



Companies' power to alter articles of association under the Nigerian companies Act 2020: Matters arising

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Abstract

From the nature and legal effect of Articles of Association of a company, its alteration may implicate a breach of rights of members and the contractual obligations to its officers and third parties. In this paper, we examine the power of the company to make alteration to its Articles of Association under the relevant provisions of the Nigerian Companies Act 2020, including the legal matters that inevitably arise from the exercise of that power. We determine when alteration of Articles may result in breach of members' rights or the company's contractual obligations, and identify the attachment of liability for any breach. The paper concludes with useful hints on the best approach towards making alteration to a company's Articles of Association without occasioning any breach of rights or obligations under the Companies Act 2020.

Keywords: companies Act 2020, articles of association, alteration of articles, breach of rights, contractual obligations, liability for breach

Introduction

In Nigeria the process of incorporation of a company involves the preparation and submission to the Corporate Affairs Commission two fundamental documents which ultimately become the company's Constitution, and available to the public upon incorporation of the company^[1]. These documents are the Memorandum and Articles of Association of a company. Though both documents form the company's Constitution, they are however distinguishable in their nature and purpose. For instance, on the one hand the Memorandum of Association serves as the foundation document of the company in that it defines the objects for which the company is incorporated and sets out the basis and conditions upon which the company is to relate with the public.

The Memorandum of Association therefore allows members of the public who intend to deal with the company to ascertain the objects and scope of business of the company, including the power and capacity of the company to justify business risks and deliver returns on investment. On the other hand, the Articles of Association consists of the rules and regulations which govern the internal affairs and management of the company. For example, the Articles of Association stipulates the duties and powers of the directors and officers of the company, including the rights and obligations of the members or shareholders of the company. Significantly, while the Memorandum of Association defines the business and scope of activities of the company, the Articles of Association spells out the way and manner the business and activities of the company are to be conducted.

Accordingly, the Articles of Association is key to determining whether the company, through its directors and officers, conducts its business and exercises its powers in full compliance with the provisions of its Constitution, i.e., its Memorandum and Articles of Association. In essence, it is the Articles of Association that gives effect to the company's power and business objects, the rights and

obligations of members of the company, and the duties and powers of the directors and officers of the company. The Nigerian Companies and Allied Matters Act 2020 (the Companies Act 2020) requires every company to file Articles of Association together with the Memorandum of Association as part of the process of incorporation^[2]. After incorporation and when the company is in operation the Companies Act 2020 also provides for the possibility of alteration of the Articles of Association, and such alteration is deemed to be as valid as if originally contained therein at the time of incorporation^[3].

From the nature and legal effect of Articles of Association of a company, its alteration may implicate a breach of rights of members and the company's contractual obligations which Articles necessarily impose on the company, members, directors and officers of the company under the Companies Act 2020. In this paper, we examine the statutory power of the company to alter its Articles of Association and the legal matters that inevitably arise from the exercise of that power. We determine when alteration of Articles may result in breach of members' rights and the company's contractual obligations, and identify liability for such breach. The paper concludes with some useful hints on the best approach to altering a company's Articles of Association without occasioning any breach of rights or obligations under the Companies Act 2020.

The Nature of Articles of Association

The Companies Act 2020 provides that upon incorporation the company becomes a corporate entity with a distinct legal personality that is separate from its incorporators^[4]. As a separate legal entity with corporate existence that is independent of its members or shareholders the company requires rules for the management of its affairs and the conduct of its business. There is also a need for rules that clearly define the relationship between the company and its members, regulate the rights and obligations of members, and stipulate the duties and powers of its directors and

officers. All such rules and regulations are provided in the company's Articles of Association. A company's Articles of Association is therefore a form of user's guide for the company, its members, directors and officers towards giving effect to the company's powers, and accomplishing the company's business objects as set out in its Memorandum of Association.

The Companies Act 2020, under section 32, requires that a company shall have Articles of Association prescribing regulations for the company, and shall register the Articles contained in a single document, and divided into paragraphs numbered consecutively. The Companies Act Regulations 2021, made pursuant to the Companies Act 2020, provides a model Articles of Association for limited liability companies to adopt either in part or in full, in so far as they do not exclude or modify the model Articles which would then form part of the company's articles in the same manner and to the same extent as if the Articles had been duly registered^[5]. Section 34 of the Act makes the model Articles to apply by default to companies without registered Articles of Association.

It is the duty of the Corporate Affairs Commission to register companies' Articles of Association, and the commission may refuse registration only if the Articles: (a) do not comply with the provisions of the Companies Act 2020; (b) the company's business or objects are illegal; (c) any subscriber to the company's Memorandum of Association lacks the legal capacity; (d) there is non-compliance with any legal requirement; or (e) the proposed name conflicts with an existing company, trade mark or business name already registered in Nigeria^[6]. The requirement for registration of Articles of Association qualifies it as a public document that is accessible to outsiders wishing to deal with the company. At common law the requirement for registration of Articles of Association reinforced the doctrine of constructive notice.

Under the doctrine of constructive notice all persons dealing with a company are deemed or construed to have knowledge of the company's Articles of Association and it did not matter that they had no such knowledge in fact^[7]. In spite of the requirement for registration, the Companies Act 2020 however provides that a person is not deemed to have knowledge of the contents of the Articles of Association of a company merely because the document is registered by the Corporate Affairs Commission^[8]. In addition, the Act adopts the common law indoor management rule to the effect that a person dealing with a company is entitled to assume that the company's Articles of Association has been duly complied with, and the company would be estopped from denying that fact^[9].

Instructively, the provisions of the Companies Act 2020 abolishing the doctrine of constructive notice and adopting the indoor management rule as they relate to Articles of Association underscore the nature of companies' Articles as a document with legally binding content. Articles of Association contains rules governing all aspects of the internal affairs and management of the company such as capitalization of the company, borrowing powers of directors, classes of shares and rights of shareholders, appointment and remuneration of directors and auditors, accounts and audit, voting and organization of general meeting, amongst others. From the model Articles of Association in the Twentieth Schedule of the Companies Regulations 2021, the Articles of private companies limited

by shares provide, *inter alia*, for:

- a. Limitation of liability
- b. Directors' powers and responsibilities
- c. Participation in directors' meetings
- d. Quorum for directors' meetings
- e. Casting of vote and conflict of interests
- f. Appointment and termination of appointment of directors
- g. Shares allotments and distributions
- h. Declaration of dividend and capitalization of profits
- i. Rights of shareholders and general meetings
- j. Voting, notices and resolutions
- k. Lien, forfeiture, indemnity and insurance

The foregoing exemplifies the essential matters that relate to the internal affairs and management of the companies. From the legal effect of Articles of Association, discussed in the next section, these are matters that may be implicated when there is alteration of the Articles. Generally, these matters involve powers, rights, duties and obligations between the company, its members and officers on one hand, and amongst the members and officers *inter se*, on the other hand. The nature of Articles of Association therefore makes it a core constitutional document of the company with legal effect on the powers, rights, duties and obligations of all parties concerned.

Legal Effect of Articles of Association

In order for Articles of Association to achieve its purpose, the rules and regulations contained therein need to be observed, respected and enforceable. The Companies Act 2020 expressly states the legal effect of Articles of Association to be that of a contract under deed. According to section 46(1) of the Act, the Articles when registered have the effect of a deed between the company and its members and officers, and between the members and officers themselves whereby they agree to observe and perform the provisions of the Articles. The Articles of Association is therefore a multi-party legal contract with terms that are binding on all the parties.

But it is more of a contract created by statute and imposed on the company and its members and officers, than the traditional form of contract which requires a consideration after mutual intention and agreement of parties. As a statutory contract the Articles take legal effect upon registration with the Corporate Affairs Commission pursuant to the provisions of the Companies Act 2020. Such registration may be at the time of incorporation of the company or after alteration of the Articles of an existing company. The Articles do not bind only the original members who subscribed to the company's memorandum of Association at the time of incorporation, but also future parties who subsequently become members and officers of the company.

Members and officers of the company are legally bound by the rules and regulations as if they had personally signed and sealed the Articles. From the provisions of section 46(1) of the Companies Act 2020, there are five angles to the legal commitment on the Articles of Association: Firstly, the company is bound to its members. This means that the company is under a legal obligation to observe or comply with any provision in the Articles conferring a right or entitlement on its members, whether individually or collectively. For instance, the company is under obligation

to issue each shareholder, free of charge, with one or more certificates in respect of the shares which that shareholder holds, including sending notices of general meetings to shareholders and allowing shareholders to cast their votes during meetings^[10]. Members can compel the company to fulfil these obligations or restrain it from violating the Articles in these respects^[11].

Secondly, the company is bound to its officers such as the managing directors, secretaries, auditors and other employees. These officers are entitled to remuneration and the company cannot fail or neglect to discharge this obligation. Thirdly, the shareholders or members are bound to the company. By this, members must comply with all the rules requiring them to discharge such obligations to the company as payment or redemption of shares, including fulfilling any prescribed conditions or restrictions attached to shares. The fourth angle of legal commitment on the Articles of Association is that officers and employees of the company are bound to the company. Employees must discharge their duties and responsibilities to the company with a standard of reasonable care and skill, and must also avoid conflict of interests in the conduct of the company's business.

Finally, the members and officers of the company are bound to one another *inter se*. This implies that members and employees of the company are liable to one another to the extent of their rights and duties contained in the Articles of Association. In all, the Articles bind the company, its members and officers, and each of these parties can enforce the rules and regulations relating to their respective interests, rights and entitlements. This legal effect of Articles of Association has been judicially recognized and endorsed for over a century under the old English companies' statutes, beginning from the Joint Stock Companies Act of 1856. The age-long judicial pronouncements on the contractual nature of companies' Articles have since shaped statutory provisions through the last century and up till the current UK Companies Act 2006^[12].

As a common law jurisdiction and from colonial affiliation, the Nigerian Companies Act 2020 derives heavily from the provisions of the UK Companies Act 2006. In light of the paucity of Nigerian judicial authorities, English cases on the legal effect and enforceability of Articles of Association remain relevant. As early as 1889, the English Court of the Chancery Division held in the case of *Wood v Odessa waterworks*^[13] that members could compel the company to pay dividend in cash in accordance with the terms in the Articles of Association. The directors of the company had proposed to pay the dividend in kind by issuing debentures. Stirling, J declared what has become the essence of the provision of section 46(1) of the Companies Act 2020: "The articles of association constitute a contract not merely between shareholders and the company, but between each individual shareholder and every other"^[14].

From the cases, the statutory nature of the contract has not influenced the courts to interpret the Articles of Association any different from traditional contracts. In the relatively recent case of *Cosmetic Warriors Ltd v Gerrie*^[15] the opinion of the court was that Articles of Association of limited liability companies should be interpreted in the same way as commercial contracts. The case firmly established that when parties dispute the meaning of their company's Articles of association, the court would apply the same

principles of interpretation as apply to commercial contracts. Even prior to this case, the court in *Folkes Group v Alexander*^[16] had held that for the purpose of giving business efficacy to Articles of Association of a company, the court can imply any words that may have been omitted by mistake.

The judicial interpretation of companies' Articles in the sense of traditional commercial contracts has developed remarkably in the last two decades. This is because as at 1992 the court had declared in *Bratton Seymour Service Co v Oxborough*^[17] that no terms that are not already in the Articles of Association could be implied into it. The old cases that expounded the legal effect of Articles in the sense of commercial contract have held that only companies and its members are bound by the rules and regulations contained in Articles. For instance, in *Eley v Positive Government Security Life Assurance Co Ltd*^[18] and *Re New British Iron Co*^[19] the courts distinguished between "members' contractual rights" and "outsiders' rights". Under these judicial authorities, the terms in Articles of Association can be enforced only as they affect the rights and obligations of the company and its members.

Non-members of the companies, including directors and other employees, were considered as "outsiders" to the contractual rights conferred by the Articles on the company and shareholders^[20]. This is not the position under the Companies Act 2020 which expressly provides that where the Articles empower any person to appoint or remove any director or other officer of the company, such power shall be enforceable by that person notwithstanding that he is not a member or officer of the company^[21]. Thus, the legal effect of Articles of Association is that it equates contractual terms that are enforceable. However, under the Companies Act 2020 enforceability of Articles is not only by and amongst the company, its members and officers, but also by an outsider or a person who is neither a member nor an officer of the company, provided the person is mentioned in the articles.

Pursuant to the provision of the Companies Act 2020, therefore, the plaintiff in *Eley v Positive Government Security Life Assurance Co Ltd* would have been successful. The plaintiff, a solicitor and a member, was to be appointed as the company solicitor according to the company's Articles of Association. When the appointment fell through, he instituted an action to enforce the articles in his capacity as a solicitor. Lord Cairns, LC affirmed the decision of the lower court and held that the plaintiff had the right to sue only in his capacity as member, but not as solicitor which made him an outsider to the company.

Also, the court in *Re New British Iron Co* would have been able to uphold the directors' claim for remuneration without having to decide that the Articles of Association was not in itself a contract between the company and the directors. The court only allowed the claim of the directors by stating that the directors could rely on the Articles because it became embodied into the external contract between the company and the directors. From the foregoing, common law cases decided long ago under the old English Companies Acts have contributed in no small way towards the present statutory recognition of the legal effect of Articles of Association. But statutes such as the Companies Acts 2020 have deepened and expanded the legal effect of Articles, with inevitable impact on the consequence of alteration of Articles.

Alteration of Articles of Association

The power of a company in Nigeria to make alteration to its Articles of Association is statutory. The Companies Act 2020 provides that a company may, by special resolution, alter or add to its articles, including deletion, modification or substitution of any of its provisions ^[22]. In addition to a special resolution by the shareholders, other requirements for a valid alteration of Articles are that the alteration must be subject to the provisions of the Companies Act 2020 and the conditions contained in the company's Memorandum of Association. Once these requirements are fulfilled any alteration of the Articles would be valid and takes effect as if originally contained therein. The alteration thereafter forms part of the original Articles and is also subject to alteration by special resolution ^[23].

From the provision of section 53 of the Companies Act 2020, a company may make alteration to its Articles for the purpose of modifying the provisions in its Memorandum of Association such as its name, its registered office, the nature of the business it is authorised to carry on, and any restriction on its powers. Alteration may also be to give specific effect to the general provisions contained in the Memorandum. But for such alteration to be valid it must be consistent with the provisions of the Memorandum and must not seek to replace or subvert it. The necessary implication is that if the alteration to the Articles is inconsistent with the Memorandum of Association such alteration would be invalid to the extent of the inconsistency.

At common law, the limit on the power of a company to make alteration to its Articles of Association was that the power must be exercised lawfully, fairly and equitably without constituting fraud on the minority. And above all, alteration must be in the interest of the company. In the case of *Alien v Gold Reefs of West Africa Ltd* ^[24] Lindley, MR declared that companies' power of alteration;

“... must, like all other powers, be exercised subject to those general principle of law and equity which are applicable to all powers conferred on majorities and enabling them to bind minorities. It must be exercised, not only in the manner required by law but also *bona fide* for the benefit of the company as a whole and it must not be exceeded”.

The requirements under the Companies Act 2020 that alteration of companies' Articles must be subject to the provisions of the Act and the Memorandum of Association are to ensure that the interests of the company and minority members are adequately protected. Hence, the statutory requirements amply reflect the common law conditions as adumbrated over a century ago by Lindley, MR in *Alien v Gold Reefs of West Africa Ltd*. Also, the statutory requirement for alteration to be done only through a special resolution of members of the company necessarily implies that no other means is contemplated, such as majority members giving such instruction to directors ^[25], or through an application praying the court to make an alteration order. Therefore, common law cases like *Folkes Group v Alexander* ^[26] and *Mutual Life Insurance Co of New York v The Rank Organisation* ^[27] to the effect that Articles of Association of a company may be altered by the court are at variance with the express provision of the Companies Act 2020. According to the decision in *Mutual Life Insurance Co of New York v The Rank Organisation*, a court may imply terms into the Articles of Association where it relates to duty of directors to exercise their powers in good faith

and in the interest of company. But in light of the clear provisions of the Companies Act 2020, the court cannot imply any terms into the Articles (which is effectively an alteration) in order to validate the clause in issue. Rather, the court is to declare any offensive, vague or ambiguous clauses in the Articles as void and invalid.

However, matters may arise even from valid alterations to Articles of Association; where a company lawfully passed a special resolution that validly modified original rules in the Articles. In effect, alteration to Articles may be made with the intended or unintended consequence of impinging on the rights of members or in breach of the company's contractual obligations to its officers or third parties. Under the provisions of the Companies Act 2020, members and officers of the company are empowered to enforce any obligation owed to them under the company's Articles either in personal or representative capacity ^[28]. This may also apply to breach of members' rights and contractual obligations occasioned by alteration of Articles.

Alteration of Articles in Breach of Rights or Contractual Obligations

As noted earlier, any alteration of Articles of Association in breach of the provisions of the Companies Act 2020 and the conditions contained in the company's Memorandum would be void and invalid. But it is noteworthy that a company has the statutory power of alteration of its Articles, and it cannot relinquish or contract out of that power ^[29]. For instance, under the Companies Act 2020 a company cannot include in its Articles an entrenched provision that is not subject to alteration. Neither can the company expressly or by implication make any of its Articles unalterable. However, matters do arise when alteration of Articles constitutes a breach of the rights of members of the company or the company's contractual obligations with its officers and third parties.

Thus, while the company's power to make alteration to its Articles is statutory and abiding, it is however not absolute and untrammelled; the exercise of that power may be illegal or unlawful. From the provisions of the Companies Act 2020, where alteration of Articles is in breach of rights of members of the company the result is that such alteration would be invalid and inoperative. The reason is that the rights of members of a company are expressly spelt out in the Companies Act 2020 and the Articles may only set out how the rights are to be enjoyed or exercised. For example, according to section 139 of the Companies Act 2020; “The shares or other interests of a member in a company are personal property transferable in the manner provided in articles of association of the company”.

Therefore, while the Articles may state conditions for shares transfer by members, the company cannot make an alteration to its Articles prohibiting shares transfer, as that would amount to stripping or depriving members of their statutory right to transfer their shares. Similarly, the Companies Act provides in section 107 that notwithstanding any provision in the Articles, every member of a company shall have a right to attend any general meeting of the company and to speak and vote on any resolution before the meeting. However, the Articles may provide that a member shall not be entitled to attend and vote unless all calls or other sums payable by the member in respect of shares in the company have been paid.

From the provision of section 107, the Articles may only

impose a condition or an obligation on the right of a member to attend meeting and vote at such meeting, but no alteration can be made to the Articles for the purpose of revoking or abrogating the right. In these two examples^[30], any alteration of the Articles to deprive members of the company of their rights to transfer shares, attend meetings and vote for resolutions at such meeting would be contrary to the provisions of the Companies Act 2020. The necessary implication is that such alteration would be void, invalid and of no effect. In addition, affected members would be entitled to bring an action against the company for a restraining or mandatory injunction, as the case may be, with respect to the rights^[31].

But a different consequence would occur where alteration is made to the Articles either to do or undo what is expressly prohibited under the Companies Act 2020. The provision of section 140 of the Companies Act 2020 clearly exemplifies this point. According to the section, any share issued by a company shall carry the right on a poll at a general meeting of the company to one vote in respect of each share, and no company may by its articles or otherwise authorise the issue of shares which carry more than one vote in respect of each share or which do not carry any right to vote. This is an express statutory prohibition of non-voting and weighted shares. If a company, in spite of this prohibition, make alteration to its Articles in order to issue non-voting and weighted shares, the consequence is more than the alteration being void and invalid; it is provided that the company and any officer in default are liable to a daily default fine^[32].

Liability for Breach of Rights and Contractual Obligations

From the above discourse, different consequences of liability may arise from the company's unlawful exercise of its power to make alteration to its Articles of Association under the Companies Act 2020. If the alteration is contrary to the provisions of the Act, the alteration would be void and invalid, with no liability attaching to the company and its officers, though affected members have the right to sue the company either to restrain or mandate it to respect the rights accordingly. But where the alteration is for a purpose expressly prohibited under the Act, the alteration would not only be void and ineffectual but the company and its officer responsible would be attached with liability.

The company's unlawful exercise of its power to make alteration to its Articles may also breach its contractual obligations with its officers in terms of appointment and termination of employment. Terms of appointment, remuneration and disengagement of officers of the company are contained either in the Articles of Association, or in a separate agreement that is incorporated by reference into the Articles. The Companies Act 2020 does not expressly provide for the consequence of the company's breach of contractual obligations occasioned by alteration of its Articles. However, the consequence can be gleaned from extant common law principle guiding the contract of employment between a company and its officer.

Just the way the law does not take away the statutory power of a company to make alteration to its Articles, so also the law does not compel an employer to retain the services of its employee, even though an employer is under a legal obligation to observe and respect the terms of the contract of employment^[33]. Likewise, the company must exercise its power of alteration of its Articles lawfully or in compliance

with the provisions of the Companies Act 2020. If an employer terminates the services of its officer in a way that is in breach of the terms of the contract of employment the officer's remedy lies only in damages for wrongful termination of employment.

From the precedent case of *Southern Foundries Ltd v Shirlaw*^[34], there is an implied term of the contract of employment between a company and its officer that the company would not alter its articles in a way that would be a breach of the contract and injurious to the officer. In that case, the plaintiff was appointed managing director of the defendant company for a fixed term of ten years. Eventually, the defendant was taken over by another company and the new company made alteration to the pre-existing Articles of Association and empowered two directors and a secretary to remove a director, irrespective of the terms of contract of employment. Acting in pursuance to the alteration made to the Articles, the new company sacked the plaintiff before the expiration of the fixed term of ten years.

In this action to recover damages for breach of contract, the plaintiff argued that his employment contract was for a fixed term of ten years; that alteration could not be made to the company's Articles in breach of the contract; and that there was an implied term of the contract that the company would not breach the contract through an alteration to its articles in a way that the plaintiff would be prejudiced. But the defendant contended that it had the statutory power to make any alteration to its Articles, and since it had lawfully and validly made such alteration, the court could not interfere with its statutory right to do so. The House of Lord affirmed the decisions of the lower courts and held that the plaintiff was entitled to recover damages for breach of the contract of employment.

According to Lord Atkin, though the defendant company could not be deprived of the power to make alteration to its Articles of Association, it may however be liable in damages if it makes alteration to the Articles in a way that prejudices a contract validly made prior to the alteration. This case deepened a common law principle of contract and company law to the effect that damages may be successfully sought for breach of contract by a director or other officer of the company where the company subsequently exercised its constitutional power in breach of a pre-existing contract of employment. And this principle also applies with equal force to any contract between the company and outsiders or third parties. This is more so under the provisions of the Companies Act 2020 even with respect to pre-incorporation contracts.

According to the provisions of the Companies Act 2020, any contract entered into by the company or by any person on behalf of the company prior to its formation may be ratified by the company after its formation and thereupon the company shall become bound by and entitled to the benefit thereof as if it has been in existence at the date of such contract and had been a party thereto^[35]. The company may by reference incorporate the contract into its Articles of Association, or ratify same as it is in a separate document. However, once the company has ratified and adopted a pre-incorporation contract, or entered a new post-incorporation contract, any breach of such contract through a subsequent alteration to its Articles would make the company liable in damages to the other party to the contract.

Thus, if in the exercise of its power to make alteration to its

Articles a company acted in breach of its contractual obligation to an outsider or a third party, such act would remain valid and effective but the company would be liable in damages to the other party to the contract. This is a different consequence from the breach of rights of members. The difference between the consequences of breach of members' rights and breach of contractual obligations is that while in the former the company contravenes the provisions of the Companies Act 2020, in the latter it only derogates from the terms of a mutual agreement. Nevertheless, both consequences flow from an unlawful and improper exercise of the company's statutory power to make alteration to its Articles of Association.

Conclusion

The Companies Act 2020 is clear in its provisions on the company's power to make alteration to its Articles of Association; the limit of the exercise of that power; the breach of rights of members and contractual obligations to its officers and outsiders while exercising that power; including liability for breach in the exercise of that power – liability to members, officers and third parties. If the company acted in breach of the rights of its members through the exercise of its power to make alteration to its Articles, such act would be void and invalid. In the case of breach of its contractual obligation to its officer or an outside party, such act would remain valid and effective but liability in damages would attach to the company.

In order to validly and lawfully make alteration to its Articles for the purpose of effecting any changes to the rights of its members or shareholders, the company must negotiate the variation of the rights with such members prior to alteration of the Articles to reflect the changes. The Companies Act 2020 expressly states that any variation of members' rights through alteration to the Articles without the consent of the affected members would be void and invalid^[36]. The consent of members is therefore key to validating any changes to the rights of members before effecting such changes in the Articles. Consent is even more crucial with respect to a contract; it is one of the essential elements of a valid contract^[37].

Therefore, in the absence of the consent of the other party to a contract, whether in the case of an officer or an outside party, the company cannot vary its contractual obligations without incurring liability in damages. The statutory power of the company to make alteration to its Articles affecting the rights of members and contracts with its officers and third party must necessarily be subject to the consent of the respective parties concerned. It is only then the power may be exercised with validity and without liability under the Companies Act 2020.

References

1. According to section 36(1) and (4)(e) of the Companies and Allied Matters Act 2020, the Memorandum and Articles of Association must be delivered to the Commission together with an application for registration of the company; Under section 8(1) of the Companies Act 2020 the Corporate Affairs Commission has the statutory mandate to administer the Act, including the registration, regulation and supervision of the formation, incorporation, management, striking off and winding up of companies in Nigeria.

2. See section 36 of the Act
3. See section 53; Pursuant to section 49(1) the Memorandum of Association may also be altered according to the provisions of the Act. But this paper is only concerned with the alteration of the Articles of Association and its legal implications.
4. See section 42
5. See section 34 of the Act and the Twentieth Schedule at of the Companies Regulations 2021, 215.
6. Section 41(1); Note that if the Corporate Affairs Commission refuses to register Articles of Association on any of the stated grounds, section 41(2) provides that any person aggrieved by the decision of the Commission may give notice to the Commission requiring it to apply to the Court for directions and the Commission shall, within 21 days of the receipt of such notice, apply to the court for the directions.
7. See the case of *Ernest v Nicholls* (1857) 6 HL Cas 401 in which the doctrine was established by the House of Lords.
8. Section 92
9. Section 93; The indoor management rule was established in the case of *Royal Bank v Turquand* [1856] 6 E. & B. 327 as an exception to the doctrine of constructive notice.
10. See the provisions of the Model Articles of Association contained in the Twentieth Schedule of the Companies Regulation 2021
11. This is further emphasized under section 46(4) of the Companies Act 2020
12. See section 33 of the UK Companies Act 2006 from which the Nigerian Companies Act 2020 derives
13. [1889] 42Ch. D. 636
14. Subsequent cases decided along this line include *Automatic Self-Cleansing Filter Syndicate Co Ltd v Cuninghame* [1906] 2 Ch 34; *Hickman v Kent or Romney Marsh Sheep-Breeders' Association* [1915] 1 Ch 881
15. [2017] EWCA Civ 324
16. [2002] 2 BCLC 252
17. [1992] BCLC 693
18. (1876) 1 Ex D
19. [1898] 1 Ch 324
20. See also *Beattie v E and F Beattie Ltd* (1938) Ch 708
21. Section 46(3)
22. Section 53
23. Section 53(2)
24. (1900) 1 Ch 656, CA
25. As in the case of *Automatic Self-Cleansing Filter Syndicate Co Ltd v Cuninghame* [1906] 2 Ch 34, where the Court of Appeal affirmed that directors were not agents of the shareholders and so were not bound to implement shareholders' resolutions, where special rules in the company's Articles already provided for a different procedure.
26. *supra*
27. [1985] BCLC 11
28. See section 46(4)
29. This statutory position may have been informed by common law where a company could not deprive itself of the power to alter its Articles by special resolution. See the old case of *Andrews v Gas Meter Company* (1884) LR 25 Ch D 320 which involved the right of a company to amend its constitution to enable the issuing

- of preferential shares. Lindley, LJ held that the company could issue the preferential shares, and that ‘‘it is desirable, from all points of view, to remove from companies a fetter which ought never to have been imposed upon them’’.
30. Also, see section 54 which states that a member would not be bound by an alteration to the company’s Articles requiring such member to increase his number of shares, or his liability to contribute to the share capital of the company, or to pay money by any other means to the company, without the prior agreement of the member.
 31. At common law, the rights of members of a company could not be interfered with, and any interference led to a personal right of a member to sue in a personal capacity to enforce his right. See the *locus classicus* of *Pender v Lushington* (1877) 6 Ch D 70.
 32. Section 140(2)
 33. See Cheshire, Fifoot & Furmston's *Law of Contract* (16th edition, OUP: 2012) 197
 34. [1940] AC 701
 35. Section 96(1)
 36. See section 54
 37. See Cheshire, Fifoot & Furmston's *Law of Contract*, op.cit 53