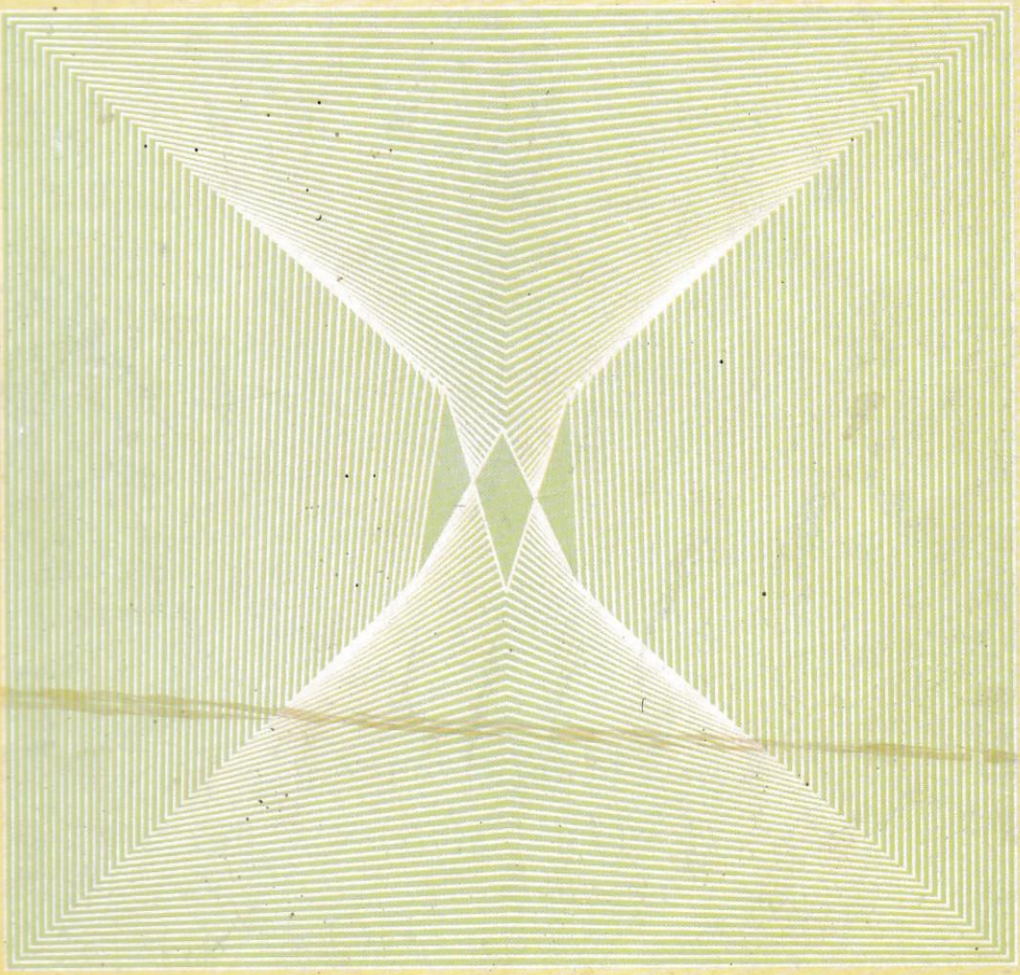
CORPORATE GOVERNANCE
ISSUES, PROCESSES, AND THE LAW



Edited by:

Edet B. Akpakpan

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Plot 3, Unit D, Ewet Housing Estate
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Telephone: 085-203580, 085200972, 803410
E-mail: dg@akiipoc.com

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CHAPTER SIX

DUTIES, RESPONSIBILITIES AND LIABILITIES OF DIRECTORS UNDER THE COMPANIES AND ALLIED MATTES ACT (CAMA)

Enefiok E. Essien

Introduction

The general theme of the workshop is on corporate governance, i.e. how a company is led so as to achieve efficiency, probity, responsibility, transparency and accountability.[1] Professor Colin Trickler is credited with originally coining the term "Corporate governance" and, in his view, "if management is about running business, governance is about seeing that it is run properly, which is the old distinction about doing things right and doing the right thing"[2]

On a broad perspective, the Organisation for Economic Cooperation and Development (OECD) defines corporate governance as:

> The system by which business corporations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as, the board, managers, shareholders and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also

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[1] Chief Emeka Anyaoku, former Commonwealth Secretary General, at Diamond Bank Tenth Anniversary Lecture 2000; Financial Times, June 21, 1999

[2] R. I. Trickler, "Corporate Governance", cited in c. Atoki, "Boardroom Politics on Corporate Governance" MILQ 1997, vol. 2 NO. 4 p. 35 at 41.

> provides the structure through which the company objectives are set, and the means of attaining those objectives and monitoring performance.[3]

But it is not always that the broad view is taken. For instance, the term "corporate governance" is sometimes viewed as "the way in which directors and auditors handle their responsibilities towards shareholders"[4], or, from the investor's viewpoint, as "the ways in which suppliers of finance to companies assure themselves of getting a return on their investment".[5] Whatever view one adopts, however, i.e. whether the narrow or the broad view, and even if one aligns with the emerging perspectives in corporate governance, which are fuelled by the process of globalisation,[6] the directors of a company play a pivotal role. It is for this reason that, in discussing corporate governance in Nigeria, it is also necessary to appraise the duties, responsibilities and liabilities of directors under the Companies and Allied Mattes Act ("CAMA" or "the Act").[7]

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[3] See: OCD (Organisation for Economic Cooperation and Development), Principles of Corporate Governance, 1999, pmbl, available at http://www.oecd.org/abqutg eneraldindex.html.

[4] Shleifer and Vishny, *Journal of Finance* (1197), 737

[5] Ibid.

[6] See: E. A. Oji *et al:* "Globalisation and New Perspectives in Corporate Governance", and The Corporate Governance", both papers presented from 16-19 May 2004 at the 40th Annual Conference of the Nigerian Association of Law Teachers, at the Nigerian Institute of Advanced Legal Studies.

[7] Formerly Decree No. 1 of 1990, see now Cap. C 20 Vol. 3 Laws of he Federation of Nigeria 2004.

Directors

As a definition, a director is simply a person duly[8] appointed by the company to direct and manage the business of the company[9], whether or not he is called a director or some other name[10], and includes any person on whose instructions and direction the directors are accustomed to act[11]. The Act therefore looks at a director in functional terms and not just by the name tag, for someone may be called a director who really directs nothing, and conversely, someone may be called some other name and yet, functionally, he is the director. Thus a director is anyone occupying the ole of director regardless of his title within the company. This could include a *de facto* director[12].

In Nigeria, company directors are generally called as such, rather than by another or other name(s). However, because under CAMA a director is a director by whatever name called, it means that dummy directors[13], shadow directors,[14] alternate directors[15]nominee directors[16],

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[8] The significance of due appointment lies in the fact that by Section 250 of CAMA, where a person who is not duly appointed as a director acts as such on behalf of the company, his act shall not bind the company and he shall be personally liable for such action, unless he can be said to have been held out by the company, in which case the company would be bound.

[9] Section 244 CAMA

[10] After all, as Shakespeare once asked, "what's in a name?". See, "Romeo and Juliet", in *The Complete Works of William Shakespeare.*

[11] Section 245 (1) and Section 567 CAMA.

[12] Same functional approach is adopted by the Banks and other Financial Institutions Act, Cap. B3 vol. 2 Laws of the Federation of Nigeria 2004, section 66 of which states that a director "includes any person by whatever name he may be referred to carrying out or empowered to carry out substantially the same functions of a director in relation to the affairs out substantially the same functions of a director in relation to the affairs of a company incorporated under the company and Allied Matters Act".

[13] E.g., a director who never acted a director or attended a board meeting: *London and Masshonaland Exploration Co. v. New Masshonaland Corporation Co.* (1891) WN 165

[14] i.e. a person in accordance with whose directions or instructions the directors of a company are accustomed to act, unless the directors are accustomed so to act only because the person concerned gives them advice in a professional capacity, e.g. professional advisers such as accountants and lawyers, who are therefore, not, for

managing directors, executive directors and non-executive directors are all directors and therefore are bound and must abide by the relevant provisions of CAMA.[17] In practice, an executive director is an employee of the company whose status has been raised to that of a director but who continues essentially as such employee. Being an employee he devotes his whole time and attention to the work of his employer (the company) to the exclusion of any other paid jobs. He is employed by the company to attend to the daily running and management of the company. He has a contract of service with his employer and earns salaries. His appointment, powers, duties, rights, discipline and tenure are regulated by the Articles of Association of the Company as well as his contract of service. In other words, executive directors of companies are just senior managers appointed by the board under the articles of association for

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that reason alone, shadow directors. Whether a person is or is not a shadow director is a matter of fact to be decided on the circumstances of the case. Some indications are:

(a) being a signatory to the company's bank account and/or attendance at interviews with bank officials;

(b) the ordering by the person concerned of goods and/or services for the company;

(c) the signing of contracts and/or letters in the capacity of director; (d) attendance at meetings of the board;

(e) possession of detailed information about the company. The significance of being a shadow director is that such persons are caught by certain statutory provisions in the same way as a formally appointed or *de facto* director.

[15] These are appointed to act for the director in his absence, sometimes confined to acting at board meetings. By Table A an alternate director is a director "for all purpose".

[16] As Lord Denning MR once said: "There is nothing wrong in 'appointing nominee directors'. It is done every day. Nothing wrong, that is, so long as the director is left free to exercise his best judgement in the interest of the company which he serves. But if he is put upon terms that he is bound to act in the affairs of the company in accordance with the directions of his patron, it is beyond doubt unlawful".

[17] As to an examination of the extent to which directors abide by the provisions of CAMA, see: Professor Enefiok Essien, "Compliance under the Companies and Allied Mattes Act 1990: Challenges to Directors, Company Secretaries, Trustees and Shareholders", a lead paper presented at a 2-day National Workshop on Company Administration and practices in Nigeria, at Lagos Sheraton Hotel and Towers, on 10 – 11 February 2005.

convenience and in the interest of running the company; they head departments in a company, and a person cannot be the managing director/chief executive concurrently without being an executive director[18]. Thus, where an executive director is appointed the managing director/chief executive of a company he automatically relinquishes his position as a working or executive director, with the result that if he is subsequently suspended as managing director he cannot be issued notice to attend nor can he attend board meetings qua executive director.[19]

As to non-executive directors, the practice of appointing them has grown tremendously, particularly with public limited companies.[20] They are also known as part-time, outside or independent directors. Non-executive directors are directors who are appointed directly under sections 247, 248 and 249 of CAMA. They are not employees of the company as they do not have contracts of employment and do not draw salaries. The remuneration paid to them are in the nature of fees or allowances fixed at their Annual General Meeting by resolution, and they draw it or earn it only when and if they attend meetings of the board of directors. Their appointments, duties, powers and removal are provided for in the CAMA. They are not usually required to report for duty at the office and, their functions being part-time in nature they could be engaged in some other endeavours, which could be full or part-time. Perhaps it may be stated here, right away, that a non-executive director has the duty to keep himself informed about the business activities and financial status of his company, to attend board meetings with fair regularity and to check on the activities of the full-time directors and leading executives. If he fulfils these duties conscientiously, the court may be inclined to adopt to his obligation to exercise skills, care and

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[18] See: *Longe v. First Bank of Nigeria Plc (2006)* 3NWLR (Pt. 967) 228, held 11,12.
[19] Ibid
[20] E. J. Jacobs, "Non-Executive Directors," (1987) *Journal of Business Law, 268*

diligence as a director a different standard from that which it would apply to a full-time director.[21]

The managing director is as well as an employee of the company, but he is the company's chief executive. He is not required to have been a director in the company. It suffices that he is a person of proven relevant ability or experience, as required by the company's Articles. Before now, Article 106 in the First Schedule in Table A of the repealed Companies Decree 1968 had required the board of directors to appoint one of their members as the managing director. It provided:

The directors may from time to time appoint one or more of their body to the office of managing director for such period and on such term s as they think fit.

It followed that under Article 106 of the First Schedule in Table A of Companies Decree, 1968, a person to be appointed a managing director must himself have been a sitting director, as he ought to come from amongst the directors. He was consequently permitted to retain his directorship along with his added status of managing director[22]. This is no more the case under CAMA.

There is no statutory or common law specification of the quality of persons eligible for appointment as director: there is no specification of any academic, professional or other such qualification. All that is required is compliance with the provisions of the Articles of Association of the Company, which may simply stipulate, subjectively, that the appointee should be " a person of proven relevant ability or experience", as in the *Longe* case cited above. Even the half-hearted provision on age limit[23] for directors is modified by so many exceptions and saving clauses that it does not appear to have much practical effect. On the other hand,

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[21] See generally C. M. Schmitthffled (ed.) *Palmer's Company Law* vol.1, 24th edn, para 60-48.
[22] Ibid, at p. 263 H.
[23] S. 252 of CAMA

while not laying down qualifications, the Act lays down lavish disqualifications from company directorship. These include infancy (i.e. being below 18 years of age), lunacy or unsoundness of mind, insolvency, fraud, and bankruptcy[24]. This lacuna on objective directorial qualification is one reason why today some boards have on them some people who really should have no business being on the board and this is more so with boards of government companies and parastatals. Indeed, even a shareholding qualification is not statutorily required. Under Section 251 (1) of the Act, the shareholding qualification for directors may be fixed by the articles of association of the company and unless so fixed no shareholding qualification shall be required. The Act thus imposes no obligation on the directors to hold any share in the company. There being no statutory obligation, directors therefore need not be members of the company. They may thus have no stake in the well-being of the company nor run any pecuniary risk in the company. In the event of winding up, the directors are bound to escape liability an event of winding up, the directors are bound to escape liability and even when the company is a going concern, they may just barley ensure its survival. It is this lack of financial stake that often makes directors breach their statutory duty. Despite contra arguments,[25] one easily shares the view[26] that a statutory share qualification for directors presents itself as a promising way of securing bona fide at the board by giving the directors a substantial stake in the company's fortunes.

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[24] See generally, Sections 253, 254 and 257 of CAMA

[25] That when there is no share qualification directors cannot use their votes to manipulate their removal or block a suit on behalf of the company against them, or to serve their own interests while sacrificing those of the shareholders; *North-West Transportation Co. v .Beatty* 12 App. Cas 589; *Bushel v. Faith* (1979) AC 1099

[26] See: Report on the Reform of Nigerian Company Law, Vol. 1 pp. 196-197; The Encyclopaedia of the Laws of the Federal Republic of Nigeria Vol. 5 (1st edn), 1992 at p. 219

Duties/Responsibilities of Directors

Directors derive their powers from the Articles of Association of the company. Accordingly, Section 63(2) of CAMA provides:

> Subject to the provisions of this Act, the respective powers of the members in general meeting and the board of directors shall be determined by the company's articles.

Further legitimacy for the governance of a company by the board of directors is provided in Section 63 (3) of CAMA, thus:

> Except as otherwise provided in the company's 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 this Act or the Articles required to be exercised by the members in general meeting.

The statutory recognition of directors as "persons duly appointed by the company[27] acknowledges the board as the powerhouse of the company. Directors are perhaps more involved in the management of the affairs of the company than other interested parties. Directors are perhaps more involved in the management of the affairs of the company than other interested parties. Directors take decisions, award contracts on behalf of and in the name of the company; they engage employees for the company and take decisions on mattes which affect the fortunes of the company.

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[27] Section 244 (1) of CAMA

It is trite that a company has "all the powers of a natural person of full capacity"[28] but even then, the powers and functions of the company cannot be exercised or discharged except through natural persons, in this case the directors. Directors discharge certain duties for and on behalf of the company. These are the functions they perform, the roles they play or the work that is their job in the company. At the same time, directors owe certain duties or legal responsibilities to the company. These relate, in the main, to the way and manner that their duties are discharged, not just as trustees but as agents of the company.

It is now beyond question that the position of a director vis-à-vis the company, is that of an agent who may not himself contract with his principal, i.e. the company, and that it further is that of trustee who, however fair a proposal may be, is not allowed to let the position arise where his interest and that of the trust may conflict[29]. He is a watch-dog, and as Timothy Bowler once said, the watch-dog has no right, without the knowledge of his master, to take a sop from a possible wolf[30]. The director thus owes a fiduciary duty to the company, both under statute (i.e. the CMA) and in equity. The fiduciary duty is intended to ensure the survival of the company in so far as it prohibits the misuse of corporate information, personal interest of directors, diversion of company business and cashing in on a lost corporate opportunity. The fiduciary relationship imposes upon directors duties of loyalty and good faith, which are akin to those imposed upon trustees properly so called. As agents, directors are also under duties of care,

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[28] Section 38(1) CAMA. As to the attenuation of the effect of the doctrine of *ultra vires*, see Section 39(3) of CAMA

[29] See generally Section 280 CAMA; *Shonowo v. Adenbayo (1996)* 1 AU NLR 176, (1969) NCLR 126; 2 ALR Comm. 419. For arguments monies and property, and agents in the transaction which they enter into on behalf of the company, see: *Re City Equitable Fire Insurance Co. Ltd* (1925) Ch. 407; G. E. Ry v. Tumer (1872) 8 Ch. App. 149; Report on the Reform of Nigerian Company Law, Vol 1.

[30] Timothy Bowler, English Jurist, in *In re North Australian Territory Co.* 1892, quoted in *The Quotable Lawyer* at p. 28

diligence and skill. In discharging his duties of care, diligence and skill, it suffices that a director acts honestly. If he acts honestly he cannot be made responsible in damages unless he is guilty of gross or culpable negligence in a business sense. A director need not exhibit in the performance of his duties a greater degree of skill than may reasonably be expected fro a person of his knowledge and experience. Thus, if directors act within their powers, if they act with such care as is reasonably to be expected from them, and if they act honestly for the benefit of the company they represent, they thereby discharge both their equitable as well as their legal duty to the company[31].

Though a director is expected to exercise due skill in the company's affairs, he is not expected to exercise skill which he does not possess. This derives from the fact that directors are not expected to be experts, unless they are appointed as such. Thus, for example, a rubber-producing company may have a manager on its estate who is responsible for all the day-to-day work there, but who is responsible to the board of directors; and the board, or at least certain members of it, may know little or nothing about the management of an estate. The director may undertake the management of the rubber company in complete ignorance of everything connected with rubber, without incurring responsibility for the mistake which may result from such ignorance; while if he is acquainted with the rubber business he must give the company the advantage of his knowledge when transacting the company's business.[32] Similarly, a director of a life insurance company, for instance, does not guarantee that he has the skill of an actuary or of a physician[33]. Directors of a specific company are therefore not required to be experts in the type of business which the company undertakes and this impacts on the degree of skill expected of them and therefore on their

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[31] *Lagunas Nitrate Co. v. Lagunaas Syndicate* (1899) 2 Ch 392, 435

[32] *Re Brazilian Rubber Plantation & Estates Ltd (*1911) 1 Ch. 425, 437

[33] Re*City Equitable Fire Insurance Co* (1925) ch. 407 at p. 428

liability or otherwise. This statutory leeway explains, as earlier stated, why many boards comprise directors who know absolutely nothing about the specific business of the company. However, where a board has some experts in certain fields, a director would be entitled to rely upon the advice of his fellow directors in matters in which they are, or should be experts.[34]

The director's duty of diligence extends to attendance at board meetings, as non-attendance can constitute negligence. Importantly, diligence carries with it the necessity of giving a reasonable amount of attention to the company's affairs. Continuous non-attendance at meetings may render a director guilty of the breaches of trust which are committed by others.[35]

It is interesting that while CAMA establishes a fiduciary duty, it on the other hand appears to facilitate its breach by implicitly allowing multiple directorship and therefore, directorship in competing companies, Section 281 of the Act provides:

> The fact that a person holds more than one directorship shall not derogate from his fiduciary duties to each company including a duty not to use the property, opportunity or information obtained in the course of the management of one company for the benefit of the other company, or to his own or other person's advantage.

One would have expected that the fiduciary duties owed to the company, particularly the non-conflict rule, should prohibit the director from being a director of competing companies. At present in Nigeria it is the norm for a director in one company to use the corporate information or opportunity of that company for the benefit of

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[34] *Palmer's Company Law,* vol. 1, 24th edn., p. 926

[35] Per Lord Hardwike in *Charitable Corporation v. Sutton* (1942) Atk 400, 405

another. True, directors have their own business interests, which they pursue outside the company activities. The reason behind the Act not prohibiting this may probably be that, if they are prohibited from private business pursuits by reason of their directorships, competent men might be discouraged from serving as directors[36]. This means then that, in the absence of any prohibition in the terms of his appointment, a director may engage in any independent business of his own or enter the employment of a rival company[37]. An agreeable distinction may of course be drawn between where the director's business existed before his appointment, in which case he would have made full disclosure and it may not be fair to prohibit him, and where he engages in the competing personal business only after becoming a director, in which case he should be prohibited.

Of course, though section 281 allows inter-locking or multiple directorship, it is not without a caveat. The director still owes certain duties under the CAMA, such as the duty not to use the property, opportunity or information obtained in one to the benefit of the other or others, or make secret profit. Secret profit at times comes in the form of leasing or selling the director's property to the company. In many cases the director may have acquired the property fraudulently in the name of someone else, so that in selling or leasing it to the company he does not disclose his interest. It may be argued that in such case the company could still lease or buy the property from a third party after all, and so the director should be let alone. The truth, however, is that because the director is the lessor or seller, as the case may be, there are high possibilities of overcharging the company forth the property and of preventing the company from getting it cheaper by the director going into the market to buy and then sell or lease to the company. More so, since the director fronts someone else in most of such

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[36] Oladeji Akanki, "Abuse of Power and Breach of Duty by Company Directors" *Nigerian Journal of Contemporary Law*, Vol. 6 Nos 1 & 2 (1975) 1 at 41

[37] *London & Mashonaland and Exploration co. v. New London & Mashonaland Co. (1891)* W. M. 165; *Bell v. Lever Bros Ltd.* (1932) AC 161 at 195

transactions, there is a breach of the director's duty to disclose his interest to the company under section 277 of the Act. The section provides, *inter alia:*

277(1) Subject to the provisions of this section, it shall be the duty of a director of a company who is in any way whether directly or indirectly, interested in a contract or proposed contract with the company, to declare the nature of his interest at a meeting of the directors of the company.

(2) In the case of a proposed contract, the declaration required by this section to be made by a director shall be made at the meeting of the directors at which the question of entering into the contract is first taken into consideration, or, if the director was not at the date of that meeting interested in the proposed contract, at the next meeting of the directors held after he became so interested, and in a case where the director becomes interested in a contract after it is made, the said declaration shall be made at the first meeting of the directors held after he becomes so interested.

For finance companies and banks in particular, the banks and Other Financial Institutions decree (now Act) 1991[38]. (BOFID, NOW BOFIA) goes beyond the CAMA by expressly prohibiting directors of a bank from contemporaneously serving as director of any other bank or company or holding more than 10 per cent of the voting rights of the shareholders of the bank, unless with the prior approval of the Central Bank[39] and prohibits the managing director of a

[38] Cap B3, Vol. 2 Laws of the Federation of Nigeria 2004

[39] As to when a bank is said to have failed, see section 35 BOFIA

bank from being a director of any other company unless such other company is a subsidiary of the Bank[40]. The approach taken by BOFIA is commended and recommended for inclusion in the CAMA. That is not to say that the outright statutory prohibition of multiple or interlocking directorship would immediately put an end to the practice, and afford a panacea for breach of fiduciary duties by directors. In fact even with the BOFIA some directors have devised a way to sidetrack it. They do so by ensuring that their names are not put on the board of the parallel companies. Rather, they put their cronies as directors. These crony-directors are mere dummies while the shadow director pulls all the strings. By this device, quite a number of directors, particularly in the finance sector, have breached their statutory duties to the company, and this has adversely affected the national economy by the phenomenon of distressed or failed banks.[41]

Directors have given or facilitated the giving of huge loans to companies some of which are in fact owned by them, though only the names of their cronies, rather than theirs, are visible on paper. Clearly, the mere statutory prohibition of multiple directorship may not in itself stop this practice by directors. What is needed is a reformation of character and attitude because even if the prohibition is inserted in CAMA, the Corporate Affairs Commission would not be in a position to detect which names belong to mere cronies.

The fiduciary position of directors means that they are in a relationship of absolute trust and total confidence and therefore must exhibit *uberrima fidei* (absolute good faith). It is for this reason that his personal interest as director should not conflict with his duties[42]; e.g. receiving/making secret profit[43], or utilizing the company's property or achieving unnecessary benefits. The liability of the director

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[40] Section 19(2) (a) (b) of BOFIA
[41] Section 19(3), *Ibid*
[42] Section 280 CAMA
[43] Section 280 (2)

to account for secret profits arises from the mere fact that a profit is made by the director; it is not a question of loss to the company, and so its is no defence that the secret profit has not occasioned any loss to the company. The liability of directors to account does not depend upon proof of *mala fides* (bad faith). It is based on the general rule of equity that no one who has duties of a fiduciary nature to perform is allowed to enter into engagements in which he has or can have a personal interest conflicting with the interests of those whom he is bound to protect[44]. Where a director diverts a project which his company is trying to negotiate, but unlikely to succeed, to his new company formed for that purpose, he is liable to account for the profits which he has made[45]. Where two directors of a company who are at odds with the third diverted a contract meant for the company to a new company which they had formed, and subsequently procured a resolution of the company ratifying their conduct, such directors would be found to be in breach of duty under section 280 or CAMA, and the benefit of the contract would belong in equity to the company. They would be bound to account to the company for it[46]. Similarly, a director will be accountable for profits accruing form the exploitation of a business opportunity specifically rejected by the company. A director must not only disclose to the company the opportunity[47]. He would, however, be allowed to escape liability in such circumstance via disclosure to the company in general meeting. For guidance to directors, the Code of Best Practice contained in the Cadbury Report on "Financial Aspects of Corporate Governance" is strongly recommended.

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[44] *Addire* V. *Caretaker Committee, Ife Divisional Council* (1963) 1 All NLR 39 (FSC)

[45] *Canade Aero Service V. O' Malley* (1973) 40 DLR (31) 371

[46] *Cooks v Deeks* (1961) Ac 554

[47] *Regal Hasting Ltd. V Sulliver* (1967) 2 AC 1347

Their Liability

The Companies and Allied Matters Act attaches liabilities not only to directors but also to shadow directors[48]. Thus, not only is the director liable for unapproved transactions under section 285, even shadow directors and "connected persons" are equally liable in appropriate cases. The Act[49] defines "connected persons' to be:

(a) That director's spouse, child or step-child, including illegitimate child;

(b) Except where the context otherwise requires, a body corporate with which the director is associated; or

(c) A person acting in his capacity as trustee of any trust, the beneficiaries of which include-

(i) The director, his spouse, any children or step-children; or

(ii) A body corporate with which he is associated, or of a trust whose terms confer a power on the trustees that may be exercised for the benefit of the director, his spouse or any children or step-children of his, or any such body corporate; or

(d) A person acting his capacity as partner of that director or of any person who, by virtue of paragraphs (a), (b) or (c) of this subsection, is connected with that director.

The Act[50] also provides for personal liability of directors where the company receives money by way of loan for specific purpose, or receives money or other property by way of advance payment for the execution of a contract or project and with intent to defraud, fails to apply the money or other property for the purpose for which it was received. In such case every director who is in default will be personally liable to the third party from whom the money or property was received for a refund of the money or property so received and not applied for the purpose for which it was received. The directors will not be allowed to hide behind the

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[48] See sections 284, 285, 286.

[49] Section 286 (8)

[50] Section 290

corporate veil where, because of their fraud or negligence, they allow a third party to alter his position for the worse in dealing with the company.[51]

Similarly, there is personal liability of directors for secret benefits. The Act is emphatic[52] that a director shall not accept a bribe, a gift, or commission either in cash or kind from any person or a share in the profit of that person in respect of any transaction involving his company [53]in order to introduce his company to deal with such a person. If a director contravenes this, he thereby commits a breach of duty and the company shall recover from him the actual gift *and then sue him and the other person jointly and severally* for damages sustained. However, where the gift is made after the transaction has been completed in a form of unsolicited gift as a sign of gratitude, the director may be allowed to keep the gift. It is remarkable that in all cases concerning secret benefits, the plea that the company benefited or that the gift was accepted in good faith is no defence[54].

Loans to directors from the company are prohibited[55], except to meet expenditure incurred or to be incurred for the company's purpose, or in the ordinary course of business if the business of the company is or includes lending. A breach, i.e. obtaining unauthorised loan or guarantee from the company, renders the directors jointly and severally liable to indemnify the company.

Taken all in all, directors cannot be liable if they abide by their duties under the Companies And Allied Matters Act in running the affairs of the company. The duties, which are both statutory and equitable, are essentially those of diligence, skill and good faith. It is to ensure compliance by directors, that this forum is organised to sharpen skills, update knowledge and provide acquaintance with the best

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[51] *Bargate v Shortridge* (1855) 10 E. R. 296; *Texaco Africa Ltd, V Nigerian Shipping & Trading Co. Ltd.* (1964) L. L. R. 78

[52] Section 287

[53] Section 287 (3)

[54] Section 287 (4)

[55] Section 270

practices in the area. Which is why I thank the organisers for this event, and for picking me to speak on it. I thank you, too, for your patience and for your audience.