International Journal of Social Sciences and Management Research E-ISSN 2545-5303
P-ISSN 2695-2203 Vol 10. No. 10 2024 www.iiardjournals.org online version

Duties of Directors Under the Companies and Allied Matters Act 2020 And Analysis of the Principle of Corporate Governance

Michael Sunday Afolayan (PhD)
Nigeria Bank of Industry

Olaide Awwal-Bolanta, (LL.B.), (B.L.)
Assistant Lecturer, Faculty of Law, Ekiti State University, Ado-Ekiti
awwalbolantaolaide@gmail.com
DOI: 10.56201/ijssmr.v10.no10.2024.pg56.68

Abstract
This paper discussed the duties of directors of companies, the principle of corporate governance and the role of directors as a board to ensuring good corporate governance. It discussed the appointment, powers, removal and rotation of directors. This research work adopted the doctrinal approach. It relied on both primary and secondary sources of information or data. Primarily, it utilizes a legal approach using primary data such as the Companies and Allied Matters Act 2020 and the Code of Corporate Governance for Public Companies. The secondary sources of data uitilised include textbooks, online articles in learned journals, relevant materials from the Internet, Magazines, Newspapers, other Periodicals, Dictionaries and Reports. It was found that directors are very important figures in the administration of a company and their relationship being a fiduciary one is most certainly a relationship of utmost truth and that the Board of Directors is at the very core of existence of a company. The paper concluded that despite the rich provisions of the CAMA and the Code of Corporate Governance as to the role of the directors in ensuring good corporate governance, there are still challenges in achieving this role, the paper therefore make recommendations on how to effectively monitor compliance and balance the diverse interests of all stakeholders.

Keywords: *Director, Corporate governance, Board of Directors*

1.0 Introduction

The role of company directors is pivotal in the governance and management of corporate entities. Directors are entrusted with the responsibility of steering the company towards achieving its strategic objectives while ensuring compliance with legal and regulatory frameworks.[1] The Companies and Allied Matters Act (CAMA) 2020, which is the principal legislation governing corporate affairs in Nigeria, has introduced significant reforms that redefine the duties and obligations of company directors. This seminar paper seeks to provide a comprehensive analysis of the duties of company directors under CAMA 2020, highlighting the legislative changes and their implications for corporate governance in Nigeria.

* Michael Sunday Afolayan (PhD), Nigeria Bank of Industry
** Olaide Awwal-Bolanta, LL.B., B.L., Lecturer, Faculty of Law, Ekiti State University, Ado-Ekiti
[1] Companies and Allied Matters Act (CAMA) 2020, Section 269

CAMA 2020 represents a major overhaul of the corporate regulatory landscape, replacing the previous Companies and Allied Matters Act of 1990. The revised Act aims to modernize corporate governance, enhance transparency, and promote accountability within Nigerian companies. Among its many provisions, the Act outlines specific duties and responsibilities that directors must adhere to, thereby setting the standard for ethical and effective management practices.

The duties of company directors under CAMA 2020 can be broadly categorized into fiduciary duties and duties of care, skill, and diligence. Fiduciary duties require directors to act in the best interests of the company, avoid conflicts of interest, and exercise their powers for proper purposes. Duties of care, skill, and diligence mandate that directors perform their roles with the competence and attention that can be reasonably expected from someone in their position.

This paper will delve into the statutory duties as prescribed by CAMA 2020, examining key sections of the Act that pertain to directors' responsibilities. It will also explore the legal implications of non-compliance, including potential liabilities and penalties that directors may face. By analysing the duties of company directors within the context of CAMA 2020, this seminar paper aims to provide valuable insights into the evolving corporate governance framework in Nigeria and its impact on the conduct and accountability of company directors.

The ensuing sections of this paper will discuss the fiduciary duties and duties of care, skill, and diligence in detail, supported by relevant case law and practical examples. Additionally, the paper will consider the broader implications of these duties on corporate governance practices, offering recommendations for directors to ensure compliance and uphold the highest standards of governance. Through this comprehensive analysis, the paper will contribute to a deeper understanding of the regulatory expectations placed upon company directors under CAMA 2020 and the critical role they play in fostering sustainable corporate success.

2.0 Conceptual Analysis

2.1 Directors

Directors are individuals appointed by the company to direct and manage the affairs of the company, they are usually selected by appointment except for shadow directors. There are different types of directors and they are: life Director, Executive director, Non-Executive Director, Managing Director, Chairman of Board of Directors, Alternative Director, Shadow Director, and Representative/Nominee Director. Some Directors may double as Chairman and CEO while some are called Presidents.[2]

A director is an individual appointed to serve on the board of directors of a company. Directors are responsible for overseeing the company's management and making key strategic decisions that affect the company's operations and long-term goals. The specific roles and responsibilities of directors can vary depending on the company's size, structure, and the jurisdiction in which it operates.

According to the Companies and Allied Matters Act (CAMA) 2020, a director is defined as any person occupying the position of a director by whatever name called.[3] This broad definition ensures that the statutory duties and responsibilities apply to anyone who acts as a director, regardless of the title they hold, thus, whoever is not duly appointed but holds himself out as a director of a company commits an offence and is liable to be punished by the court with imprisonment for two years or fine, where the company holds a person out, as a director, who

[2] Resolution Law Firm, 'Duties, Liabilities and Rights of a Director Under Nigerian Company Law' (2020) <https://www.resolutionlawng.com/duties-liabilities-and-rights-of-a-director-under-nigerian-company-law/> accessed 7 July 2024

[3] Section 269, Companies and Allied Matters Act, 2020

is not duly appointed, such company shall be liable to a fine as shall be specified by the company.[4] . In the case of ***Olufosoye v. Fakorede***,[5] a director was described as "…a person appointed or elected according to law, authorized to manage and direct the affairs of a corporation or a company".

Directors are crucial to the governance and success of a company, and their actions have significant implications for the company's performance, compliance with laws, and reputation. Understanding the roles, duties, and legal obligations of directors is essential for ensuring effective corporate governance and achieving long-term corporate objectives.

2.2 Corporate Governance

Corporate governance refers to the rules, practices, and processes by which a company is directed and controlled. It encompasses the relationships among various stakeholders, such as shareholders, management, employees, customers, suppliers, and the community at large. The goal of corporate governance is to manage the business to maximize long-term value while safeguarding the interests of all stakeholders.[6]

3.0 Research Methodology

This research employs the doctrinal method of research. It relied on both primary and secondary sources of information or data. Primarily, it utilises a legal approach using primary data derived from the Companies and Allied Matters Act 2020. The secondary sources of data utilised include textbooks, online articles in learned journals, relevant materials from the Internet, and other Lecture Series, Dissertations, Magazines, Newspapers, other Periodicals, Dictionaries and Reports. All data collected were subjected to content and contextual analysis.

4.0 Literature Review

Mutha examined the function of shadow directors as puppet masters who manipulate a company's board of directors, and the importance of identifying such individuals. The author further discussed the various personalities who can fall under the meaning of "Shadow director", and raised awareness of the issue of shadow directors, who profit from their absence from legitimate board appointments and abdicate their duties. The author discussed the duties of shadow directors and the liability for breaching such duty, it made is apparent that shadow directors can be likened to *de* jure directors and could be held liable for breaching the duties imposed on them. The author pointed out that shadow directors are in a fiduciary relationship with the company. The importance of their role and its impact on the various stakeholders of the company are further emphasised.[7]

Mustapha and other examined the issue of corporate governance and financial performance as an essential and critical element of the banking sector in Nigeria. They see good corporate governance practices as necessary in reducing the risk for investors and improving performance. Their study investigates the relationship between corporate governance in the board of directors and the financial performance of Nigerian banks. The authors indicated that the relationship between board independence and Return on Assets (ROA) is negatively insignificant. Board meetings and ROA were found to be negatively significant and the relationship between board genders, board size and ROA were negatively insignificant. While

---

[4] *Ibid.*

[5] (1993)1 NWLR (Pt. 272)

[6] University of Pittsburgh, 'Corporate Governance, What It is and Why it Matters' (5 July 2023) https://online.law.pitt.edu/blog/corporate-governance-what-it-is-and-why-it-matters accessed 18 July 2024.

[7] Samraddhi Mutha, 'Role of Shadow Directors' (2023) 3 (3) *Indian Journal of Research in Law*

the relationship between firm size and ROA is positively significant. For bank age and ROA, the relationship was found as negatively significant. The authors provide[8] a guide for regulators and the Nigerian banking industry.

4.0 Types, Appointment, Retirement, and Removal of Directors

4.1 Types of Directors

There are different terms given to the various types of company directors that can sit on a board. The most recognisable terms are executive directors and non-executive directors. However, there are also de facto directors, shadow directors, nominee directors and alternate directors. The CAMA provides for different types of directors and in what position they stand to the company, however, there are two main categories of directors: the executive director and the non-executive director. The executive directors are involved in the day to day running of the activities of the company and they usually hold specific roles within the company while the non-executive directors are not actively involved in the running of the affairs of the company but merely oversee it. The different types of directors are discussed below:

I. Shadow Directors

A person who is not a member of the board but whose instruction is usually followed and who influences the decision of the board concerning the affairs of a company is generally considered in Law as a shadow director.[9] Shadow directors have huge and effective control over the affairs of the management of the company. They are those influential parties who, without holding any position on the board, direct and instruct the board to act in the manner they want. Shadow directors are determined by their influence over the company's operations.

II. Independent Directors

Independent directors are a subset of non-executive directors, independent directors are free from any business or other relationships that could materially interfere with the exercise of their independent judgment and every public company is mandated to have at least three (3) Independent directors.[10]

III. Nominee Directors

Nominee directors represent the interests of stakeholders or stakeholder groups on a company's board. Nominators appoint them to safeguard their interests.

However, regardless of its appointment by a specific stakeholder, a nominee director is not relieved of his general duties as a director of the company. The appointment of a nominee director can occur for many reasons, including appointment under the Articles of Association, appointment by partners in a joint venture, appointment by a financial institution that is the company's creditor in order to ensure the financial institution's interest is protected, appointment by an investor, stakeholder or in cases where the statute specifically provides for the appointment of nominee directors to the board.[11]

IV. Alternate Director

---

[8] Umar Aliyu Mustapha, Norfadzilah Rashid, Hussaini Bala, and Habibu Musa, 'Corporate Governance and Financial Performance of Nigeria Listed Banks' (2020) 12 (1) Jour of Adv Research in Dynamical & Control System.

[9] Section 270, *Ibid.*

[10] Section 275, *Ibid.*

[11] Stephen Conmy, 'The Different Types of Company Directors' (2024) https://www.thecorporategovernanceinstitute.com/insights/lexicon/the-different-types-of-company-directors/ accessed 17 July 2024

When another director cannot attend a board meeting, an alternate director may be appointed in their place. In the absence of the principal director, the alternate director has the same power as the principal director. These types of company directors should receive all meeting and committee notes that the principal director would receive. They should be able to fulfil all their duties while the principal director is away. In the same way as any regular director, the alternate director is personally responsible for their actions.[12]

4.2 Appointment of Directors

Directors are appointed in two different ways, this is referred to as first directors and subsequent directors. First directors are appointed by providing the number of directors and their names in writing by the subscribers of the memorandum of association or a majority of them or the directors may be named in the articles of association.[13] Subsequent directors, on the other hand, are appointed by members of the company at the annual general meeting (AGM), the members at the AGM have the power to re-elect or reject directors and appoint new ones.[14] A director may be appointed by subscribers, members, creditors or personal representatives[15].

4.3 Duties of Directors

A director of a company stands in a fiduciary relationship towards the company and shall observe utmost good faith towards the company in any transaction with it or on its behalf.[16] In the case of *Okeowo v Milgore,*[17] the Court per Eso JSC held that directors owe a fiduciary relationship with the company in the following circumstances

a. Where a director is acting as an agent of a particular shareholder
b. Where even though he is not an agent of any shareholders, such shareholders or other persons in dealing with the company's securities.[18]

The fiduciary duty is owed to the company primarily,[19] and it may also be owed to shareholders.[20] Consequent to the above, we shall now discuss the specific duties owed by the directors to the company.

1. Duty to act in the best interest of the company at all times

A director must act at all times in what he believes to be the best interest of the company as a whole so as to preserve its assets as a whole, further its business, and promote the purpose for which it was formed, and in such manner as a faithful, diligent, careful and ordinary skilful director would act in the circumstances and in doing so, must have regard to the impact on the environment in the community where it carries on business operations.[21] This duty is a subjective one, it depends on what the director believes to be in the best interest of the company and not what the court may consider is in the best interest of the company[22] so if the directors honestly believe they are acting in the interest of the company there can be no breach of duty, whether or not the court thinks it was in the best interest of the company.[23]

---

[12] *Ibid*
[13] CAMA, S. 272
[14] *J. POW Services Ltd v Clare* 30 (1995) 2 B.C.L.C 435 at 440
[15] Directors are appointed by personal representatives in the event of all the directors and shareholders being dead.
[16] CAMA, s 305 (1)
[17] (1979) N.S.C. 210 at 248
[18] *Ibid,* s. 305 (2)
[19] *Percival v Wright (1902) 2 Ch. 421*
[20] *Allen v Hyat,* (1914) 30 T.L.R. 444.
[21] CAMA, s. 305 (3)
[22] See *Re Smith & Fawcett Ltd (1942)* CH. 304 at 306
[23] Yemi H. Bhadmus, *Bhadmus on Corporate Law Practice* (5th ed. Chenglo Limited, Enugu 2021)

2. **Duty to exercise his powers for the specified purpose and not collateral purpose**
   The powers of the directors are determined by the articles of association and the CAMA, except as otherwise provided by the articles, the business of the company shall be managed by the Board of Directors who may exercise all such powers of the company as are not by CAMA or articles required to be exercised by the members in general meeting.[24] Section 305 (5) CAMA 2020 requires that a director shall exercise his powers for the purpose for which he is specified and (b) shall not do so for a collateral purpose and the power, if exercised for the right purpose does not constitute a breach of duty, if it, incidentally, affects a member adversely. The section codifies the proper purpose doctrine as it applies to directors. The directors are expected to act bona fide in what the directors consider not what the courts consider to be in the best interest of the company.[25] The breach of this section is mainly seen in cases where the directors use their powers to issue shares to block takeover bids, or to dilute member's shareholding in their farceur.[26] In the case of Punt v Symons and Co. Ltd[27] the court held to be an abuse of power when directors in order to secure the passing of a special resolution, issued new shares to the additional members.[28]
3. **Duty not to fetter his discretion**
   Section 305 (6) CAMA 2020 provides that the director shall not fetter his discretion to vote in a particular way. The section though restricted to fetter of discretion to vote, may be seen from a broader perspective not to fetter his discretion or to exercise independent judgment.[29] The directors must always exercise independent judgment. However, the subsection is not breached where the director merely takes advice or acts in accordance with an agreement duly entered into by the company or acts in a way permitted by the company's constitution.[30]

4. **Duty to exercise reasonable care and skill**
   Section 308 CAMA 2020 is a codification and amendment of the common law duties of the exercise of reasonable care and skill. It has codified the common law position by changing the standard of care and skill required from a director from a subjective to an objective standard. The standard is now that of a 'reasonably prudent director would exercise in comparable circumstances'. Failure to exercise the powers and discharge the duties of his office honestly, in good faith and in the best interests of the company shall ground an action for negligence and breach of duty.[31]
5. **Duty to avoid conflicts of Interest**
   We now turn to the more popular duty which seems to transcend all other duties and which addresses the fiduciary duties of loyalty owed by directors to their companies. Section 306 CAMA 2020 imposes a duty on a director to avoid situations where there is a conflict between the director's interests and those of the company, and particularly not to exploit any property, information or opportunity where they belong to the company.

---

[24] CAMA, s 87 (4)

[25] Hogg v. Cramphorn Ltd. (1969). Ch. 254 (Chancery Division)

[26] (1903) 2 Ch. 506 (Chancery Division).

[27] See also Howard Smith Ltd v. Ampol Petroleum Ltd (1974) AC 821; Mills v Mills (1938) 60 CLR 150 (High Court of Australia).

[28]

[29] Section 173 of CA 2006.

[30] Fulham Football Club Ltd v Cabra Estates Plc (1994) I BCLC 366.

[31] Re City Equitable Fire Insurance Co. Ltd (1925) Ch. 407 which explains the old common law position; and Australian Securities and Investments Securities Commission v. Healey (2011) FCA 717 (Federal Court of Australia) for the interpretation of the current position of the law.

4.4 Rotation/Retirement of Directors

According to CAMA[32], all directors are to compulsorily retire from office at the first annual general meeting (AGM) of the company, and subsequently at the annual general meeting, one-third of the directors or if their number is not three or a multiple of three, then the number nearest one-third are to retire from office. In determining who is to retire at any given AGM, recourse is to be made to the directors who have been longest in office since their last election, but as between persons who became directors on the same day those to retire are determined by lot unless they agree among themselves.

Vacancies created due to retirement by rotation may be filled by the company by electing a person to the office who is by default the retiring director if he offers himself for re-election unless a resolution for the re-election of such director has been put to the meeting and lost. To appoint another person other than the director retiring to fill such vacancy at any general meeting, a notice in writing of not less than three nor more than 21 days before the date appointed for the meeting must have been left at the registered office or head office of the company notice in writing, signed by a member duly qualified to attend and vote at the meeting for which such notice is given, of his intention to propose such person for election, and also notice in writing signed by that person of his willingness to be elected.[33]

4.5 Removal of Directors

A director may be removed by the company by ordinary resolution before the expiration of his period of office, notwithstanding anything in its articles or any agreement between the company and the director. This removal requires a special notice which shall be immediately sent to the director concerned and such director will be entitled to be heard at the meeting before the resolution for his removal is put to vote and passed[34]

Where notice is given of an intended resolution to remove a director, the director is expected to make written representation within 14 days of receiving such notice and sent such representation to the company which is to be distributed along with the notice of meeting sent to other members of the company unless such representation is received late in which case the representations will be read out at the meeting. Where it is discovered that the written representation or the oral representation at the meeting contains defamatory representations, the aggrieved party may apply to the High Court to stop the representation from being read.[35]

A vacancy created by the removal of a director, if not filled at the meeting at which he is removed, may be filled as a casual vacancy.[36]

5.0 General Principle of Corporate Governance

Corporate Governance is concerned with practices and procedures for ensuring that a company is run in such a way that it achieves its objectives. Its principles set out and allocate responsibility to various stakeholders in the corporate organization.[37] These principles include the rights of shareholders, the equitable treatment of shareholders, the role of stakeholders in

---

[32] CAMA, s 285

[33] *Ibid,* s. 285 (1-4)

[34] *Ibid,* s. 288 (1) and (2)

[35] *Ibid,* s. 288 (3)

[36] *Ibid,* s. 288 (4)

[37] ACCA, 'Corporate Governance: A South African Perspective' <https://www.acaglobal.com/gb/en/student/exam-supportresources/fundamentals-exams-study-resources/f4/technical-articles/corporate-governance-a-south-africanperspective.html>accessed 30 November, 2020.

corporate governance, the role of regulators, disclosure and transparency, the responsibilities of the board and the role of auditors and audit committee.[38] The corporate governance principle is founded upon specific theories which are: agency theory, stewardship theory and stakeholder theory.

5.1 Agency Theory

In this theory, shareholders who are the owners of the company hire the agents to run the company. The principals delegate the running of the business to the directors and managers who are shareholders' agents. The agency theory aligns the goal of the management with that of the owners (the shareholders). Simply put differently, the shareholders expect the agents to act and make decisions in the best interest of the principals.[39] However, this discourages directors from considering any social responsibility or other interest except that of the shareholders.

5.2 Stewardship Theory

In this theory stewards are the company executives working for the shareholders. Unlike the agency theory, stewardship theory emphasizes the role of top management as stewards integrating their goals as part of the organization. The theory suggests that stewards are satisfied and motivated when organizational success is attained.[40]

5.3 Stakeholders theory

Unlike agency theory in which the directors and managers are working for the shareholders, stakeholders' theory suggests that the directors in organizations have other stakeholders to serve. This includes the employees, suppliers, host communities and business partners. The theory opines that the group of stakeholders requires and deserves management attention. Stakeholder theory encourages companies to engage in corporate social responsibility. Accordingly, the legal regime of corporate governance in Nigeria is founded on a framework which comprises the laws,[41] corporate organs,[42] regulatory institutions[43] and regulatory instruments.

5.4 Specific Principles of Corporate Governance in Nigeria

The Companies and Allied Matters Act (CAMA) 2020 is the major law regulating corporate governance in Nigeria. It provides mechanisms for good corporate governance which include the appointment of company directors, removal of directors by ordinary resolution, duties, and liabilities of directors, provisions for auditors and audit committee, disclosure provisions, and mandatory involvement of shareholders in some corporate decisions. The CAMA specifically outlined several director obligations to codify important common law principles. Important clauses in this regard state that a director has a fiduciary duty to the company, that a director should always act in the company's best interest, that a director should only use their authority for that purpose, that a director's duties should never conflict with their personal interests, and

---

[38] D. A. Guobadia and E. Azinge (eds), 'Globalization, National Development and the Law' [2015] 162.

[39] H. Y. Bhadmus, Corporate Law Practice, (3rd edn, Enugu: Chenglo Limited, 2015) 268.

[40] Umar Mohammed Tela, Sule Ahmadu and Babagana Talba Monguno, 'Corporate Governance & the Role of Boards of Directors on Firm's Performance' (2015) 12 (2) International Journal of Ergonomics and Human Factors, 1-8.

[41] Companies and Allied Matters Act, Cap C.20 LFN, 2004 (repealed), Companies and Allied Matters Act 2020; Insurance Act, Cap 117 LFN 2004; Central Bank Act 2007; Investment and Securities Act 2007, Nigeria Deposit Insurance Corporation Act, Cap N 102 LFN 2004. 12..

[42] CAMA (repealed), ss. 79-82; 64(b); 244-298; 357-368; CAMA 2020, ss. 88 (b); 269-340; 401-415. 13.

[43] Corporate Affairs Commission; Central Bank of Nigeria; Nigeria Deposit Insurance Corporation; Nigerian Stock Exchange; Investment and Securities Tribunal

that a director must carry out their duties honestly, in good faith, and with the level of skill and care that a reasonable and prudent director would use in a similar situation.[44]

From the foregoing, it is apparent that standards of corporate governance refer to ideal injunctions, in which conformity ensures the protection of the corporate interest of companies, their members, employees, creditors, and the public while enhancing the profitability of enterprises. In 2003, at the instance of the Securities and Exchange Commission and the Corporate Affairs Commission, a code of best practices on corporate governance in Nigeria was released with the objective set out as follows:

A code to make provisions for the best practice to be followed by public quoted companies and for all other companies with multiple stakeholders registered in Nigeria in the exercise of power over the direction of the enterprise, the supervision of executive actions, the transparency and accountability in government of these companies within the regulatory framework and market and, for other purposes connected therewith.[45]

Accordingly, the key principles of corporate governance are accountability: maintaining the integrity of financial statements and reporting. Ensuring that one is answerable for one's actions, openness/transparency - acting with sincerity, clarity, uprightness and candour, independence - the ability to make decisions without influence, responsibility: acting responsibly and taking responsibility for one's actions, integrity - maintaining conducts that commands the trust and respect of others. Doing things right even when it appears one can get away with doing otherwise, and reputation involves being perceived as being upright and of good character.[46]

6.0 Role of Board of Directors in Good Corporate Governance

The board of directors is the connection between the investors or creditors and the company management, that is, those who are employed to manage and create value for the investors. The board's responsibilities include determining the long-term aim of the company, providing leadership to achieve these aims, establishing a supervisory process to ensure that the management of the business is effective and also to report to shareholders on its performance to date. The board of directors is charged with developing the corporate goals and strategy and designing the implementation process to address any problem the company may have in growing in a competitive environment and the implementation of the provisions of the Code of Corporate Governance. The effectiveness with which the board of directors discharge their responsibilities will determine the company's competitive position. They must be able to drive their companies' strategy forward but they must do so within a framework of effective accountability and transparency, not just to shareholders but to all stakeholders.[47] Thus, the Board is charged to ensure the following:

1. **Culture and values**

Investors place increased importance on delivering long-term business and economic success and developing an appropriate corporate vision, ethics and working culture in the company is paramount, so at times of stress it can be relied upon to maintain a resilient performance. The board and executive management must ensure that the decisions around value creation and the

[44] CAMA, Sections 305-308

[45] J. O. Orojo, Company Law and Practice in Nigeria, (5th edn: Lexis Nexis Group, 2008) 282

[46] Goodtime Okara, 'Examining Corporate Governance in Nigeria under the Companies and Allied Matters Act 2020 and the Nigerian Code of Corporate Governance 2018: The Way Forward' (2021) 7 (1) *Journal of International Law and Jurisprudence*

[47] Mary Kelly, 'The Role of the Board of Directors in Corporate Governance' *CPA Ireland*

company's value system and culture are fully integrated. Corporate governance culture embedded in the organisation must have a degree of flexibility to enable companies to adapt to changing patterns within the business world.

2. **Shareholder engagement**
For shareholders to determine the effectiveness of the board they must be provided with appropriate financial and non-financial information in determining a fair and balanced assessment of the company's position and its prospects. The directors are tasked with providing information to give shareholders a clear and broad view of solvency and liquidity, the company's risk management approach and the long-term viability of the business.[48]
3. **Risk management**
The Board of Directors is tasked with identifying the nature and extent of the potential challenges facing the organisation in attaining its strategic aims and the risks to its long-term viability. The board is responsible for ensuring that there is a risk management process, an information system and an appropriate internal control system in place to aid the operation of the company. The directors will need to monitor the companies' risk management and internal control system and carryout periodic reviews of their effectiveness and report on this review in the annual report. These responsibilities can be allocated to the audit committee which reports to the board and directly to the shareholders in the annual report. The board has the duty to consider the risks that affect the company.

7.0 Challenges in the Performance of Directors Role in Corporate Governance

1. **Ensuring Effective Corporate Governance**
One of the primary challenges for any board of directors is the establishment and maintenance of effective corporate governance practices, this seems to be a herculean task as it involves setting clear accountability structures, defining roles and responsibilities, and ensuring ethical conduct throughout the organisation. By providing oversight, monitoring performance, and enforcing compliance, directors play a pivotal role in fostering a culture of transparency and integrity within the company.[49] Keeping up with the oversight functions and ensuring total compliance may sometimes be an issue as the board generally meets once in a year with the exception of an Extraordinary general meeting.
2. **Balancing the Diverse Interests of Various Stakeholders**
The board of Directors is constantly faced with the problem of balancing the diverse interests of various stakeholders. These stakeholders include shareholders, employees, customers, and the broader community. Each group has its expectations and demands, thus, aligning them with the company's goals can be a daunting task. Additionally, managing a diverse team poses its own set of challenges, requiring a deep understanding of different cultural and professional backgrounds. Driving change within an organisation is another significant hurdle, especially in established companies where traditional practices are of high importance.[50]

8.0 Summary of Findings

---

[48] *Ibid*

[49] Anvil Advisory, 'Top Challenges Faced by Board of Directors' https://www.linkedin.com/pulse/top-challenges-faced-board-directors-anvil-advisory/ accessed 20 July 2024

[50] Gary Pryor, 'The World of Managing Directors: Responsibilities and Challenges' https://medium.com/@garypryor/the-world-of-managing-directors-responsibilities-and-challenges-c0934bfb3f3c#:~:text=One%20of%20the%20primary%20challenges,can%20be%20a%20daunting%20task. Accessed 20 July 2024.

This paper found that directors are very important figures in the administration of a company and their relationship being a fiduciary one is most certainly a relationship of utmost truth, one which requires the dedication and devotion of the director and the ability to not allow personal interest to affect the interest of the company. The Board of Directors on the other hand is found to be the very core of existence of a public company, although not needed by all companies especially small companies,[51] a company that lacks good administration is as good as dead. It is also pertinent that a company have a board in order to comply with the directive of the Corporate Affairs Commission as provided by the Companies and Allied Matters Act and the directives as laid down in the Code of Corporate Governance.

9.0 Conclusion

In conclusion, directors of a company are persons duly appointed by the company to direct and manage the business of the company whether in executive or non-executive capacity, they stand in a position of trustee to the company in terms of money and properties and as agent in contract entered into on behalf of the company. There are different types of directors with different modes of appointment, however, directors are appointed and removed by ordinary resolution. A director being in a fiduciary relationship with the company owes a number of duties to the company some of which are the duty to act in the best interest of the company, the duty to act for proper purpose, the duty not to fetter discretion, duty to avoid conflict of interest and not to make secret profit. The duties of directors, however, extend to their duty to the company as a board, in order to ensure good corporate governance and to maintain healthy links amongst stakeholders, the board of directors is saddled with the duty to maintain culture of values and ensure effective risk management. The directors and board of directors, however, still encounter some challenges in their roles in ensuring good corporate governance.

10.0 Recommendations

It is recommended that in order to ensure effective corporate governance, it is imperative that the board composition be balanced by ensuring diversity in the skills and status of members of the board, there should be a regular evaluation of the board to keep track of progress and identify the strength and weaknesses of the board or its members, the requirements of independent directors for companies should be strictly complied with as the presence of independent directors on the board allows for innovation, transparency in the affairs of the company as directed by the board cannot be overemphasised, so is the independence of auditors, and there should be easy to access documentation of policies and procedures relating to shareholder rights, executive compensation, board meeting operation, the election of new directors and more. This ensures transparency and consistency within the organisation.

[51] CAMA, s. 394

REFERENCES

BOOKS AND ARTICLES

ACCA, 'Corporate Governance: A South African Perspective' <https://www.acaglobal.com/gb/en/student/exam-supportresources/fundamentals-exams-study-resources/f4/technical-articles/corporate-governance-a-south-africanperspective.html>

Anvil Advisory, 'Top Challenges Faced by Board of Directors' https://www.linkedin.com/pulse/top-challenges-faced-board-directors-anvil-advisory/

Bhadmus, H. Y., *Bhadmus on Corporate Law Practice* (5th ed. Chenglo Limited, Enugu 2021)

Bhadmus, H. Y., Corporate Law Practice, (3rd edn, Enugu: Chenglo Limited, 2015) 268.

Guobadia D. A. and Azinge E. (eds), 'Globalization, National Development and the Law' [2015] 162.

Okara, G. 'Examining Corporate Governance in Nigeria under the Companies and Allied Matters Act 2020 and the Nigerian Code of Corporate Governance 2018: The Way Forward' (2021) 7 (1) *Journal of International Law and Jurisprudence*

Orojo, J. O. Company Law and Practice in Nigeria, (5th edn: Lexis Nexis Group, 2008) 282

Kelly, M., 'The Role of the Board of Directors in Corporate Governance' *CPA Ireland*

Pryor, G., 'The World of Managing Directors: Responsibilities and Challenges' https://medium.com/@garypryor/the-world-of-managing-directors-responsibilities-and-challenges-c0934bfb3f3c#:~:text=One%20of%20the%20primary%20challenges,can%20be%20a%20daunting%20task.

Resolution Law Firm, 'Duties, Liabilities and Rights of a Director Under Nigerian Company Law' (2020) < https://www.resolutionlawng.com/duties-liabilities-and-rights-of-a-director-under-nigerian-company-law/>

Samraddhi Mutha, 'Role of Shadow Directors' (2023) 3 (3) *Indian Journal of Research in Law*

Stephen, C., 'The Different Types of Company Directors' (2024) https://www.thecorporategovernanceinstitute.com/insights/lexicon/the-different-types-of-company-directors/

University of Pittsburgh, 'Corporate Governance, What It is and Why it Matters' (5 July 2023) https://online.law.pitt.edu/blog/corporate-governance-what-it-is-and-why-it-matters

Umar Aliyu Mustapha, Norfadzilah Rashid, Hussaini Bala, and Habibu Musa, 'Corporate Governance and Financial Performance of Nigeria Listed Banks' (2020) 12 (1) Jour of Adv Research in Dynamical & Control System.

Umar Mohammed Tela, Sule Ahmadu and Babagana Talba Monguno, 'Corporate Governance & the Role of Boards of Directors on Firm's Performance' (2015) 12 (2) International Journal of Ergonomics and Human Factors, 1-8.

CASES

Allen v Hyat, (1914) 30 T.L.R. 444.

Fulham Football Club Ltd v Cabra Estates Plc (1994) I BCLC 366.

Hogg v. Cramphorn Ltd. (1969). Ch. 254 (Chancery Division)

J. POW Services Ltd v Clare 30 (1995) 2 B.C.L.C 435 at 440

Percival v Wright (1902) 2 Ch. 421

Re City Equitable Fire Insurance Co. Ltd (1925) Ch. 407

Re Smith & Fawcett Ltd (1942) CH. 304 at 306

STATUTES

Central Bank Act 2007
Companies and Allied Matters Act 2020
Insurance Act, Cap 117 LFN 2004
Investment and Securities Act 2007
Nigeria Deposit Insurance Corporation Act, Cap N 102 LFN 2004. 12