both make up the

⁹³ For instance, under section 40 of CAMA 2020, the company or its agent is expected to file statement of compliance which the Commission may accept as sufficient evidence of compliance.

⁹⁴ Section 44 CAMA 2020

constitution of the company. This is to reduce the number of documents required for incorporation where the article can easily pass as an extension of the memo in modern business practice and company structure.

Conclusions

The paper identified memorandum and article of association as important incorporation documents under CAMA 2020. Both documents are often referred to as the constitution of the company clearly defining and charting the course of operation internally and externally. The paper further examined the definition, content, procedure for alteration and penalty for noncompliance with the requirements under the Act. It was discovered that there are elaborate provisions on the content and form of the memo and article under CAMA 2020. However, these provisions have not translated to an improved company management and fair business dealings. This is partly attributed to the enforcement gaps resulting from reliance on the company or its agents to furnish the Commission with information and evidence of compliance with statutory provisions.

It is therefore the position of this paper that the memo and article if properly regulated (enforced accordingly) have the capacity to address most of the challenges of internal management as well as unfavorable dealings with outsiders.

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