The meanings of the concepts of main object, main business and ancillary objects and how these meanings affect ss 33, 34 and 52 of the Companies Act 61 of 1973

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Abstract | Umongo

In ss 33, 34 and 52 of the Companies Act 61 of 1973, mention is made of the concepts of main object, main business and ancillary object. These sections have been criticised by many writers, and amendments have been proposed. The author proposes a solution to the shortcomings found in these sections, based on the ordinary meaning of the concepts used.

1 Introduction

No company may be formed in the Republic for the purpose of carrying on any business that has for its object the acquisition of gain unless it is registered in terms
of the Companies Act.\textsuperscript{1} ‘Gain, in this context, means commercial or material benefit or advantage.’\textsuperscript{2} From the provision of s 30(1) of the Act it can be inferred that any association for gain has as its object the acquisition of gain – or rather, commercial or material benefit or advantage. In other words, an association not for gain has to state its main object in its memorandum. Its main object is not a commercial or material benefit or advantage divisible to its members, but rather the achievement or promotion of some interests.\textsuperscript{3}

Taking into account the provisions of s 30 of the Companies Act, s 33(1) of the Act provides that any company formed in pursuance of s 32 has the capacity determined by the main object stated in its memorandum, and that included in its capacity are unlimited objects ancillary to the said main object, except such specific ancillary objects as are expressly excluded in its memorandum.

What exactly do the concepts of main object, objects ancillary to the main object and main business mean?

\begin{itemize}
  \item Section 30 of the Companies Act 61 of 1973.
  \item Cilliers and Benade \textit{op cit} (n 2) § 4.08.
\end{itemize}
2 The meanings of these concepts

The main object is the purpose for which a company is formed. For example, an association for gain will have as its main object the making of profit or gain, and an association not for gain will have as its main object the promotion or achievement of something such as interest.

According to the *Oxford English Dictionary*, ancillary means something which is ancillary; an auxiliary or accessory. This means that objects ancillary to the main object help to achieve the main object. In the case of an association for gain the main object will be the acquisition of gain, while in the case of an association not for gain the main object will be the achievement or promotion of something such as interest.

In terms of the *Oxford English Dictionary*, the word business means person's official or professional duties as a whole; stated occupation, profession, or trade. The example provided in the dictionary is his every day business, will be a course of wise and reasonable actions. From this definition, main business would include day-to-day transactions entered into with the purpose of the acquisition of gain, thus making main business an object ancillary to the main object, which is the making of profit. It can then be inferred that main business and object ancillary to the main object are similar concepts, and that the main business is distinct from the main object.

In the light of the above, companies will have reasonable limitations, which are also in keeping with Schedule 2 of the Act. If the company’s main business changes, or if it does things differently from what is stated in the memorandum or it does not update its memorandum, the change in the main object of the company will not cause any problems, since main business and ancillary objects are similar concepts and therefore unlimited in terms of s 33(1) of the Act.

The above suggestion is supplemented by s 34 of the Act, which provides the following:

Subject to any limitation imposed by this Act, every company shall have plenary powers, including common powers stated in Schedule 2 to this Act, to enable it to realize its main and

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4 www.oed.com [visited 26 June 2006].  
5 Ibid.  
ancillary objects, except such specific powers as are expressly excluded or qualified in its memorandum.

The fact that a company has plenary powers means that the company may do anything,\(^7\) except what is expressly excluded by the memorandum (s 34 of the Act).

### 3 Proposed amendments

In view of the aforesaid it is proposed that ss 33(2) and (3) of the Act be deleted, since the concepts of main business and ancillary objects are similar, and the main business of a company will, by operation of law, never be the main object. The provision of s 52(1)(b) should also be deleted, since it will be redundant when read with s 52(1)(c) of the Act. Furthermore, ultra vires acts and whether such acts are ancillary will be determined by looking at the memorandum of the company and s 36 of the Act.\(^8\)

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\(^7\) JS McLennan ‘Time for the final abolition of the ultra vires and constructive notice doctrines in company law’ (1997) 9 *SA Merc LJ* 333 at 334.

\(^8\) For a full discussion of s 36, see Naude op cit (n 6) at 320.