



A Legal Critique of the Role of a Company Secretary in Corporate Governance in Nigeria

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Abstract

A company secretary was traditionally viewed as a mere servant with no more than a clerical and administrative role. However, that narrative has shifted with the plethora of statutory and judicial recognition of the secretary as an officer of a company with clearly defined roles. A company secretary is expected to function as a corporate governance officer in addition to handling secretarial and administrative tasks. This expanded position requires wider professional skills and competencies to handle evolving duties. In Nigeria, the company secretary is controlled by the board of directors, which has the power to hire and fire under the Company and Allied Matters Act (CAMA) 2020. This paper critically analyses these responsibilities and strict restrictions imposed by the CAMA on a company secretary. It uses a doctrinal approach to argue that the tendency of the secretary to protect the board's interests at the expense of stakeholders is a serious flaw in Nigerian company law. Comparatively, the role of the company secretary in the United Kingdom is more balanced and established than in Nigeria. The paper recommends the amendment of the CAMA to make the

company secretary more independent and effective to achieve the company's primary objectives.

Keywords

company secretary – Companies and Allied Matters Act 2020 – corporate governance – Nigeria – United Kingdom

1 Introduction

The term 'secretary' originated from the Latin word '*secreterius*' which means a person entrusted with secrets.¹ Webster's Dictionary sees a secretary as a person employed to handle office activities such as typing for a superior.² Historically, secretaries were regarded as enlightened people who acted as clerical staff with the skills to take notes, type business letters and answer the telephone.³ As commerce and trade expanded, the services of secretaries were increasingly sought after by the nobles to handle sensitive issues on private matters as trusted advisors.⁴

From a legal standpoint, the Companies and Allied Matters Act (CAMA), 2020 does not provide any coherent definition of a company secretary. However, while enumerating the principal officers of the company in its interpretative section, the Act included the secretary as an officer in the company.⁵ A secretary is an officer of a company appointed by the board of directors to perform certain legal and administrative duties, with the requisite knowledge and experience to discharge these duties.⁶ In the United Kingdom (UK), there were no mandatory provisions for the appointment of a secretary in the early

1 See Collins English Dictionary (Harpercollins Publishers 2012) <<http://dictionary.reference.com/browse/secretaries?s=t>> accessed 20 January 2025.

2 Merriam-Webster Dictionary, at <<https://www.merriam-webster.dictionary.com>> accessed 30 August 2024.

3 Aniebiet Ubon and Innocent Abidoye, 'The Role and Status of a Company Secretary in Modern Corporate Governance in Nigeria: A Case of "A Mere Errand Boy"' (26 November 2015) <<https://www.readcube.com/articles/10.2139%2Fssrn.2695678>> accessed 20 December 2024.

4 Olakunle Orojo, *Company Law and Practice in Nigeria* (5th edn LexisNexis Butterworths, Durban 2008) 285.

5 CAMA 2020, s 868.

6 Resolute Law Firm, 'Company Secretary Responsibilities' (*Resolute Law Firm Nigeria*, 4 September 2020) <<https://www.resolutionlawng.com/appointment-and-removal-of-company-secretary-in-nigeria/>> accessed 28 December 2024.

English company legislations until 1948.⁷ Although, Nigerian company legislations were modelled after British laws, it was not until the Companies Act of 1968 that the appointment of a secretary became mandatory.⁸ The appointment was justified to ensure that companies continued to be rule-compliant while carrying out their obligations.

Under the common law, company secretaries were regarded as mere servants of the company with limited powers.⁹ As secretaries, their roles were mainly ministerial and clerical.¹⁰ Thus, they were not necessarily involved in the managerial functions of the company.¹¹ Lord Esher MR opined that the position of a secretary is that of a mere servant.¹² Hence, no one may assume that he has any power to represent anything in particular, and no one may assume that the comments he makes are required to be taken at face value without further investigation.¹³ The above mindset of the role or position of a secretary was based on what was obtainable during that era. It also reflected the way secretaries were treated. Hence, the roles they performed were not valued.

The above description of the company secretary no longer applies as Lord Denning came up with a more distinguished notion of the role of the company secretary in *Panorama Development (Guilford) Ltd v Fidelis Furnishing Fabrics Ltd*.¹⁴ Here, he averred that the world has evolved and that present-day company secretaries hold positions of far greater importance than they did in 1887. This, he explained, was indicated in contemporary company statutes as well as

7 See United Kingdom Companies Act 1948, s 177(1); Also, section 283 of the United Kingdom Companies Act 1985 provides that every company must have a secretary.

8 See Nigerian Companies Act 1968, s 169.

9 SA Osamolu, *Corporate Law practice in Nigeria* (4th edn, LawLords publications 2023) 251; *Barnett Hoares and Co v South London Tramways Co* [1887] 18 QBD 815 [827].

10 EE Alobo, *Company Law and Practice in Nigeria* (1st edn, Princeton and Associate Publishing Co. Ltd 2022) 475; *Newlands v National Employer's Accident Association* [1885] 54 LJ QBD 428.

11 OVC Okene and GG Otuturu, *Nigerian Company Law and Practice* (Rivers State University 2021) 147; YH Bhadmus, *Bhadmus on Corporate Law* (5th edn, Chenglo Limited 2021) 217.

12 See the English case of *Barnett Hoares and Co v South London Tramways Co* [1887] 18 QBD 815 [827]; Lord Salmon LJ, also observed in the *Barnett* case *inter alia* that: 'at the end of the last century, a company secretary still occupied a very humble position – very little higher, if any, than a minor clerk. Today, not only has the status of a company secretary been enhanced but that state of affairs has been recognised by statute ...' 717.

13 In the case of *Reuben v Great Fingall Consolidated* [1896] AC 439 the House of Lords expressed the opinion that the secretary of a company who is a mere servant may be the proper hand to deliver out the certificate, but he can have no authority to guarantee the genuineness or validity of a document which is not the Deed of the Company.

14 *Panorama Development (Guilford) Ltd v Fidelis Furnishing Fabrics Ltd* [1977] 3 WLR 440.

in the part they currently play in the day-to-day operations of businesses. The company secretary was said to have evolved from a simple clerk. Now he frequently engaged in contractual affairs and made representations on the company's behalf in matters pertaining to the day-to-day operation of the firm.¹⁵

According to Gower, overall, the secretary's duties are strictly administrative and lacking in managerial authority.¹⁶ Furthermore, the courts have described the company secretary in various ways. Idigbe JSC in *Okeowo v Migliore*¹⁷ asserts that a company secretary is a principal officer of the company. In *Wimpey Ltd v Balogun*,¹⁸ a company secretary was seen as a high-ranking officer in the company's organisation and part of the management team.¹⁹

This paper analyses the role of a company secretary in Nigeria to ascertain how it enhances the performance of the board of a company. Furthermore, the paper investigates how the company secretary can complement the efforts of the board in balancing the interests of the company and other stakeholders to strengthen corporate governance practices. Due to colonially influenced similarities in their legal systems, the UK version of corporate governance practices is used to identify lessons for Nigeria.

The paper is divided into five sections. Beyond this introduction, section two clarifies the conceptual arguments on corporate governance, while section three delves into the duties of a company secretary. Section three begins by reviewing the legal and regulatory regimes of corporate governance, including the balancing role a secretary plays between the board of directors and the

15 Gower observes as follows: 'It is arguable therefore that the secretary has also graduated as an organ of the company. Though appointed by the directors he is not their servant but an officer of the company with substantial authority in the administrative sphere and with powers and duties derived directly from the articles and the Companies Acts. And in the performance of his statutory duties, he is clearly entitled to resist interference from the members, Board of directors or managing director'. See LCB Gower, *Final Report of the Commission of Enquiry into the Working and Administration of the Present Company Law of Ghana* (Government Printer Accra 1961) 159 cited in Olakunle Orojo, *Company Law and Practice in Nigeria* (5th edn, LexisNexis Butterworths, Durban 2008) 286–287.

16 *ibid.*

17 [1979] 11 SC 138; [1979] NSCC 210 at 263.

18 [1987] 2 NWLR (Pt 28) 322.

19 It was also held in *Migliore v Metal Construction (WA) Ltd* [1978] NCLR 274 that a company secretary is 'an administrative officer of the Company'. In addition, paragraphs 522 and 524 of *Hogg v Cramphorn Ltd* [1967] Ch 254 stated that 'a company secretary is an officer of the company and as such has a number of important duties. He is responsible for the company's compliance with legal and regulatory requirements and for ensuring that board procedures are followed and that applicable rules and regulations are complied with' and that 'the company secretary is an important officer in any company, and it is essential that he should act in the best interests of the company'.

company as a compliance officer. Section four briefly analyses the role of the company secretary in the UK to draw lessons for Nigeria. Section five provides relevant recommendations and concludes the paper.

2 Corporate Governance: Conceptual Framework

The phrase 'corporate governance' lacks a commonly agreeable definition because it is a contextual construct embedded in an institution.²⁰ However, it may be described as a set of processes and structures for controlling and directing an organisation.²¹ It may also be seen as a system of managing the affairs of corporations to increase share value and meet the expectations of stakeholders.²² Generally, corporate governance seeks to ensure a fair return on investment and establishes incentives and procedures that meet the interest of the shareholders while respecting other stakeholders' interests in the organisation.²³ The Organization for Economic Cooperation and Development (OECD) Principles of Corporate Governance stipulates that corporate governance provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.²⁴

Shleifer and Vishny view corporate governance in terms of economic interests.²⁵ Ayoni and Sampson show how corporate governance has aroused the interests of shareholders, investors, creditors, regulatory agencies, and governments due to developments in global stock markets.²⁶ Okike posits that

20 Collins Ajibo and Kenneth Ajibo, 'Mandatory versus Discretionary Rule Dichotomy in the Harmonization of Corporate Governance Codes: Lessons for Nigeria' (2019) 63(3) *Journal of African Law* 385–411.

21 A Cadbury, *The Report of the UK's Committee on the Financial Aspect of Corporate Governance* (1992).

22 Felix Nzarga and Ibrahim Mohammed, 'Understanding the Role of Company Secretary in Ensuring Good Corporate Governance in Nigerian Public Company' (2018) 6(4) *International Journal of Business and Law Research* 49.

23 V Raffee and J Sarabdeen, 'The Cultural Influence in the Practice of Corporate Governance in the Emerging Markets' (2012) *Journal of International Business Management of Association* 1.

24 See the G20/OECD *Principles of Corporate Governance* (2015).

25 See A Shleifer and R Vishny, 'A Survey of Corporate Governance' (1997) 57 *Journal of Finance* 737–775.

26 Omowumi Ayoni and Mfonobong Sampson, 'Corporate Governance and its Effects on the Nigerian Insurance Industry' (2013) 8(1) *European Journal of Globalization and Development Research* 477–91.

adopting good governance practices in the corporate world in Nigeria was part of the Federal government's strategy in 1999 to open the nation's frontiers to foreign direct investment.²⁷ Osemeke adds that the need for corporate governance resulted from financial improprieties that caused the collapse of banks in the 1990s, which affected the Nigerian economy drastically.²⁸ Accordingly, there has been a growing awareness of the crucial role that companies play in the growth of a country's economy, alongside the need to guarantee optimal governance of companies.²⁹ Also, there are more efforts to provide a governance framework for efficient management and supervision of companies.³⁰

Ubon and Abidoye argue that the concept of corporate governance rests on the basic philosophy that it is designed to ensure the efficient and effective administration of modern business enterprises to guarantee their long-term growth and survival.³¹ Corporate governance relies on some universally accepted principles such as accountability, conflict of interests, shareholders' approval, transparency, and full disclosure, the protection of all interest groups, economic efficiency, and independent directors.³² As shown below, these scholarly views shape theories of corporate governance.

2.1 *Theories of Corporate Governance*

The theory of shareholder value and primacy suggests that a firm must be run primarily to advance the interest of the shareholders.³³ It holds that managers in an organisation form a network that serves the interests of all stakeholders.³⁴ Thus, a corporation exists to cater for the larger interests of the shareholders, creditors, employees, and suppliers.³⁵ Arguably, while the ultimate objective of a company should be formulated to promote shareholders' interests, directors must consider material interests in promoting the success of the company.

27 Elewechi Okike, 'Corporate Governance in Nigeria: The Status Quo' (2007) 15(2) *Corporate Governance: An International Review* 173.

28 Louis Osemeke, 'Directors, Auditors and Secretaries Roles and Corporate Governance System: Identity Theory Perspective' (2014) 12(1) *Corporate Ownership and Control* 543.

29 *ibid.*

30 *ibid.*

31 Ubon and Abidoye (n 3).

32 JO Irukwu, *Corporate Governance in Modern Africa* (Safari Books, Ibadan 2010) 122.

33 Andrew Keay, 'Enlightened Shareholder Value' (2006) *LMCLQ* 335, 336.

34 *ibid.* 66. They include: shareholders, creditors, depositors (bank), customers, suppliers, managers, employees, the state and communities.

35 See E Freeman, A Wicks and B Parmar, 'Stakeholder Theory and 'The Corporate Objective Revisited' (2004) 15(3) *Organisation Science* 364–369.

2.2 *Legal Framework for Corporate Governance in Nigeria*

The Nigerian corporate governance regime began with the promulgation of Ordinances in 1912, 1917, and 1922, which followed the UK Companies Act of 1908.³⁶ The 1922 Companies Ordinance later developed to become the Companies Act of 1968.³⁷ The Act was an improvement on the earlier legislation. This was because it raised the accountability standard on the part of directors. The participation of the shareholders in the affairs of the company was equally noticeable.³⁸

Nigeria did not have a consolidated legal framework for corporate governance in its formative years. However, the first effort was when various company legislations were amended and the CAMA 1990 was enacted. The enactment of the CAMA 1990 led to the establishment of the Corporate Affairs Commission (CAC) in 1990.³⁹ The CAC was vested with the powers to regulate, incorporate, and administer the CAMA. Its establishment marked the government's efforts to advance the application of corporate governance practices. Prior to the creation of CAC, the Registrar of Companies in the Corporate Affairs Division of the Ministry of Trade oversaw the administration and regulation of companies.⁴⁰ Despite being a government organisation that generated revenue, the Company Registry lacked funds and other essential resources to perform its duties.⁴¹

Later, the repealed Banks and Other Financial Institutions Act 1991 was enacted as a sector-specific legislation.⁴² The Securities and Exchange Commission Rules followed in 1995 to regulate investment in securities and exchange markets. At the commencement of democratic governance in 1999, the government undertook several reforms to boost the economy, combat poverty and secure the attainment of Nigeria's Millennium Development Goals.⁴³

36 Amujo-Akomolafe, 'Legal Framework for Corporate Governance in Nigeria: An Appraisal of The 2018 Code of Corporate Governance' (2018) 2(1) *Abuad Private and Business Law Journal* (APBLJ) 41–65.

37 *ibid.*

38 *ibid.*

39 *ibid.*

40 MN Umenweke, 'Powers and Duties of the Corporate Affairs Commission as a Regulatory Body in Nigeria' (2011) 2(1) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 1–12.

41 *ibid.*

42 Bank and Other Financial Institution Act (BOFIA) 1991 had been repealed and replaced by BOFIA 2020.

43 John Okpara, 'Perspectives on Corporate Governance Challenges in a Sub-Saharan African Economy' (2011) 5(1) *Journal of Business & Policy Research* 110–122.

Specifically, it reviewed the CAMA 1990.⁴⁴ Also, it established the Central Bank of Nigeria Act 2007 to improve the business climate and regulate the operations of banking and other financial institutions.⁴⁵ Despite this development, different regulations were applicable to different sectors of the economy.

As a result of noticeable weak corporate governance culture, Nigeria witnessed a high incidence of corporate failures.⁴⁶ In 2003, the Securities and Exchange Commission (SEC) set up a committee to investigate corporate governance issues under the chairmanship of Atedo Peterside, with a mandate to identify weaknesses in corporate governance practices and devise necessary changes that would improve Nigeria's corporate governance culture. The Financial Reporting Council of Nigeria Act 2011 was enacted in response to the global financial crisis of 2009 and its negative consequences on the world economy.⁴⁷ The Financial Reporting Council (FRC) was established by the Act and tasked with issuing, overseeing, and enforcing accounting and auditing standards. Following the suspension of the previous 2016 Code of Corporate Governance, the FRC released a harmonised draft of the Nigerian Code of Corporate Governance (NCCG) of 2018 in accordance with its mandates under the 2011 FRCN Act.⁴⁸

However, the 2016 NCCG's existence was short-lived due to legality disputes and its incapacity to foster an atmosphere that would encourage businesses to strive towards the Government's objectives.⁴⁹ The 2018 Code establishes the minimal standards of conduct that Nigerian businesses must follow, using a principle-based approach comparable to the 'apply-or-explain' approach.⁵⁰ The 'apply-or-explain' or 'principle-based' approach assumes that companies have followed all of the corporate governance recommendations in the 2018 Code. Periodically, companies may from time to time be requested to show that specific activities they have taken comply with the 2018 Code of corporate governance.

The NCCG 2018 Compliance Regulation was released on January 15, 2019, by the Ministry of Trade and Investment. This was to improve integrity and

44 CAMA 1990 was repealed and replaced by CAMA 2020.

45 CBN issued Corporate Governance Code for Banks (2006) in line with the CBN's Act.

46 *ibid.*

47 FRC, 'National Code of Corporate Governance 2018: Learning From The 2016 Controversies' (2018) <<https://www.frc.org.ng>> accessed 25 January 2025.

48 Pursuant to the Powers of the FRC Under Section 11(C) and Section 51(C) of the Financial Reporting Council of Nigeria Act, 2011 in line with international best practices on corporate governance.

49 *ibid.*

50 See the 2018 Code of Corporate Governance, principle 2.2.

openness in conducting businesses by combining several corporate governance laws. The 2018 Code aims to institutionalise corporate governance standards and educate the public about the fundamentals of ethical behaviour, including principles and values.⁵¹ While CAMA is the principal law regulating companies, including banks, there are other industry-related laws and regulations on different aspects of transacting business in Nigeria.

2.3 *Corporate Governance Codes: Board Composition*

A competent board leads a successful company by offering strategic and entrepreneurial leadership, fostering an ethical culture, and encouraging responsible citizenship.⁵² The board's role as an intermediary between the company and its stakeholders is to exercise oversight and control over the management to guarantee that it operates in the best interests of the shareholders and other stakeholders while maintaining the firm's prosperity.⁵³ The 2018 Code encourages the board of all companies in Nigeria to assume greater responsibility for internal corporate governance and oversight. The Code requires the board to have an appropriate balance of knowledge, skills, experience, diversity, and independence to objectively and effectively discharge its governance role and responsibilities.⁵⁴ The 2018 Code also requires the board to have an appropriate number of executive members, non-executive and independent members of the board, and to ensure that the majority of the board members are non-executive directors to promote board independence.⁵⁵

Furthermore, the 2018 Code states that each board committee should have qualified members with sufficient numbers to secure a quorum at meetings. Compared to the 2016 suspended Code, the 2018 Code gives the board more flexibility to make decisions regarding the structure and composition of the board.⁵⁶

2.3.1 *CEO-Chairperson Duality*

The 2018 Code provides that a person who is appointed as a Managing Director (MD), Chief Executive Officer (CEO), or Executive Director (ED) of a company is prohibited from being appointed as the Chairman of the same company.⁵⁷ The Chairman of a company is supposed to be a Non-Executive Director who

⁵¹ FRC (n 48) 3.

⁵² See 2018 Code, principle 1.

⁵³ *ibid.*

⁵⁴ *ibid.*, principle 2.2.

⁵⁵ *ibid.*

⁵⁶ *ibid.*

⁵⁷ *ibid.* principle 2.7.

provides leadership advice to the board of directors.⁵⁸ The 2018 Code provides that a person who had previously served as a CEO can become the board chairman of the same company only after a cool-off period of three years.⁵⁹ Unlike the 2018 Code, the cool-off period in the 2016 suspended Code was seven years.

2.3.2 CEO/MD in Remuneration Committees

The 2018 Code states that the chief executive officer (CEO) or managing director (MD) cannot be appointed as a member of the committees responsible for remuneration, audit, nomination, and governance.⁶⁰ This recommendation seems proper to avoid conflict of interest and to prevent CEOs or MDs from influencing decisions regarding their own compensation. The 2018 Code further provides that the CEO or MD of a company can be appointed as a non-executive director (NED) on the board of another company provided that such appointment is not detrimental to the company where such a person is serving as CEO/MD or against its policy.⁶¹

3 Appointment of a Company Secretary

As a high-ranking officer, the secretary is usually part of company management. The rising relevance of the company secretary is well captured in the past and present companies laws enacted in Nigeria.⁶² For instance, while the 1968 Companies Act contained relatively fewer provisions on company secretaries, the 1990 version amplified these provisions by providing for matters related to the appointment of company secretaries.⁶³ Similar amplifications were also made in the current CAMA.⁶⁴

Unlike other employees in the organisation, a company secretary is a person whose employment is created and protected by statute.⁶⁵ The board of directors is vested with the power to appoint a company secretary under the Act.⁶⁶

⁵⁸ *ibid* principle 3.

⁵⁹ *ibid* principle 3.3.

⁶⁰ *ibid* principle 4.7.

⁶¹ *ibid* principle 4.8.

⁶² Ibitayo Durosomo and Eti Herbert, 'Articulating the Locus of Company Secretary in Corporate Governance in Nigeria' (2019) 40(6) *Business Law Review* 258–268.

⁶³ *ibid*.

⁶⁴ See the Draft Bill for the Repeal of CAMA 1990 and the Enactment of a New Act of CAMA 2020.

⁶⁵ See *Ezekwekre v Golden Guinea Breweries Ltd* [2000] 8 NWLR (P670) 684.

⁶⁶ See CAMA 2020 s 333.

It mandates every company – with the exception of a small private company – to have a company secretary.⁶⁷ Statutorily, a company is considered a small company if it is a private company with turnover of not more than ₦120, 000, 000 (One Hundred and Twenty Million Naira) or such amount as may be subsequently fixed by the Corporate Affairs Commission (CAC) and its net assets are not more than ₦60, 000, 000 (Sixty Million naira) or an amount fixed by CAC.⁶⁸ Additionally, none of the company's shareholders should be a foreigner, government or government agency. Also, the directors of the company must hold at least 51% shares in the company.⁶⁹ To demonstrate the indispensability of a company secretary, especially in public companies, the CAMA criminalises the failure to appoint a secretary.⁷⁰

3.1 *Qualification of a Company Secretary*

Directors are required by the CAMA to ensure that individuals nominated as company secretaries appear to possess the skills and background necessary to carry out their duties.⁷¹ In the case of a public company, the CAMA requires that the secretary must be either:

- a) a member of the Institute of Chartered Secretaries and Administrators;
- b) a legal practitioner; or
- c) a member of any professional body of accountants; or
- d) any person who has held the office of the secretary of a public company for at least three years of the five years immediately preceding his appointment in a public company; or
- e) a body corporate or firm consisting of members each of whom is a qualified professional under the professions earlier mentioned.⁷²

The purpose of hiring experts is obviously to uphold sound corporate governance practices and encourage competence and professionalism in managing the company's affairs, especially public companies.⁷³ While private companies are not explicitly required to appoint a company secretary from among the aforementioned professions, they are nonetheless encouraged to hire individuals who seem to possess the necessary skills and background to carry out the

67 *ibid* s 330(1).

68 *ibid*.

69 *ibid* s 394.

70 *ibid* 330(4).

71 *ibid* s 332.

72 *ibid*.

73 Philip Odiase, 'Corporate Governance in Nigeria: Putting the Role of Company Secretary in Perspective' (2023) 2 CULJ 1–14.

responsibilities of the roles and add value to the company.⁷⁴ The fact that such companies are not under any obligation to employ experienced professionals should not be an excuse. In short, the board should ensure that the individual chosen possesses the gravitas, objectivity, and professionalism required.⁷⁵ Following the CAMA, the selection procedure should be rigorous, leading to an appointment process comparable to that of directors.⁷⁶

3.2 *Modalities for Removing a Company Secretary*

Although the office of a company secretary is lower than that of the managing director or a director, a director acting alone cannot remove the company secretary.⁷⁷ The power of removal resides with the board of directors and must be exercised collectively as a board.⁷⁸ This position is the case even where a person acts as both the secretary and the company's legal adviser.⁷⁹ The fact that a person occupies two positions does not take away the protections afforded by the CAMA.⁸⁰ However, in a small private company where the board of directors is properly constituted by one person, a director may validly remove the company secretary. Unlike in a public company, the secretary of a private company does not have the same measure of protection afforded by the CAMA.⁸¹

Nevertheless, if the article of association of a private company provides for a process of his removal, that process must be strictly followed. In *Ashibogun v Afprint Nigeria Ltd*,⁸² the managing director removed a company secretary contrary to the provision of the company's articles which provided that the board of directors' resolution was required for the appointment and removal of the company secretary. The court relied on the principle that only the body or person who employs should have the authority to terminate such employment. This principle aligns with the position of the CAMA that registered articles and memorandum shall have the effect of a deed between the company and its officers.⁸³ Since a secretary of a private company is an officer of the company, a removal must accord with the contractual stipulation of the articles.⁸⁴

74 *ibid.*

75 2018 Code, principle 8.1.

76 *ibid* principle 8.2.

77 See *Ashibogun v Afprint Nigeria Ltd* (1985) HCNLR 400.

78 CAMA 2020, s 333.

79 *ibid.*

80 *ibid.*

81 *ibid* s 333.

82 [1985] HCNLR 400.

83 CAMA 2020, s 46 (1).

84 *ibid* s 868.

Unlike private companies, s. 333(2) of the CAMA demands a measure of statutory compliance before a secretary in a public company can be validly removed.⁸⁵ It provides that where the secretary of a public company is to be removed, the board of directors shall give notice:

- i. stating the proposal to remove,
- ii. giving the grounds on which the proposal is premised,
- iii. giving at least seven working days within which to make a defence if any: and
- iv. providing an option to resign within seven working days.⁸⁶
- v. After receiving the notice, if the secretary does not within the given period resign or make a defence, or the defence is unsatisfactory, the board may only proceed to remove him/her where the ground for removal is founded on fraud or serious misconduct. Subsequently, it must report to the next general meeting.
- vi. Where the ground of removal is other than fraud or serious misconduct, though the company secretary was appointed by the board, it cannot exercise its power of removal without the approval of the general meeting.
- vii. In that case, the board may in the interim suspend the company secretary and report the matter to the next general meeting.⁸⁷
- viii. The general meeting may approve or reject the removal.
- ix. If the removal of the company secretary is approved by the general meeting, the removal may take effect from such time as the general meeting may determine.⁸⁸

3.3 *Removal of Public and Private Secretaries: A Comparison*

The removal of secretaries of public companies is protected by statute in Nigeria. There are, however, no statutory provisions in the CAMA on the procedure for the removal of secretaries of private companies for alleged misconduct.⁸⁹ Arguably, this lacuna may be exploited as some directors of private companies have sought sanctuary under it to remove company secretaries. Arguably, the removal of secretaries for alleged misconduct by directors of private companies without giving them an opportunity to defend themselves is discriminatory in terms of section 36 of the Constitution of the Federal

⁸⁵ *ibid* s 333(2)-(4).

⁸⁶ *ibid* s 333(2).

⁸⁷ *ibid* s 333(b).

⁸⁸ *ibid* s 333(4).

⁸⁹ Andrew Abuza, 'An Examination of the Power of Removal of Secretaries of Private Companies in Nigeria' (2017) 4(2) *Journal of Comparative Law in Africa* 34–76.

Republic of Nigeria (CFRN) 1999, rules of natural justice, international human rights instruments, and international best practices.⁹⁰ Despite the fundamental differences between private and public companies, we suggest, among other things, the amendment of the CAMA to provide for the procedure for the removal of secretaries of private companies for alleged misconduct. Such procedure must accord them an opportunity to be heard and defend themselves before they can be removed.⁹¹ Arguably, this aligns with the 'equal protection of the law and non-discriminatory' principle in section 42(1)(a) and (b) of the CFRN 1999 and other international and regional human rights instruments.⁹²

Similarly, the procedure for the removal of a company secretary in a public company should be similar to that of the director of a company.⁹³ The reason is to further protect and secure the job of secretaries and improve their multi-dimensional roles without fear or favour.⁹⁴ Like other officers of the company, the secretary is a partner in achieving the corporate objectives of the organisation.⁹⁵ This, arguably, makes their status similar to that of a director to the effect that due process must be followed otherwise a removal will amount to illegality, leading to possible reinstatement or payment of appropriate damages, as laid down by the Supreme Court in *Longe v. First Bank*.⁹⁶

3.4 *Duties of a Company Secretary: A Review*

The CAMA contains a long though not exhaustive list of some of the functions and duties placed on the office of the company secretary. The list includes:

- (a) arranging and attending the meeting of the company, the board of directors and its committees, taking minutes and rendering all other necessary secretarial services in respect of the meeting, and advising on best corporate governance, including compliance, by the meetings, with the applicable rules and regulations;

⁹⁰ *ibid.*

⁹¹ *ibid.*

⁹² See Universal Declaration of Human Rights 1948; African Charter on Peoples and Human Rights (Ratification) Acts 1981.

⁹³ Bamidele Adebayo, 'A Review of the Status of the Secretary of a Public Company under the Companies and Allied Matters Act Based on the Supreme Court's Decision in *Lange Versus First Bank of Nigeria Plc*' (2020) 3 *Journal of Corporate Governance and Administration* 1–18.

⁹⁴ *ibid.*

⁹⁵ *ibid.*

⁹⁶ (2010) 6 NWLR (Pt. 1189) 1 S.C.

- (b) maintaining the registers and other records required to be kept by the company under CAMA or other relevant statutes;
- (c) rendering proper returns and giving notification to regulators; and
- (d) carrying out such other administrative and secretarial duties as directed by the director or the company.⁹⁷

According to section 868 of CAMA, the secretary is an officer of the company. The duties in section 335(1) of CAMA can be broadly categorised under the following headings: secretarial duties, legal obligations, the maintenance of statutory books, and other duties.⁹⁸ These are enormous powers and responsibilities and for the purposes of efficacy require special skills, power and independence on the part of the company secretary.⁹⁹ In execution of their compliance functions, the secretary consults with the chairman to prepare the agenda and other documents for the general meetings which s/he is expected to attend and keep records.¹⁰⁰ Similarly, the functions of a company secretary demand that s/he keeps a correct record of the proceedings of all meetings in line with the company's objectives as stipulated in articles and memorandum of association.¹⁰¹ Thus, s/he is expected to maintain the registers of transfer of shares and shareholdings, mortgages, charges, beneficial ownership, contracts, and common seal.¹⁰² Other records may include the allotment of shares, directors, and other officers in the company.¹⁰³

It is the above role of maintaining numerous records that consequently afford secretaries the title of the guardians of business secrets. Danjuma defines the role of a company secretary as the principal administrative officer of the company.¹⁰⁴ Gower further contends that the secretary has the status of an executive of the company.¹⁰⁵ Hence, even though the company secretary is appointed by the board of directors, he is not their employee; rather, he is an

97 *ibid* s 335(1).

98 Chioma Unini, 'Role and Duties of a Company Secretary' (*The Nigerian Lawyer*, 18 March 2017) <<https://thenigerialawyer.com/role-and-duties-of-a-company-secretary>> accessed 20 December 2024.

99 *ibid*.

100 Irene Aigbe, 'Examination of the Pre and Post Recognition of the Company Secretary Under CAMA 2020: An Overview of Private and Public Companies in Nigeria' (2022) 4(1) *IJOCLLEP* 137.

101 *ibid*.

102 CAMA 2020, s 335(1)(b) and (c).

103 *ibid*, s 329.

104 Nkiru Danjuma, *The Role of the Company Secretary in Incorporate Management* (Heinemann, Ibadan 1991) 53.

105 Gower (n 15).

officer of the company with significant administrative power and obligations that are explicitly drawn from the articles of incorporation and the Companies Act.¹⁰⁶ Additionally, s/he has a right to defy attempts by the members or board of directors to interfere with the performance of his or her statutory obligations.¹⁰⁷ Gower's conceptualisation alludes to the independence enjoyed by company secretaries in the execution of their functions.¹⁰⁸

3.5 *Company Secretary versus Board of Directors*

Under the CAMA, the company secretary is referred to as an officer of the firm, together with the company's director and manager.¹⁰⁹ A superficial glance at the afore-mentioned information could lead one to conclude that a highly qualified company secretary must be autonomous and well-respected.¹¹⁰ However, practice indicates that the manner of appointment, remuneration, and termination sometimes undermines a secretary's lofty status and roles.¹¹¹ As a major player in the establishment of best practices in corporate governance, the secretary holds office based on the principles of independence and trust.¹¹² However, s/he is required to support the board and management in establishing a long-lasting corporate governance culture, as the board of directors has the final duty to ensure adherence to the corporate governance standard.¹¹³

Corporate governance principles demand that the office of the company secretary enjoys independence to be efficient.¹¹⁴ Such efficiency ensures that s/he carries out the functions in accordance with best practices, and in the best interest of the company without fear of being victimised by the board of directors.¹¹⁵ This notwithstanding, the provisions of the CAMA gives the board of directors powers over the appointment and removal of secretaries.¹¹⁶ However, removal must be carried out in strict compliance with the provisions of the Act, which checks the seemingly arbitrary powers of the board of

¹⁰⁶ *ibid.*

¹⁰⁷ *ibid.*

¹⁰⁸ *ibid.*

¹⁰⁹ CAMA 2020, ss 101 and 668.

¹¹⁰ *ibid* s 333.

¹¹¹ *ibid* s 333.

¹¹² *ibid.*

¹¹³ Bisi Adeyemi, 'The Role of the Company Secretary in Corporate Governance Compliance' (*Business Day*, 6 May 2013) <<https://businessday.ng/exclusives/article/the-role-of-the-company-secretary-in-corporate-governance-compliance/>> accessed 26 December 2024.

¹¹⁴ 2018 Code, principle 8.1.

¹¹⁵ *ibid.*

¹¹⁶ CAMA 2020, s 333(1).

directors.¹¹⁷ Hence, the independence granted to the office of the secretary rests in the corporate governance principle of accountability and responsibility.¹¹⁸ While the secretary should be allowed to perform his functions independently, he is still accountable to the company.

Adeyemi opines that the substantial internal control mechanisms available to a company become less effective when the board fails to uphold the integrity of the office of the company secretary.¹¹⁹ Accordingly, the unambiguous identification of whom a company secretary should report to will typically be a key component of ensuring independence. Unfortunately, in some organisations, chief executive officers (CEOs) are said to be directly involved in the employment and remuneration of company secretaries.¹²⁰ This implies that secretaries could be compelled to dance to the tune of the piper, who in this context is the CEO. Failure to do so could have an impact on the employment and remuneration of the secretary.¹²¹

Corporate governance principles recognise that the independence of secretaries is sacrosanct.¹²² Such independence is violated when the CEO wields too much power over the corporate secretary. By limiting the ability of CEOs to dominate the governance process and giving directors increased separation and independence from the CEOs' influence, the boards are better equipped to ask the tough questions of management and hopefully limit problems.¹²³ It follows that a single individual or officer should not be given total control over the office of the secretary. According to Finkelstein and Mooney, the company secretary is the primary point of contact between the board and chairperson, including other board members, and typically has intimate knowledge of the most current vital information.¹²⁴ As such, the secretary is heavily involved in board processes and agendas. Kakabadse, Khan, and Kabakadse describe

¹¹⁷ *ibid* s 333(2).

¹¹⁸ 2018 Code, principle 8.1.

¹¹⁹ Adeyemi (n 113).

¹²⁰ Vera Ekundayo, Olubukola Olugasa, Toluwalase Ajibade, Olalekan Moyosore Lalude and Adebisi Adefalu, 'Empirical Study on the Evolving Role of Company Secretaries in the 21st Century Nigerian Corporation' (2021) 42(6) *The Company Lawyer* 207, 211.

¹²¹ *ibid*.

¹²² 2018 Code, principle 8.1.

¹²³ Jill Barclift, 'Corporate Governance and CEO Dominance' (2011) 50 *Washburn Law Journal* 611.

¹²⁴ Sydney Finkelstein and Ann C Mooney, 'Not the Usual Suspects: How to Use Board Process to Make Boards Better' (2003) 17(2) *Academy of Management Executive* 101.

company secretaries as the ‘invisible power(s) behind the throne.’¹²⁵ The implication of this is that though the company secretary wields power in an organisation, such power is exercised by way of subtle influence rather than assertiveness. They insist that the invisibility quotient in the leadership skills of secretaries is most desirable by board members.¹²⁶ Roberts and others, however, opine that to enhance the efficiency of company secretaries, the exercise of their powers must be made apparent, although exercised within a moderate leadership structure.¹²⁷ Summarily, company secretaries must not be seen at any time to try to usurp the authority of the board regardless of their independence. A preferable approach to leadership engagement for secretaries should be through exerting influence.

3.6 *Company Secretary under NCCG 2018*

Given that the company secretary is expected to support the board of directors in a number of ways as outlined by corporate governance standards, regulators and practitioners contend that the post has grown in importance in many jurisdictions.¹²⁸ The company secretary is an enabler of corporate governance through various engagements.¹²⁹ These include monitoring of safety and productivity, including virtual meetings of the board of directors and general meetings in cyberspace.¹³⁰ Thus, the role of the company secretary is elevated beyond regulatory compliance.¹³¹

Under Principle 8.2 of the 2011 Code, the company secretary has a fundamental responsibility to support the board and management in putting the Code into practice so as to foster an environment and practices of good corporate

¹²⁵ Andrew Kakabadse, N Khan and N Kakabadse, ‘Leadership on the Board: The Role of Company Secretary’ in J Storey, J Hartley, J.-L Denis, P t’ Hart and D Ulrich (eds), *The Routledge Companion to Leadership* (Routledge, Abingdon 2017) 241.

¹²⁶ *ibid.*

¹²⁷ Darryl Roberts, Laura Morgan, Regina O’Neill and Stacy Blake-Beard, ‘The Invisible Work of Managing Invisibility for Social Change: Insights from the Leadership of Reverend Dr Martin Luther King Jr’ (2008) 47(4) *Business Society Journal* 435.

¹²⁸ SAA Halim, N Lokman and S Othman, ‘Corporate Governance and Board Effectiveness: A Systematic Literature Review of the Company Secretary Role’ (2023) 8(3) *Journal of Nusantara Studies* 209–234.

¹²⁹ Lawrence Juwah, ‘Cyberspace Resilience and Corporate Governance: Company Secretary as an Enabler’ (2024) 45(4) *Business Law Review* 107–115.

¹³⁰ *ibid.*

¹³¹ SF Fuzi, SAA Halim, JM Khudzari and N Ezrine Yusoff, ‘Comparative Analysis on the Requirement, Qualification and Responsibility of Company Secretaries in United Kingdom, Malaysia and India’ (2019) 16(1) *Journal of Administrative Science* 118–126.

governance.¹³² The 2018 NCCG also addresses the position of the company secretary, particularly the secretary's role to support the board and management in fostering an environment of sound corporate governance.¹³³ Both codes provide for similar functions on the position of the company secretary.¹³⁴ The company secretary is to report directly to the CEO/MD but should have a direct channel of communication with the board chairman.¹³⁵

The obligations and responsibilities of the company secretary outlined in the Code necessitate playing a leading role in the good governance of the company.¹³⁶ A fundamental function is to ensure that the company complies with FRCN requirements, particularly compliance with reporting in accordance with the International Financial Reporting Standard (IFRS).¹³⁷ The duties and functions of the company secretary under the CAMA and various corporate governance codes are so enormous that it would not be wrong to say that the secretary is the engine room of the company.¹³⁸ The important question is whether this exalted position has real power or authority of its own.

3.7 *Balancing the Roles of the Secretary*

The secretary is supposed to maintain a position on par with the board of directors. Thus, the secretary is not inferior to the board of directors. As observed by Gower,¹³⁹ despite being chosen by the board of directors, the company secretary is not a directors' employee. Rather, he is a company officer with extensive administrative power and duties drawn directly from the articles of incorporation and the Act.¹⁴⁰ The company in this context is inclusive of shareholders, employees, and other stakeholders.¹⁴¹ According to Wulfshon, the secretary performs three key roles in an organisation, namely: advising the board members on their roles and responsibilities; ensuring that the company complies with all applicable laws and regulations; and managing ongoing strategic

¹³² *ibid*, principle 8.1–2.

¹³³ 2018 Code, Principle 8.

¹³⁴ For instance, the FRCN Act through the NCCG 2016 harmonised the various pre-existing Codes.

¹³⁵ Code of Corporate Governance for Public Companies 2011, s 8.2.

¹³⁶ Ubon and Abidoye (n 3).

¹³⁷ Ekundayo and others (n 120) 211.

¹³⁸ *ibid*.

¹³⁹ Gower (n 15).

¹⁴⁰ CAMA 2020, s 335 (1).

¹⁴¹ *ibid* ss 305–309.

communication between the company and its important stakeholders so that the board and management are aware of stakeholders' legitimate concerns.¹⁴²

While the company secretary serves the company, s/he is always regarded as the chief governance officer/legal officer of the company. This speaks directly to the secretary's duty to ensure that the company complies with the principles of good corporate governance. In discharging this obligation, s/he would have to interface with the directors, shareholders, employees, and other stakeholders. The board is responsible for ensuring that the organisation, its shareholders, and other important stakeholders engage in appropriate dialogue.¹⁴³ Within the framework of its primary objective, the board should respect the interests of its shareholders and other significant stakeholders.¹⁴⁴ From the provisions of the CAMA and the NCCG 2018, it is evident that the board of directors has a supervisory role over the secretary. Thus, the secretary is to enjoy independence while under the guidance of the board.¹⁴⁵

Generally, company stakeholders, especially the shareholders, are keenly interested in the progress of the company. Practice indicates that stakeholders always look for efficient board performance that translates into strategic value. Stubington identifies key roles the company secretary performs to ensure that the board and management add value to the company.¹⁴⁶ These include advising the chairman and managing director on the board's performance process. Similarly, it includes creating the annual board agenda to ensure that the critical success factors needed for sustainable competitive advantage are addressed. This entails that the management receives clear delegations from the board to ensure that the terms of reference for board committees reflect the necessary performance outcomes as required.¹⁴⁷ The duty of the secretary to the board is supposed to substantially complement the expectations of the stakeholders. Thus, it should balance the duties of the company secretary to the board of directors and the company.

However, a more worrisome development is where the expectations of the board from the secretary contradict the interests of the company. In other words, to what extent can a company secretary be a restraint on managerial

142 Loren Wulfsohn, *The Company Secretary as a Polymath* (IFC Publication 2014) <<https://documents1.worldbank.org/curated/en/619491468154784717/pdf/913420BRIoBox385331BooPUBLICooPSOo34.pdf>> accessed 20 January 2025.

143 CAMA 2020, ss 305–309.

144 NCCG 2018, principle 6.

145 *ibid* s 8.

146 Graham Stubington, 'Australian Secretaries Focus on Board Performance' (1998) *The Journal of Corporate Secretary* 13–15.

147 *ibid*.

risk-taking? Ubon and Abidoye have observed that in situations where the shareholder's request for a legitimate duty of the secretary and the board opposes because of personal interest(s), the secretary should prioritise his fiduciary duty to the company over and above every other interest.¹⁴⁸

Miller and Colvert affirm that company secretaries should at no time choose devotion to an employer over their professional integrity to the organisation they work for.¹⁴⁹ Summarily, the fiduciary duty of the secretary to act as an agent of the company requires him/her to always act in the best interest of the company over and above the personal interest of the board or other stakeholders. Essentially, professionalism requires that the company secretary be committed to statutory obligations rather than private interests.

4 Company Secretary in the UK

The first clause in English company statutes mandating the appointment of company secretaries was section 177(1) of the UK Companies Act of 1948.¹⁵⁰ Currently, the prime company law is the Companies Act of 2006.¹⁵¹ By 2008, private limited companies in the UK were no longer required to appoint a company secretary, although many still do.¹⁵² However, the requirements are different for public companies. Section 271 of the Companies Act 2006 compels public companies to have a secretary.¹⁵³ However, the Secretary of State may give the company a direction where it appears that a public company did not comply with the requirement. If a company fails to comply, an offence

¹⁴⁸ For instance, members may request an extraordinary general meeting (EGM) to conduct special business such as the removal of a director. Where the directors refuse to authorise the company secretary to call it, the secretary must summon the meeting as a fiduciary duty to the company. See Ubon and Abidoye (n 3).

¹⁴⁹ Gina Miller and Kieran Colvert, 'Independence of the Company Secretary' (April 2013) <<https://cgj.hkcgj.org.hk/sites/cgj/files/2024-01/csj-2013-april.pdf>> accessed 25 January 2025.

¹⁵⁰ Also, s 283 of the United Kingdom Companies Act 1985 provides that every company must have a secretary.

¹⁵¹ *ibid.*

¹⁵² Section 270 (1) of the companies Act of 2006 provides that a private company is not required to have a secretary; see Jayne Challinor, 'Does My Company Need a Company Secretary?' (*Inform Direct*, 13 June 2022) <<https://www.informdirect.co.uk/officers/company-secretary-do-i-need-one/>> accessed 2 January 2025.

¹⁵³ *ibid.*

is committed by the company, including every officer of the company who is in default.¹⁵⁴

The United Kingdom Corporate Governance Code of 2018 did not specifically mention the company secretary. The principle-based 2024 UK Corporate Governance Code is adhered to on a “comply or explain” basis.¹⁵⁵ In order to avoid using a box-ticking approach, the UK Financial Reporting Council (FRC) urges businesses to make use of the flexibility offered by the ‘comply or explain’ regime. However, the New Principle C in the 2024 Code stipulates that a detailed explanation must be given whenever the board reports on deviations from the Code’s requirements.¹⁵⁶

The role and specific duties of a company secretary are not prescribed by the Companies Act 2006. With regard to secretarial duties, sections 275, 276 and 277 of the Companies Act 2006 did not specifically mention the secretary. The sections only placed the duties on the company.¹⁵⁷ But it may be set out in the company’s secretary’s employment contract. Under UK laws, a company secretary will typically fulfil numerous administrative functions, including but not limited to maintaining the company’s records and registers, preparing agendas, taking minutes of meetings, and compiling documents.¹⁵⁸ According to the Chartered Governance Institute of the United Kingdom (formerly ICSA), the functions of a company secretary include the board, the employees, and shareholders.¹⁵⁹ For the board, the secretary ensures that the right processes are followed and that all pertinent documents are distributed to board members before meetings.¹⁶⁰ Additionally, the secretary should oversee and supervise the company’s corporate governance rules and give appropriate assistance and guidance, especially to non-executive directors.¹⁶¹ In effect, the secretary guarantees that the company complies with all applicable laws and norms of conduct that are relevant to the company’s operations. Furthermore, the board of directors and top executives frequently rely on the company secretary

154 *ibid*, s 272.

155 FRC, ‘UK Corporate Governance Code 2024’ <<https://www.media.frc.org.uk>> accessed 30 January 2025.

156 The 2024 Code applies to accounting periods beginning on or after 1 January 2025, with the exception of Provision 29. This provision is applicable for accounting periods beginning on or after 1 January 2026.

157 Also, section 1121(2) of the UK Companies Act 2006 describes the company secretary as an officer of the Company and may be criminally liable for defaults committed by the company.

158 *Chida Mines Ltd v Anderson* [1905] 22 TR 27.

159 Wulfsohn (n 142).

160 *ibid*.

161 *ibid*.

as their primary source of information.¹⁶² For the shareholders, the secretary serves as the main point of reference for institutions and stakeholders, especially when it comes to issues pertaining to corporate and environmental governance.¹⁶³

The position of corporate secretary took a step backward in 2008 because the 2006 Companies Act made the office of the secretary optional for private companies.¹⁶⁴ This was done in furtherance of the bid to deregulate businesses in the UK. Notwithstanding these measures, the provisions of the 2006 Act were still made applicable to public and private companies that opt to have secretaries. However, with the amendment of the 2018 Corporate Governance Code (CGC) and the new 2024 CGC that is expected to commence in 2025, the position of the company secretary is reaffirmed and further acknowledged.¹⁶⁵ This includes playing a crucial supporting role in corporate governance culture and helping the board chairman to conduct routine evaluations of the board as a whole and the individual directors in particular.¹⁶⁶ In any circumstance where the secretary acts in excess of express or apparent power, the company shall be bound by the actions of the secretary, although the company may hold the secretary accountable for all losses sustained as a result.¹⁶⁷

5 Recommendations and Conclusion

This paper has established that the office of the company secretary plays a very crucial role in an organisation. As a corporate governance officer, the secretary can perform a supervisory function to improve the quality of governance in the organisation. For a public or private entity to avoid pitfalls, the office of the company secretary cannot be an option, as has been indicated in the provisions of the CAMA and corporate governance codes.¹⁶⁸ Thus, every company should be mandated to have a secretary for the sake of compliance with good corporate governance practices, whether on a full-time or a part-time basis.

¹⁶² *ibid.*

¹⁶³ *ibid.*

¹⁶⁴ A Douglas, 'The Company Secretary' (*The ICSA Company Secretary's Handbook*, 21 October 2019) <https://www.cgi.org.uk/assets/files/shop/cs-handbook_12thed_sample-extract.pdf> accessed 20 January 2025.

¹⁶⁵ *ibid.* 3.

¹⁶⁶ Chartered Institute of Internal Auditors, *UK Corporate Governance Code 2024: What does it mean for Internal Audit?* <<https://www.iiia.org.uk>> accessed 28 January 2025.

¹⁶⁷ *ibid.* 6.

¹⁶⁸ CAMA 2020, s 330.

This study also reveals that the secretary plays a vital role in assisting the board of directors to achieve its goals and maintain compliance with corporate governance principles. The positions of the company secretary and those responsible for implementing good governance have evolved as have the relevant laws and principles. Because of this, a role that was once solely considered administrative is becoming more accountable for putting effective governance practices in place throughout the entire company. Wulfshon has aptly described the secretary as a polymath.¹⁶⁹ The implication is that the company secretary assumes many technical roles and is no longer limited to clerical functions in ensuring that the company is functioning effectively.

Furthermore, the company secretary has been identified as the chief adviser to the board and other company stakeholders. However, for the secretary to give constructive advice to the board that would benefit the well-being of the organisation, s/he must not succumb to the whims and caprices of the directors. Regrettably, the CAMA primarily places the duty to employ, remove, and remunerate company secretaries in the hands of the board of directors, thereby infringing on secretaries' independence, especially in private companies. Such powers can be exploited negatively when the interests of the board members clash with the role of the secretary as expected by the wider stakeholders in the company.

Under section 330 of the CAMA, only small companies are exempted from having a secretary. Comparatively, it is not mandatory for a private company to have a secretary under the United Kingdom Companies Act.¹⁷⁰ However, the UK Act regulates private companies without secretary. For instance, it stipulates that anything authorised or required to be sent to or served on the company may be done through its secretary, and if addressed to the secretary, be treated as addressed to the company. Also, the directors may authorise a person generally or specifically to carry out the duties of the secretary on behalf of the directors.¹⁷¹ This study therefore recommends the following reforms:

1. Section 270 (3) (a-b) of the UK Companies Act, 2006 is recommended as beneficial for small companies in Nigeria by amending the CAMA to handle cases of this kind with regard to small companies exempted from having a secretary.
2. The procedure for the removal of a company secretary should be similar to a director of a company to further protect the job security of the secretary of a public company.

169 Wulfsohn (n 142).

170 Companies Act 2006, s 270.

171 *ibid*, s 270 (3) (a-b).

3. We suggest, among other things, the amendment of the CAMA to improve the procedure for the removal of secretaries of private companies by directors for alleged misconduct. Such procedure must accord them an opportunity to defend themselves in line with the right to a fair hearing, equal protection of the law and non-discrimination.
4. The CAMA should be amended to make the office of the company secretary mandatory for all companies as the role they play in upholding and enforcing corporate governance standards is invaluable.
5. The evolving requirements of corporate governance entail that the capacities of the secretary should be upgraded. Thus, regulatory bodies should organise training for secretaries to ensure they are in touch with corporate governance best practices.
6. The CAMA lacks explicit or implicit clauses to control or hold a company secretary responsible for negligence. It is suggested that special provisions should explicitly delineate the secretary's liability for non-adherence to laws, regulations, and standards. These could include fines, reprimands, temporary or permanent disqualification from serving as company secretary, and/or prosecution.