AN ASSESSMENT OF THE STATUTORY DUTIES, MANAGERIAL POWERS AND RESPONSIBILITIES OF COMPANY DIRECTORS

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LONG ESSAY SUBMITTED TO THE FACULTY OF LAW, GODFREY OKOYE UNIVERSITY IN PARTIAL FULFILLMENT OF THE AWARD OF THE DEGREE OF BACHELOR OF LAWS (LL.B) DEGREE OF GODFREY OKOYE UNIVERSITY

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DEDICATION

I dedicate this project with heartfelt affection to God, my family, my parents, brothers and sisters who have been my unyielding foundation of inspiration and backing during my educational journey. My profound appreciation goes to my parents for their selfless monetary contributions that enabled this achievement. Their enduring affection has been the key to my success thus far.

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ABSTRACT

This study discusses the legal obligations and the management functions and responsibilities of directors in Nigeria within the context of the extant provisions of the Companies and Allied Matters Act, 2020. The legal historical development of the law of directors in Nigeria dating back to the pre-colonial, colonial and post-colonial periods are examined in order to understand the trends of the common law, fiduciary and the soft law of the international best practice that have been influencing the pattern of developments of the legal obligations of directors in Nigeria. The study explains the existing legal obligations of the directors including the obligations to act in good faith, to act with reasonable care and skill, to avoid a conflict of interest, and to promote the success of the company, and distinguish them from the existing management functions and responsibilities of the directors, which include monitoring the operations of the company managing risks and ensuring that the company complies with the applicable laws. The study reviews the problems militating against the existing legal framework which include the absence of an effective enforcement mechanism; the factors of patronage and corruption; the multiplicity of the regulations and the absence of diversity and independence in the board of directors, which have caused various corporate failures. The study uses the doctrinal research method to examine the relevant primary legal sources including the statutes and case law. It also considers the relevant secondary sources and comparative analysis with the jurisdictions of the United Kingdom; United States and South Africa. Findings reveal gaps in enforcement, institutional capacity, and stakeholder protection, leading to recommendations for reforms: harmonizing governance codes, introducing a statutory business judgment rule, enhancing sanctions and disqualification regimes, promoting board diversity, and adopting Environmental social and Governance (ESG) reporting aligned with Organisation for Economic Co-operation Development (OECD) principles. Ultimately, the study advocates for strengthened accountability to foster ethical corporate governance, investor confidence, and economic growth in Nigeria.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Directors' legal duties and managerial responsibilities under Nigerian law are crucial to the establishment and maintenance of good corporate governance. These duties and responsibilities ensure that directors, who are the core controllers of companies, manage the affairs of the company with integrity, due care and in a manner that ensures the continued existence of the company and which preserves the best interests of shareholders and other stakeholders. The legal duties of directors in Nigeria have evolved over time having been influenced in the past by its colonial heritage and now shaped by the realities of the modern business environment. Although the duties of directors consist of legally binding responsibilities imposed by law, equity, statute and common law, the managerial responsibilities of directors refer to the direction and control of companies in furtherance of the attainment of the corporate goals. In this part, the evolution, rationale and theoretical basis for the imposition of directors' duties and responsibilities are discussed along with a discussion of the rationale behind the research.

The history of the law of companies in Nigeria dates back to 1912 when the Companies Ordinance, 1912, which was an extension of the English Companies Act 1908, came into existence. "The Ordinance provided that a director was an agent of the company and was under a duty to act honestly and in good faith, and not to allow his interests to conflict with those of the company. After Nigeria gained its independence in 1960, the law of companies was still heavily influenced by the English law and thus, the Companies Decree 1968 was enacted, which was later codified into the Companies and Allied Matters Act (CAMA) 1990. Fast forward to August 7, 2020, when

President Buhari signed into law the Companies and Allied Matters Act, 2020 (CAMA 2020) which made significant changes to the law of companies in Nigeria and brought it up to date with international best practices of company law[1]. Some of the innovations in the new law are provisions for enhanced corporate accountability and transparency, minority shareholder protection, and single-member companies, amongst others. The introduction of the new law was largely influenced by Nigeria's desire to improve the ease of doing business in Nigeria which in fact improved from 131st position in 2019 to 105th position in 2023, according to the World Bank Ease of Doing Business rankings.

The legal foundation of the directors' duties in Nigeria can be found in the fiduciary theory of the company that is the directors are seen as trustees in the position of managing the affairs of the company and the resources of the company for the benefit of the company and not for self-gain, hence Section 305 of the Companies and Allied Matters Act 2020 that provides that a director shall act in good faith and exercise reasonable care, skill and diligence in the exercise of his powers and performance of his functions[2].

It is in the light of the foregoing that the provisions of the extant legislation in respect of the legal regime of the duties of directors under the aegis of the CAMA will be appraised with a view to tracing the lacunae in the legal framework, particularly with respect to the conflict of interest provisions in Section 306 thereof and to making proposals for a more effective regime of law that would enable the legal regime of the duties of directors to thrive in Nigeria with a view to bringing about good corporate governance and an ethical business culture, all of which are essential

[1] A Compendium of the Historical, Legal and Institutional Framework for the Practice of Company Law and Corporate Governance in Nigeria

[2] https://www.studocu.com/row/document/baze-university/land-law/examine-the-historical-development-of-company-law-throughout-the-years-in-nigeria/10558215

ingredients in any economy if it is to attract foreign investment in the true sense of the expression. In this study, I will adopt the doctrinal legal research method of sourcing legal data from the relevant statutory provisions, case law including, most notably, the celebrated case of *Salomon v. Salomon & Co. Ltd*[3] , which remains a cornerstone in Nigerian company law in respect of the separate personality of a registered company, and a collection of literature on the topic, as the objective of the study is to generate ideas to improve corporate governance and ethical business culture in Nigeria in order to enhance foreign investment into the country. In this respect, the provisions of the relevant extant legislations in Nigeria will be examined in order to identify the historical background to the development of the legal regime of the duties of directors in Nigeria. As would be revealed later, the provisions of the Companies Ordinance of 1912 compelled every director of a company to disclose to and obtain the approval of the company for his interest in any contract or arrangement entered into or proposed to be entered into by the company, which provisions are traceable to the development of the modern law of fiduciary duty. However, the historical development of the legal regime of the duties of directors in Nigeria after the 1968 Companies Act, and in particular, the unbridled abuses that were prevalent in the management of the state-owned companies in the course of the economic boom of the 1970s, necessitated the indigenization policy of the Nigerian Enterprises Promotion Decree of 1972, which effectively conferred a right of participation in the management of Nigerian companies on Nigerians but did not go pari passu with it by putting in place a corresponding legal regime for the duties of directors.

Indeed, Sections 279–282 of the Companies and Allied Matters Act (CAMA) 1990 attempts to stipulate the duties of the directors, focusing on the duties of care, skill and loyalty. However, it does not go far enough in defining the extent of the duties of the management, leaving it open to

[3] [1897] AC 22

judicial interpretation in the light of the facts of each case, see *Longe v. First Bank of Nigeria Plc*[4] where the Supreme Court held that the appellant was liable for breach of fiduciary duty. The result of this knowledge gap became evident during the 2008–2009 banking crises where a lot of banks failed due to high risk-taking and poor management. The response of the Central Bank of Nigeria (CBN) and the consequent enactment of the Financial Reporting Council of Nigeria Act 2011 led to the development of the Nigerian Code of Corporate Governance 2018, which prescribes the principles and best practices of board effectiveness. The CAMA 2020 has reinforced this with the provision of Section 265 which deals with the powers of the board and Section 303 which deals with derivative action. Notwithstanding, the implementation and enforcement still remains a challenge, especially as most businesses in Nigeria are family owned businesses which do not have a well defined governance structure.

From a moral point of view, the application of utilitarian and deontological theories to the enforceability of directors' duties alludes to economic and social welfare of all stakeholders and moral obligations of directors to act honestly and in good faith respectively. Within the academic debate, the stewardship theory states that a director is expected to act as a steward or faithful custodian of corporate assets and resources while the agency theory argues that a director will act as self-interested actors. The above debates motivated the study as issues such as breaches of governance practices, for instance, the concentration of power in the hands of one person, especially the Chief Executive Officer, who doubles as the Chairman of the board, in contravention of Central Bank of Nigeria's (CBN) guidelines, that weaken the bank governance practices and lead to bank distress. The weak corporate governance practices in Nigeria, reflected in Nigeria's Corruption Perception Index score of 25/100 (2025), as well as the boardroom disputes reported

[4] (2010) 6 NWLR (Pt. 1189) 1

in Dangote Cement Public Company (plc) in 2022 provide additional motivation for the study. In addition, the study adopts a comparative approach to governance rules in Nigeria, UK and US to advocate for the reform of corporate governance rules in Nigeria.

Against the above background, the study is considered important in the light of the fact that empirical studies have shown that enforcement of directors' duties is associated with better corporate governance. The report of Deloitte (2024) shows that firms with good corporate governance have high return on equity. Conversely, poor corporate governance has extracted high costs on the Nigerian economy evidenced by the bailout funds that has so far been committed which PwC places at about ₦1.2 trillion. Thus, in an effort to fill the knowledge gaps in this area, this study is aimed at investigating the duties imposed by the Act as well as that of the common law, on directors of a company.

1.2 Statement of the Problem

The new legal framework that came with the recent passage of the Companies and Allied Matters Act (CAMA), 2020 has not put an end to the persistent breach of the statutory and common law duties as well as corporate governance roles of directors of a company in Nigeria. While there are legal sanctions against such breach, there is equally ineffectual enforcement of the existing legal sanctions. In addition, some socio-cultural factors militate against adherence to such legal sanctions. Consequently, this has led to failures of companies, investors' loss of confidence in the capital market and huge financial losses. For instance, this problem stems from the non-compliance with some express provisions of the law such as that of the duty of directors to act in good faith as provided in Section 305 of CAMA, in the corporate practice of companies, which breeds agency problem and causes loss to stakeholders. In 2019, for instance, there was alleged breach of the directors’ duties which led to loss of investors’ confidence in Oando Plc and the resultant loss was reported to be about ₦500 billion.

Another cause of the problem is the presence of different regulations such as CAMA, the Nigerian Code of Corporate Governance, and SEC rules which are contradictory in nature and are unclear to directors. Weak enforcement agencies such as Corporate Affairs Commission and the court to enforce regulations due to lack of resources and procedural inefficiency in enforcing the law (*Longe v. FBN*, 2010). Corruption is still prevalent in corporate governance decision making at the board level (Nigeria Corruption Perception Index, 2025). Lack of a good board composition-power often lies in the hands of inside and family members of the company increasing conflict of interest which is more common in closely held companies.

Furthermore, there is still much to be desired in terms of stakeholder involvement, and the minority shareholders' remedies are not frequently employed owing to issues of cost and process.” Against this backdrop, this research is aimed at analyzing the various statutory and fiduciary duties imposed on the directors of a company, analyzing the existing legal framework for any loopholes and thereafter proffering reformative solutions.

1.3 Research Questions

The following research questions will be answered in this study:

1. What are the legal and fiduciary obligations of company directors under the CAMA 2020 and other Nigerian legislations?
2. What is the history and development of the law relating to the duties of directors in Nigeria from the colonial era to the current period?

3. What are the problems militating against the enforcement of the duties of company directors, including legal, institutional and socio-economic problems?
4. How can the law relating to the duties of directors be reformed so as to engender more compliance and effective enforcement of the law?

1.4 Aim and Objectives of the Study

The aim of this study is to critically examine the statutory duties and managerial responsibilities of company directors under Nigerian company law, identifying gaps and proposing reforms for better corporate governance.

Specific objectives include:

1. To analyze the legal provisions on directors' duties in CAMA 2020.
2. To trace the historical evolution of these duties.
3. To identify enforcement challenges and their impacts.

To recommend policy and legislative changes.

1.5 Scope and Limitations of the Study

The scope of the research is carefully circumscribed in order to enable an in-depth investigation of the legal and equitable duties and obligations of company directors in Nigeria. In light of the fact that the Companies and Allied Matters Act (CAMA) 2020, Case Laws, Common Law And Other Legislations Applicable to Nigeria is the most recent, comprehensive and far-reaching overhaul of Nigeria’s corporate law and governance regime, this research will be grounded on that law with a focus on the provisions dealing with directors’ duties including sections 305–314 which address matters such as: fiduciary duties, duty of care, skill and diligence, duty of disclosure, and conflicts of interest, amongst others[5].

Furthermore, the research will focus on both public and private companies in Nigeria due to the differences in structure and regulation of these different types of companies (for example, public companies must also comply with the additional requirements of the Securities and Exchange Commission (SEC) Code of Corporate Governance 2018 while private companies are able to benefit from the flexible compliance regime provided by CAMA 2020 such as in the creation of single-member companies pursuant to section 18. “This will ensure that the research addresses the application of directors’ duties in different contexts, from public quoted companies in the banking and oil and gas sectors to small and medium sized private enterprises which make up the majority of Nigeria’s economy[6].

Notwithstanding the above scope, some limitations might still impact the scope of this study. Firstly, due to the unavailability of some recent cases in 2024 and 2025, the study may be restricted to decisions of the appellate Courts (Supreme Court and Court of Appeal) in Nigeria which are usually delayed, or only found in the Law Pavilion and the Nigerian Weekly Law Reports which may not be up-to-date during the course of this research. In this regard, the study will have to make use of secondary materials that are readily available to the researcher which will include scholarly writings and commentaries on the subject matter and also, the study may make use of online data from the website of the CAC. Secondly, since the study will make use of secondary materials

[5] Duties and Responsibilities of Directors of a Company; CAMA 2020" by Confidence Chinem Abraham (SSRN,
[6] Examining Corporate Governance in Nigeria under the Companies and Allied Matters Act 2020 and the Nigerian Code of Corporate Governance 2018: The Way Forward" (Plymouth University repository/academic paper).

which includes textbooks, journals, and reports from institutions such as the World Bank, the study may face the risk of getting obsolete data or biased interpretations.

1.6 Significance of the Study

This study is significant in three ways. Firstly, the study will add to the extant literature on the issues of directors' duties, managerial accountability, corporate law reform and corporate governance practice in Nigeria. Secondly, the study will be relevant as it will show that there is a lack of enforcement of the legal duties imposed on directors and that there is a difference between the corporate governance practices espoused in law and that which is practiced in Nigeria. Finally, the study will be relevant to serving and intending directors and regulators of companies in Nigeria as it will illustrate the legal implications of non-compliance with directors' duties. It will also show that enforcement is the best way to fill the lacuna in the Nigerian corporate governance law framework.

1.7 Research Methodology

The methodology used for this research is Doctrinal. It will involve a study of primary sources of law such as legislations, statutes and court judgments and secondary sources of law such as textbooks, journal articles, seminar papers and reports. Reference will also be made to international conventions where necessary. Comparative analysis will be employed in the course of the research by looking at the legislation of other countries and their court decisions to compare and analyze the legal approaches and the courts decisions on the subject matter. Electronic materials such as online legal resources, academic websites etc will be extensively used in the research, as more recent and detailed legal resources are available online. However, internet materials that are not creditworthy will be avoided to ensure the authenticity of the data collected

1.8 Literature Review

The statutory duties, managerial responsibilities and powers of company directors have remained one of the most extensively discussed areas of company law due to the central role directors play in corporate governance and administration. The evolution of corporate governance principles, coupled with increasing concerns over corporate scandals and managerial abuses, has generated substantial scholarly discourse on the extent of directors' powers and the legal mechanisms for ensuring accountability.

One of the earliest and most influential contributions to the understanding of directors' duties is found in the work of Gower, who describes directors as the "brains and hands" of a company through whom the company acts and exercises its powers.[7] Gower argues that although directors possess extensive managerial powers, such powers are not absolute but are constrained by fiduciary obligations and statutory regulations. His work provides a comprehensive analysis of directors' powers and responsibilities under common law but does not extensively address the contemporary statutory framework introduced by recent corporate legislation such as the Companies and Allied Matters Act (CAMA) 2020 in Nigeria.

Similarly, Pennington examines the legal nature of directorial powers and emphasizes that directors are not merely agents of the company but occupy a fiduciary position that imposes obligations of loyalty, honesty and good faith.[8] According to Pennington, directors must exercise their powers solely for the benefit of the company and not for personal gain. While his work remains highly authoritative, it is largely rooted in English company law and provides limited

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[7] LCB Gower, *Gower's Principles of Modern Company Law* (10th edn, Sweet & Maxwell 2016) 151.
[8] RR Pennington, *Pennington's Company Law* (9th edn, Butterworths 1990) 739.

discussion of the peculiar challenges associated with the enforcement of directors' duties within developing jurisdictions such as Nigeria.

In the Nigerian context, Uche provides a detailed examination of directors' responsibilities and corporate governance practices.[9] He argues that directors owe duties not only to shareholders but also to the company as a separate legal entity. According to him, the statutory codification of directors' duties under Nigerian company law represents a significant attempt to strengthen accountability and improve corporate governance standards. However, his analysis focuses predominantly on fiduciary obligations and offers limited consideration of the practical exercise of managerial powers and the challenges associated with balancing managerial discretion with accountability.

Akanki, in his influential work on Nigerian company law, discusses directors as the primary managers of corporate affairs and emphasizes their extensive powers in relation to corporate decision-making, business strategy, and financial administration.[10] "He argues that directors derive their powers principally from the company's constitution and statutory provisions. Nevertheless, while the work provides a useful doctrinal foundation regarding directors' powers, it predates CAMA 2020 and therefore does not address recent statutory innovations concerning directors' duties and liabilities.

Keay approaches directors' duties from the perspective of creditor protection and argues that directors' responsibilities extend beyond shareholders, particularly when a company approaches insolvency.[11] He contends that directors should exercise their powers with due regard to creditor

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[9] C Uche, *Corporate Governance and Accountability in Nigeria* (Malthouse Press 2018) 87.
[10] EO Akanki, *Essays on Company Law* (University of Lagos Press 2007) 112.
[11] Andrew Keay, *Company Directors' Responsibilities to Creditors* (Routledge 2007) 121.

interests in situations of financial distress. This perspective is especially relevant to modern statutory provisions concerning wrongful trading and insolvency-related liabilities. Nevertheless, the applicability of these principles to Nigerian company law requires further analysis due to differences in regulatory structures and judicial interpretation.

From the foregoing review, it is evident that substantial scholarly attention has been devoted to directors' fiduciary duties, managerial powers and corporate governance responsibilities. However, much of the existing literature either predates the enactment of CAMA 2020, focuses on common law principles, or examines directors' duties without comprehensively integrating statutory duties, managerial responsibilities and powers within a unified analytical framework. Furthermore, limited attention has been given to the practical implications of the expanded statutory duties under CAMA 2020 and the challenges associated with their enforcement in Nigeria. This study therefore fills this gap by undertaking a comprehensive examination of the statutory duties, managerial responsibilities and powers of company directors under CAMA 2020, with particular emphasis on the interaction between managerial authority, fiduciary accountability and corporate governance obligations in contemporary Nigerian company law.

CHAPTER TWO

CONCEPTUAL AND THEORETICAL FRAMEWORK

2.1 Basic Concepts

2.1.1 Corporation

A corporation is a legal entity established by law and recognized as having a distinct legal personality separate from its members or shareholders. It possesses the capacity to own property, enter into contracts, incur liabilities, and sue or be sued in its own name. A corporation also enjoys perpetual succession, meaning its existence continues despite changes in membership. The principle of separate corporate personality was firmly established in the case of *Salomon v A Salomon & Co Ltd*, where the court held that a duly incorporated company is a separate legal person from its shareholders.[12] This principle forms the foundation of modern corporate law and limited liability.[13]

2.1.2 Legal Personality

Legal personality refers to the existence of a separate corporate personality. Under law, a company incorporated, obtains a legal entity distinct from that of its members or the director of that company. In other words, the company as a whole is the respondent or the appellant and not the members in their individual capacity. When a company is incorporated, the company can own property in its name and enter contracts in its name with others. The firm has legal rights to sue and be sued. Moreover, the company may incur its own liability in its name. In the critical case of registration of a company was done as a reputed boot manufacturer. The company was controlled by one person.

[12] Salomon v A Salomon & Co Ltd [1897] AC 22 (HL).
[13] Andrew Keay, Company Law and Corporate Governance (2nd edn, Routledge 2022) 15.

Subsequently, the company was insolvent or unable to pay. The Court ruled that the company was duly incorporated with all legality. Moreover, a company is an independent entity. The defendant is not responsible for the debts of the firm. The company is entitled to sue in its own name thereafter. Therefore, for legal purposes, a registered corporation is classed as a "person" and possesses a "distinct personality which is separate to its members". Furthermore, it grants the company a continuous existence. As a result.

2.1.3 Limited liability

Limited liability shields the individual shareholder. Their liability is restricted to whatever is unpaid on their shares which is, in other words, equivalent to the worth of their investment. So, creditors can only look to the assets of company. Shareholders' individual assets cannot be seized in first approach. The rationale for limited liability comes from legal personality. Refer to *Salomon v Salomon*. By lowering investors' individual risks, it encourages entrepreneurial activity and makes investing easier while freeing shareholders from closely monitoring management. There are two kinds of companies that are subject to limited liability. They are: Companies limited by shares, and Companies limited by guarantee. However, there is a caveat regarding the liability of directors, which is as follows: Directors aren't protected from personal liability in case of breach of duty, fault, or wrongdoing. For example, directors aren't protected from wrongful trading. Directors will not be protected from personal liability where guarantees have been given to creditors of the company. This is a basic idea.

It has played an essential role in the contribution of firms to economic development through capital formation. Nonetheless, this principle is not always absolute. Statutory law has, in fact, overridden this fundamental legal principle and the courts too may decide to ignore the principle in case of abuse. In a company, owners are liable only for their investment, with no further risk, attack, etc.

2.1.4. Lifting the Veil of Incorporation

Unveiling the secrets of when the company is shown to be a mere sham or facade e.g. to commit fraud or defeat an existing obligation or liability, courts pierce the veil. The case of Prest v Petrodel Resources Ltd[14] held that veil-piercing does not arise solely because of the impropriety of the company. The improper conduct objected to must relate to the use of the corporate structure. Judges may also annul the ban.

2.1.5 Directorship

Director of a company is a pivotal concept in company law, corporate governance and corporate administration. By Nigerian company law, a director is the directing mind and will of a company and the person responsible for the direction and control of its affairs. A company, being an artificial person has no existence of its own and can only act through natural persons who manage the affairs of the company. These natural persons are known as directors. By Nigerian law, specifically under the Companies and Allied Matters Act (CAMA) 2020, a director is not just an employee or agent of a company, but rather a special class of persons who are positioned in a hybrid capacity involving agency, trusteeship and fiduciary. Thus, section 283 of the CAMA 2020, states that every company shall have at least one director and in the case of a public company, not less than two directors. Thus, it can be inferred that a director is a necessary tool for corporate administration. By an ordinary interpretation, a company director is a person appointed or elected to the board of a company to manage, direct and administer the affairs of the company in accordance with its memorandum and articles of association, the provisions of the CAMA and any other applicable law. The term includes an executive director who actively participates in the day-to-day running

[14] [2013]

of the affairs of the company and a non-executive director who does not participate in the day-to-day running of the affairs of a company but merely exercises oversight functions, formulate policies and take major decisions.

Indeed, our courts have invariably held that the directors of a company are the "brains" of a company. Thus, in *Lennard's Carrying Co. Ltd v Asiatic Petroleum Co. Ltd*, the directors were said to be the directing mind and will of the company and their acts are regarded as the acts of the company itself where the circumstances justify it. This position of the law has been received and accepted in Nigeria. Also, in *Bolton (Engineering) Co Ltd v Graham & Sons Ltd* [15], Denning LJ posited that: The directors are the brain of the company and represent the directing mind and will of the company, and without them, the company cannot act. This position has been followed in Nigeria. See *Trenco (Nig.) Ltd v African Real Estate and Investment Co. Ltd* (1978) 4 SC 9 where our apex court held that the directors are alter ego of the company and their actions as such done in the name of the company and in the circumstances disclosed in this case, can be deemed to be the act of the company. It is pertinent to note that the directors of a company derive their authority from the articles of association of the company but which authority must be exercised within the limits provided by the statute and in conformity with the fiduciary obligations owed by them to the company. The law recognizes different types of directors, namely, executive, non-executive, and shadow directors. In *Re Hydrodam (Corby) Ltd* [16], a shadow director was defined as: A person in accordance with whose directions the directors of a company are accustomed to act. This definition is captured in Section 245 of CAMA 2020.

[15] (1957) 1 QB 159
[16] (1994) 2 BCLC 180

Furthermore, powers of the directors are also found in the articles of association which states the powers, duties and limits of the directors. Nevertheless, such powers are not unlimited, directors must act in good faith, for a proper purpose and in the best interests of the company as a whole. Failure to do so, the directors may be liable for civil or criminal penalties for breaches of the legal requirements.

2.1.6 Statutory duties of Directors

Statutory duties are those duties which are placed on the director by an enactment. The principal statute setting out the duties of a director in Nigeria is the CAMA, 2020 although there are other enactments, for example, the Investment and Securities Act (ISA), Banks and Other Financial Institutions Act (BOFIA) etc. The enactment may be specific to a sector. Statutory duties are automatic and must be complied with. The consequences of non-compliance may include civil liability, criminal liability or disqualification from acting as a director. One of the duties of a director imposed by Nigerian law is the duty to act in good faith and in the best interest of the company. The law provides thus; every director of a company shall act honestly and in good faith and in the best interest of the company. Here, the director must act in the best interest of the company[17]. The interest of the company must come before any other interest, whether personal or of a group of shareholders. Another duty is the duty to exercise powers for a proper purpose. A director must not exercise his powers for a purpose which is collateral to or beyond the objects of the company or for a purpose which is improper[18]."

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[17] MS Afolaya and O Awwal-Bolanta (2024) 'Duties of Directors Under the Companies and Allied Matters Act 2020 and Analysis of the Principle of Corporate Governance', International Journal of Social Sciences and Management Research, 10(10), pp. 56–68.

[18] https://law.stanford.edu/wp-content/uploads/2023/01/Corporate-Governance-and-Directors-Duties-in-the-United-States-Overview.pdf

For example, using his powers to entrench himself into office or to favour one group of shareholders to the detriment of another group. In *Placers Development Ltd v. the Commonwealth Development Corporation* the court held that even though the directors have acted honestly, their action will still be rendered invalid if it was done for an improper purpose. Yet another example is the duty to exercise care, skill and diligence. This is found under Section 306 of the CAMA, 2020 which states thus; every director of a company shall exercise the degree of care, diligence and skill which a reasonably prudent person would exercise in comparable circumstances whether as a director of a company or in any other capacity. The duty of care, skill and diligence has both subjective and objective tests. The director is to take into consideration his knowledge, skill, expertise and position within the company. It is also expected of him to put in reasonable time to take an informed decision. In the Nigerian case of *Abdulrahman v. Oduneye*, the Court of Appeal said that a director must act bona fide in the interest of the company and not for extraneous purposes. Another example is the duty to avoid conflict of interest. Under Section 303 of the CAMA, 2020, a director must not permit a conflict of interest to arise. Where such interest arises, he must disclose some instances not participate in the decision of the board in that respect[19].

The second statutory duty is the duty not to derive secret profits. The law states that a director has a fiduciary duty not to derive any benefit from the position of directorship that has not been disclosed to the company. If he does derive any such benefit, it has to be accounted for to the company, even if the company has not suffered any loss as a result of such benefit. In addition, directors have a statutory duty to ensure that proper accounts and financial statements are prepared. S331 of the Companies and Allied Matters Act (CAMA) says that a director of a company must

[19] D Adeyemo,(2022) 'Directors' duties under the Companies and Allied Matters Act 2020: A critical appraisal', Journal of African Law, 66(3), pp. 345–370.

ensure that true and fair financial statements are prepared, that proper accounting records are maintained and that the provisions of the law relating to the audit of accounts are complied with. Contravention of this section attracts penalty and also imposes personal liability on the director. Furthermore, there are also other statutory requirements like filing of annual returns, and notice to the Corporate Affairs Commission (CAC) of a change in directors. There are also corporate governance codes that directors have a duty to comply with.

2.1.7 Managerial Responsibilities of Directors

While the statutory duties of the directors of a company are the legal obligations of a director, the managerial responsibilities of Directors are the actual, on-the-ground functions that the directors of a company must undertake to manage the company in an efficient and profitable manner and to ensure the long-term survival of the company.

Essentially, the first key managerial role of directors is strategic leadership. “This includes defining the vision, mission, and long-term goals of the organisation. Developing policies and strategies to deliver these objectives, to ensure the growth, competitiveness and sustainability of the company, while mitigating risks and addressing any environmental changes that may impact on the business[20].

A second major managerial function is oversight and control. This means ensuring that management follows board policies, monitoring the performance of management, and ensuring that the organization has good internal controls in place. This includes hiring capable executives,

[20] MN Umenweke (2024) ‘Directors’ Liability for Corporate Misconduct in Nigeria under CAMA 2020’, Nigerian Journal of Contemporary Law

assessing the performance of executives, and dismissing executives if they are failing to perform adequately.

Risk Management: part of the board's role is to take on risk management tasks. This includes identifying risks, adopting mitigants, and ensuring there is adequate insurance and business continuity planning in place. This is particularly important for directors who operate in highly regulated environments such as banking and telecoms. Financial management: there is an obvious need for financial oversight on the board. This ranges from management of the company's finances, approving the budget, ensuring adequate cash flow, and ensuring that resources are being used properly. In a smaller organisation, it is likely that the executive will undertake much of this work. However, in a larger organisation, there is a clear need for board-level oversight. Ethical conduct and Corporate Social Responsibility (CSR): in contemporary governance, it is expected that a company will be expected to operate ethically and within environmental standards, and also seek to make a positive contribution to society. It is the role of the board to ensure that this happens. Stakeholder management: the board is expected to engage with stakeholders and maintain a positive relationship[21]. These include, but are not limited to, shareholders, employees, creditors, regulators and the host community. A key component of stakeholder management is ensuring that there is adequate communication and transparency.

2.1.8 Concept of Duties, Powers and Authority

Concept of Duties, Powers and Authority. A company acts through general meeting, its board of directors or his officers and agents appointed by them as it is an artificial person. A company acts through these persons, Section 87(1) CAMA(a). The Board of Directors will have broad

[2121] HN Eluchie-Chike (2023) 'Consequences of Directors' Breach of Duty', Journal of Commercial and Contemporary Law.

management powers subject to the memorandum and articles of association. The board of directors, subject to the Memorandum and articles of association can exercise all such powers as the company is entitled, except powers in relation to the general meeting. Simply put, they have all the powers of the company as a whole.

The directors may delegate management powers to board committees or a managing director to oversee the company's day to day operations.To put it another way, they act on behalf of the company with third parties.

In their capacity as trustees, they manage the company's assets and exercise their powers as trustees. The fundamental duty of the trustee has been categorized into "fiduciary duties". It is important that they act in utmost good faith in all dealings. A company director must act in the interest of the whole company. They shall also not use their powers for collateral or improper purposes. Requires an obligation of care and skill.

What directors must never do is to let their personal interests conflict with the duties they owe to the company. They should not make secret profit. office-bearers owe an ongoing duty to avoid misleading the company's businesses and to testify for the company and not for the intruder. This duty remains in effect after the director vacates office. In most cases, borrowing powers and other restrictions of the company are found in the Articles of Association. The purpose clause outlines the powers that this company may exercise. Liable for Breaching Duties: The Director will become personally liable for.

2.1.9 Organs of a Company

A company primarily operates through two main organs: the Members in General Meeting (MGM) and the Board of Directors (BOD). The company's 'alter ego' is the board of directors. Also, it is mainly responsible to regulate the business of the company. In other words, the daily management of the business activities is known as business function[22]. When acting bona fide, the board will generally be free of the direction of the general meeting on management matter. There needs to be a division to ensures that the Board is generally not subject to direct instructions from the general meeting when exercising its management functions in good faith[23]. However, the Members in General Meeting retain ultimate control through their power to appoint and remove directors by ordinary resolution. The MGM holds exclusive authority over fundamental matters such as altering the Objects Clause, increasing share capital, and other major corporate changes.

In cases of board deadlock or lack of quorum, the general meeting has residual power to act. The MGM may also institute legal proceedings in the company's name where the board refuses or neglects to do so. The Company Secretary acts as a key administrative officer, supporting the functions of both the Board and the general meeting.

In public companies, the Audit Committee serves as a specialised organ for financial oversight and corporate governance. The principle of majority rule applies, though minority rights are protected under the law. Under the rule in *Foss v Harbottle*, only the company acting through its proper organs can sue to redress wrongs done to it[24]. These organs must collectively ensure the company operates in line with public policy and stakeholder interests.

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[22] https://diverselaw.org.ng/critical-analysis-of-corporate-goverance-and-accountability-under-companies-and-allied-matters-act-2020/ accessed 16 May, 2026.

[23] https://iiardjournals.org/get/IJSSMR/VOL.%2010%20NO.%2010%202024/DUTIES%20OF%20DIRECTORS%20UNDER%2056-68.pdf accessed 16 May, 2026.

[24] https://cjokoyelawview.com/corporate-law-practice/week-14-corporate-governance-iv-majority-rule-minority-protection-investigation-of-companies accessed 16 May, 2026

2.1.10 Distinction between Duties and Responsibilities

The terms duties and responsibilities are often used interchangeably but are, in fact, distinct concepts in the realm of corporate governance. It is necessary to understand their distinction to adequately grasp the nature and extent of the duties of directors within the Nigerian company law. A duty is a legal obligation that is imposed upon a person by a statute, the common law or in equity which is enforceable in a court of law and the breach of which may result in liability. Duties imposed by a statute, as the name implies, is one that is laid down by the legislature in a statute and has no scope for negotiations. They are the hard and fast rules of law which are binding on directors. Thus, in the case of *Percival v Wright* (1902) 2Ch 421, the Court held that, the legal duties of the directors are duties owed to the company, and not to individual shareholders. This distinguishes the legal nature of duties from responsibilities.

In contrast, responsibilities, refers to those managerial, ethical and strategic obligations that are expected of a director, that when not fulfilled, may not necessarily attract liability in a court of law but could, in addition to other things, result in loss of reputation, loss of confidence of investors or even removal from office. A director may discharge his legal duties but fail in his managerial responsibilities and so the company performs poorly. In essence, the concept of duty refers to the legal minimum required of a director while the concept of responsibility refers to what is, in fact, the best practice and higher standards that are expected.

2.2 Theoretical Framework

2.2.1 Agency Theory

This is the theoretical foundation upon which the relationship between the company and its directors(who are appointed as agents of the company)is based. This relationship is such that the shareholders (principals) employ the services of the directors (as agents), to manage the affairs of the company on their behalf and in their best interests. The problem of agency arises as a result of the divergence of interest between the principal and agent, hence, the agent may pursue their personal interests such as increased compensation and entrenchment to the disadvantage of the principals. In *Foss v Harbottle* (1843)[25] , the rule in the case, which states that the company is the proper plaintiff in actions for wrongs done to the company was laid down, thus further establishing the fact that the legal duties of a director are owed to the company and not the shareholders.

The importance of the legal duties imposed on directors by the Nigerian company law, lie in their utility as mechanisms for solving agency problems. The duty of loyalty, care and disclosure all ensure that the interests of the directors are tied to those of the company and the shareholders. In addition to the imposition of these legal duties, agency theory also justifies the existence of monitoring mechanisms such as audits, meetings, monitoring by shareholders, as well as the mechanism of regulation which exist to reduce information asymmetry[26].

2.2.2 Fiduciary Duty Theory

Fiduciary duty theory is another theoretical framework upon which the structure of directorship in Nigerian companies is based. It imposes a trust like obligation on directors such that they are expected to have acted bona fide in the best interests of the company with utmost good faith, loyalty and honesty. This theory is equitable in origin and has now been codified in the Nigerian company law. The obligation of directors as fiduciaries, requires that they must at all times place the interests of the company above their personal interests and that any act that amounts to an

[25] 2 Hare 461

[26] L Osemeke, et al. (2020) 'Corporate Social Responsibility and Stakeholder Management in Nigerian Banking', Corporate Ownership & Control.

abuse of trust and confidence such as self-dealing and misappropriation of the company's assets and property is in breach of the fiduciary obligations of the director. The Nigerian courts have held directors liable for breaches of fiduciary obligations even in cases where there is no violation of any statutory provision. This theory seeks to ensure the highest standards of ethical conduct and integrity in corporate management.

2.2.3 Stakeholder Theory

This is the type of theory that postulates that in addition to the shareholders, there are other stakeholders like employees, creditors, consumers and the community who have an interest in the company, and directors have a responsibility to those stakeholders[27]. It is the type of theory that is currently in vogue, being more in tune with the contemporary corporate governance perspective and the tenets of sustainability and corporate social responsibility. In Nigeria, the interests of other stakeholders are now being taken into consideration, particularly in areas of social and environmental activities. For example, in the Niger Delta area of Nigeria, the oil companies are expected to consider the interest of the local inhabitants in the area, when embarking on any oil exploration activities. It is the duty of the directors of the oil companies to consider the interest of both the shareholders and the local inhabitants when taking decisions. Although, in Nigeria, the interest of the company as a separate legal entity still takes precedence, the interests of other stakeholders now have a role to play in the managerial and policy decisions of the directors.

[27] BL Parmar, RE Freeman, JS Harrison, AC Wicks, L Purnell, and de S Colle, (2010) 'Stakeholder theory: The state of the art', Academy of Management Annals, 4(1), pp. 403–445.

2.2.4 Stewardship Theory

The stewardship theory proposes that, contrary to the assumptions of the agency theory, that is, that the managers and directors are inherently opportunistic and thus cannot be trusted to pursue the interest of the company, the managers and directors are in fact trustworthy and interested in doing their best for the company. The stewardship theory proposes that the managers and directors regard themselves as stewards of the corporate assets. This theory advocates that there is a need for empowerment, trust and teamwork between the shareholders and the directors. What the stewardship theory in fact advocates in terms of corporate governance is that the governance framework should be such that it allows for the development of autonomy and fosters a long-term view by the managers and directors[28].

In the case of *Re Smith & Fawcett Ltd*[29], Greene M.R. delivering the judgment of the court said thus: “The discretion must be exercised bona fide in what they consider not what a court may consider is in the interests of the company, and not for any collateral purpose”. See above, for a discussion on how the decision in this case lends credence to the stewardship theory. In Nigeria, “the stewardship theory comes in handy in that it fills the lacuna left by the statutory law, that is, it supplies the ethical and moral yardsticks with which the leadership and corporate accountability of companies should be measured”.

2.2.5 Resource Dependence Theory (RDT)

This theory is based on the following four premises:The Tenet Implication for the Board External Resource Acquisition The board must identify and acquire the needed resources from the

[28] JH Davis, FD Schoorman, and L Donaldson, (1997) ‘Toward a stewardship theory of management’, Academy of Management Review, 22(1), pp. 20–47.

[29] (1942) Ch 304

environment such as suppliers, funding, regulations, and market outlets. Power Balancing The board should develop ways to minimize the influence of the resource controllers such as joint ventures, interlocking directorships, and contracts. Strategic Adaptation The board should manage and adjust the firm's strategy when there is a change in the resource dependence such as the availability of a new technology provider. Legitimacy Management The board must obtain socially accepted legitimation (e.g., certifications, governmental licenses) to make the flow of resources legitimate[30].

Suggests that firms are interdependent with their environments. To ensure their survival, firms require resources such as financial, technological, raw material, human, and legitimacy from their environments. Given that other organizations control these resources, the power dependencies generated by resource acquisition can affect a firm's behavior and outcomes. Top managers, or directors, are the vehicles through which a firm manages resource dependencies by handling relations with external stakeholders, forming coalitions, and developing networks to access the resources necessary for firm functioning.

It is also important to ensure that any such conduct and behavior requirements are consistent with the public authority's existing legal obligations. This means that the requirements must not violate or supersede any statutory duties imposed on the authority.

2.2.6. Corporate Governance Theory.

The theoretical basis of the corporate governance mechanism, the corporate governance theory plays a crucial role in its development. The corporate governance theory is derived from the agency

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[30] MD Lynall, BR Golden, and Hillman, (2003) 'Board composition from adolescence to maturity: A multitheoretic view', Academy of Management Review, 28(3), pp. 416–431.

theory, which was first proposed by Jensen and Meckling[31] to provide an effective framework for describing and analyzing the relationship between the agency cost and the corporate governance mechanism. Later, Fama (1980) [19] and Fama and Jensen (1983) [20] expanded the connotation of the agency theory to the agency relationship between the managers and the shareholders.

Theoretical discussions of corporate governance generally revolve around three distinct frameworks: the stakeholder view, the agency view, and the stewardship view. Understanding the core principles of these theories can provide insights into the dynamics and mechanisms of corporate governance[32].

CGT is concerned with the means by which a firm is governed and controlled. The core idea of the theory is that governance practices bring the interests of the board and the shareholders (as well as other stakeholders) into alignment. This, in turn, reduces agency costs and increases accountability. It includes, inter alia, questions concerning the appropriate board structure and composition (independence, skills, diversity, etc), the role and powers of internal monitoring bodies (such as the audit, remuneration and nomination committees), and the efficacy of external monitors (the market, the regulators, etc). The CGT supplies the normative matrix that determines the legal and practical context within which the directors may exercise their statutory powers and fulfill their managerial role.

[31] MC Jensen, and WH Meckling, (1976) 'Theory of the firm: Managerial behavior, agency costs and ownership structure', Journal of Financial Economics, 3(4), pp. 305–360.
[32] EF Fama, and Mc Jensen, (1983) 'Separation of ownership and control', Journal of Law and Economics, 26(2), pp. 301–325. doi:10.1086/467037

CHAPTER THREE

THE LEGAL FRAMEWORK GOVERNING THE STATUTORY DUTIES, MANAGERIAL POWERS AND RESPONSIBILITIES OF COMPANY DIRECTORS UNDER THE NIGERIAN LAWS

The law relating to company directors is one of the most essential areas of corporate governance and company law. In Nigeria, the functions, powers, rights, duties, and liabilities of a director are governed mainly by statutory law, that is, the Companies and Allied Matters Act (CAMA) 2020, as well as common law and regulations. This chapter discusses the legal rules and regulations that relate to the statutory duties and executive roles of directors in a company in Nigeria, with a focus on the provisions of the new CAMA 2020.

3.1 Companies and Allied Matters Act (CAMA) 2020

It is the fundamental law governing the incorporation, operation, and regulation of companies in Nigeria. The new Act repeals the Companies and Allied Matters Act 1990 (CAMA 1990) and is a significant landmark in the history of company law in Nigeria[33]. The objective of the new law is to provide a new regime of corporate regulation to Nigeria that eases the burden of doing business and advances the sound corporate governance and good corporate practices in Nigeria.

The Companies and Allied Matters Act, 2020 (CAMA 2020) has a detailed provision on the office of the director of a company which include their appointment, powers, duties, liabilities and management of the affairs of the company[34]. The Act has largely codified the several judicial common law and equitable rules which were previously applicable to directors. This is a welcome

[33] Intercontractors (Nig.) Ltd v UAC of Nigeria Ltd (1988) 2 NWLR (Pt.76) 303
[34] Union Bank of Nigeria Ltd v Penny-Mart Ltd (1992) 5 NWLR (Pt.240) 228

development as it makes the law more certain and it makes it easier for directors to comply with the law knowing what is expected of them.

Another significant aspect of the CAMA 2020 is that it makes corporate governance, and disclosure more accountable[35]. For instance, the new law has provided for specific statutory responsibilities of the directors as regards, diligence, care, skill, good faith, and best interest. Moreover, there is now more transparency and more stringent conditions attached to the disclosure of the director's interest in the company transactions.

Fourthly, the CAMA 2020 acknowledges the changing dynamics of the roles and responsibilities of company directors. Though, it still generally adhere to the doctrine of a company director as an agent of the shareholders, but it also reflect a more contemporary perspective of the company director which emphasize a wider accountability of the directors to a wider group of stakeholders including employees, creditors, regulatory bodies, members of the public, etc, in particular, compliance with regulatory provisions, financial management and probity.

3. 1. 1 Appointment and Qualification of Directors

The appointment and qualification of directors are essential to good corporate governance under the Nigerian company law. Given the fact that directors are responsible for the management and control of the affairs of a company, the law has laid down rules and regulations to govern who can be appointed as a director of a company, the procedure for appointing a director and the qualification and disqualification for appointment as director of a company[36]. These provisions are largely found in Parts VI and VII of the Companies and Allied Matters Act (CAMA) 2020.

[35] N.N.S.C. Ltd v Establishment Sima of Vaduz (1990) 7 NWLR (Pt.164) 526
[36] Alhaji Adebayo Akande v General Electric Co. Ltd (1977) 1 FNLR 331

(1) Subject to the articles of a company, a company shall have at least one director, and if the company is a public company, the company shall have not less than 2 directors.

(2) The first directors of a company are appointed by the subscribers to the memorandum and articles of association of the company, and the appointment is effective from the date of incorporation of the company[37].

(3) After incorporation of the company, any other director of a company may be appointed by the company in accordance with the articles of association, subject to any provisions of this Act.

However, in practice, the following processes can lead to the appointment of a director, namely: Appointment of a director by resolution of the shareholders at a general meeting. This process is in line with the principles of control of the board by the shareholders. In the case of *Lagos City Council v. Ajayi* [38], the court held that where the articles provide for the manner of appointment, the same must be adhered to. The CAMA 2020 further allows the board of directors to appoint a director to fill a casual vacancy or as an additional director, as long as it is in accordance with the articles. In this case, however, the director would hold office until the next annual general meeting when his or her appointment must be confirmed by the shareholders.

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[37] Yadis (Nig.) Ltd v Great Nigeria Insurance Co. Ltd (2007) 14 NWLR (Pt.1055) 584
[38] (1970) 1 All NLR 291

3.1.2 Powers and Authorities of Directors

The extent of the powers of directors includes the power to enter into a contract for and on behalf of the company, to control the property of the company, to employ, engage, control and remove the executives and subordinate staff of the company, and to formulate and implement the policies of the company. A director is an agent of the company and his act when done within the scope of his authority, binds the company. In the case of *Royal British Bank v Turquand*[39] the indoor management rule was laid down. The rule is a presumption in favour of a third party who acts in good faith in a transaction with the company that the rules and procedures of the company have been complied with. The rule applies to the acts of the directors and strengthens their power to bind the company in its external relations.

But directors' powers have limits. Acts within their powers but contrary to a statute, or acts outside their powers may be void or give rise to personal liability. In *Ashbury Railway Carriage and Iron Co Ltd v Riche*[40] the House of Lords found that acts outside the company's objects are void and cannot be ratified. Whilst the ultra vires doctrine has now been greatly diminished, directors must still act within the company's capacity.

The powers of the directors may be restricted in the following ways:

Statute: the powers must be exercised in accordance with any relevant statutory provisions, for example, the requirement for directors to act in accordance with their fiduciary duties and the disclosure requirements.

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[39] (1856) 6 E & B 327

[40] (1875) LR 7 HL 653

Articles: the articles may place certain restrictions or conditions on the exercise of powers, for example, limits on borrowing powers or the requirement for board approval for certain levels of expenditure.

Directors' authority is also checked by the shareholders. Although the shareholders cannot meddle in the daily business operations, they are able to remove the directors, amend the articles or pass special resolutions. In *Shaw & Sons (Salford) Ltd v Shaw*, it was ruled that shareholders cannot exercise the powers of management that have been conferred upon the directors by the articles.

3.2 Statutory duties

The most important innovation in the Companies and Allied Matters Act (CAMA) 2020 in respect of company law in Nigeria is that the Act codifies the statutory duties of company directors[41]. These are the minimum standards of legal conduct that every director of a company must comply with regardless of the size of the company and whether it is a small private or a large public company[42]. The statutory duties of directors are intended to ensure that directors manage companies properly, promote the success of the company, and do not misuse the powers of a director of the company. In the main, the statutory duties under the CAMA 2020 are a re-statement of the common law and equitable principles, especially fiduciary duties, that have been developed over time. However, their inclusion in the Act not only clarify the law but also provide the framework for their enforcement. A breach of statutory duty renders a director liable in civil, criminal, or administrative law.

[41] Longe v FBN Holdings Plc (2010) 6 NWLR (Pt.1189) 1
[42] Trenco (Nigeria) Ltd v African Real Estate & Investment Co. Ltd (1978) 4 SC 9

Certain specific statutory duties which are also expected of a director include; duty of care, skill and diligence and the duty to act in good faith and in the best interest of the company. These will be discussed later on.

3.2.1 Duty of Care, Skill and Diligence

This is a duty to take reasonable care and be reasonably diligent in the discharge of their functions. The provision of the law in Nigeria in this regard is Section 308 of the CAMA 2020 which stipulates that "a director of a company shall in the performance of his functions exercise such a degree of care, diligence and skill as would be exercised by a reasonably diligent person".

The duty to exercise reasonable care, skill and diligence is to be assessed both objectively and subjectively. Objectively, a director will be assessed as to whether he has measured up to the standard of a reasonable person in his position. Subjectively, a director will have his knowledge, skill and experience taken into consideration. A director holding a particular professional qualification or expertise will therefore be subject to a higher standard of care, skill and diligence than a non-professional director.

The common law test for this duty used to be somewhat minimalistic. In *Re City Equitable Fire Insurance Co Ltd* [43], it was decided that there was no need for directors to show greater skill than may be reasonably expected of a person of their knowledge or experience. Directors could also trust the company's officers, unless they had cause to suspect. But today's corporate governance has no patience for that standard of conduct. In *Daniels v Anderson*[44] , the court ruled that the passive attitude will no longer do, and that directors are under a duty to take reasonable steps to

[43] [1925] Ch 407

[44] [1995] 37 NSWLR 438

ensure that they guide and monitor the management of the company. This is the standard that has influenced judicial and regulatory expectations in Nigeria, at least in the context of the financial and public company space[45].

The modern trend is what is with us in s. 306 of the CAMA 2020. Under that section, the directors are to act honestly and reasonably and they should: attend board meetings; obtain at the meetings of the directors, or in some other manner, information with respect to the activities or proposed activities of the company; require officers, agents and employees to furnish information with respect thereto. A director will be in breach of his duty if he fails to act in accordance with the section above, even if he had acted honestly: see *CPC (Nig) v Mamman*[46].

For instance, in *Union Bank of Nigeria Plc v Ajabule*[47], the Court of Appeal held that a director has a duty to exercise care and that a director would be liable for breach of duty for any loss suffered by a company as a result of the director's negligence. The Union Bank case demonstrates the courts' readiness to enforce the duty of care when there is evidence of recklessness or inattention.

3.2.2 Duty to Act in Good Faith and in the Best Interest of the Company

One of the most important of the directors' statutory duties is the duty to act in good faith and in the best interest of the company. Indeed, this duty is one of the most obvious of the statutory duties of directors, and it is specifically imposed on the directors by Section 305 of CAMA 2020, which stipulates that the functions of a director shall be performed by him honestly, in good faith and in the best interest of the company.

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[45] okomu Oil Palm Co. Ltd v Iserhienrhien (2001) 6 NWLR (Pt.710) 660
[46] [2020] 2 NWLR (Pt. 1707) 1
[47] (2011) 18 NWLR (Pt. 1278) 152

What is in the "*best interest of the company*?" The expression "best interest of the company" has been judicially defined as the interest of the company viewed as a separate legal entity with its own interests which may differ from those of its shareholders or directors. In *Percival v Wright*, it was held that, the directors do not in law represent the shareholders, their powers are derived from the company itself, and they are bound to exercise them in the company's interest and for its benefit as its governing body. An individual shareholder cannot compel them to do what they do not consider the company's interest to do. However, what is in the best interest of the company is not always an easy question to answer. It can be especially difficult to determine in situations where there are conflicting interests. Courts generally allow directors the benefit of business judgment, as long as they act honestly and without ulterior motives. In *Charterbridge Corp Ltd v Lloyds Bank Ltd* [48], the court held that the test is whether an intelligent and honest man in the position of a director of the company concerned could in the whole of the circumstances have reasonably believed that the transaction was for the benefit of the company of which he was a director.

The second criterion in the employment of powers is that it should be for a proper purpose. It implies that the directors should act bona fide in what they consider and not for any other purpose than for the benefit of the company as a whole. In *Howard Smith Ltd v Ampol Petroleum Ltd AC*, it was held that, even though the directors may have genuinely considered that they were acting in the best interests of the company, the power was nonetheless exercised for an improper purpose, since their primary intention was to defeat the bidder by diluting the voting power of his shares.

[48] (1970) Ch 62

3.2.3 Duty to Avoid Conflicts of Interest

One of the most important statutory and fiduciary duties of company directors under the Nigerian law is the duty to avoid a conflict of interest. This duty is of equity and has now been entrenched in the Companies and Allied Matters Act (CAMA) 2020 by virtue of sections 303 and 306 of the Act. A director is expected to avoid any situation where his interest may conflict, or is likely to conflict with the interest of the company. A conflict of interest occurs when a director's personal, financial or other interest conflicts, or may conflict, with his duty as a director to act in the best interest of the company. The law is rigid in this regard because a director is in a fiduciary position, and is required to show undivided loyalty to the company. In *Aberdeen Railway Co v Blaikie Bros*, it was held by the House of Lords that a person in a fiduciary position should not be permitted to place himself in a situation in which his interest and duty conflict. This principle has been upheld in Nigerian law. The principle is more preventive than punitive. Its aim is to avoid placing the director in a position where he would be tempted to make a gain for himself at the expense of the company, even if the company actually suffers no loss. By the Provisions of CAMA 2020 Section 303 of CAMA 2020 states that a director shall not allow his interest to conflict with those of the company. In a situation where such conflict arises, the director is expected to declare the nature and extent of his interest to the board of directors[49].

In addition, CAMA 2020 states that a director who fails to disclose his interest in a contract or proposed contract may be liable to have the contract set aside at the suit of the company, in addition to being liable to account to the company for any profit which he has made by reason of his holding office and such further liability, if any, as the court may determine.

[49] Duke v Akpabuyo Local Government (2005) 19 NWLR (Pt.959) 130

Disclosure is an essential tool in the battle against conflicts of interest. A director must disclose the nature and extent of any direct or indirect interest in any contract or proposed contract that the company has entered into or is to be entered into with him or her. This must be disclosed at a board meeting and entered into the minutes of the meeting. As seen in *Transvaal Lands Co v New Belgium (Transvaal) Land and Development Co*[50] , the court has said that such a disclosure must be full and frank and that anything less than full disclosure, or a disclosure which is likely to mislead is not enough. Nigerian courts have upheld this position in relation to the duty of disclosure. Nevertheless, disclosure does not necessarily inoculate against liability for conflict of interest. Depending on the gravity of the conflict, the director may be required to go further and exclude himself from deliberations and voting.

Another fiduciary duty of the directors which follows almost naturally from the duty to avoid a conflict of interest is the duty not to make a secret profit. A director is under a duty not to profit from his trust position without full informed consent. Thus, in *Regal (Hastings) Ltd v Gulliver* , the House of Lords held that the directors who had profited from their position were liable to account for their profits although the company could not itself have obtained those profits. Similarly, in *Industrial Development Consultants Ltd v Cooley* , a managing director who turned an existing corporate opportunity to his own advantage was held liable for breach of his fiduciary duties. The position is the same in Nigeria as our courts have followed these cases to hold directors liable for diversion of corporate opportunities[51]."

[50] (1914) 2 Ch 488
[51] Afolabi v Western Steel Works Ltd (2012) 17 NWLR (Pt.1329) 286

3.3 Common Law Duties

3.3.1 Duty to Exercise Powers for Proper Purposes

It is a responsibility imposed by common law on a director not to exercise powers conferred on him for any collateral or improper purpose. The powers of directors exercised bona fide in the interests of the company as a whole for a proper purpose will be valid so far. Bona fide refers to something that is done in good faith and is genuine. Collateral in this case means something non-genuine or something else. So, the directors must not misuse their authority. A collateral purpose is a purpose that is not the purpose for which the power was given. Share issuance the power only to raise capital but if it had another dominant purpose of defeating a take-over bid by an issuing share to your friends it would be improper[52]. In the same vein, if the main aim is to consolidate control, the power may not be exercised improperly as an alternative course of action but the use of the power principally to raise capital is proper. CAMA 2020 has a similar provision as the common law mentioned above. The directors are to exercise the powers conferred on them for the purposes which such powers were conferred and not for any collateral purpose.

3.3.2 Duty Not to Fetter Discretion

A director must come to his/her own conclusion. As per common laws, a director must not restrict future discretion. In other words, a director must not agree to vote or act in a certain way regardless of any future occurrence. An agreement could fairly bind his judgement when the time comes regarding the matter as he will not be able to exercise discretion. In essence, this duty bars a director from consenting with others to abrogate his powers as a director. He must not go contracts

[52] MS Afolayan, & O Awwal-Bolanta, (2024). "Duties of Directors Under the Companies and Allied Matters Act 2020..." International Journal of Social Sciences and Management Research, Vol. 10 No. 10.

which restrict his ability to perform as a director in future for example. Having an agreement with the company which is a reasonable agreement for proper corporate benefit is not impermissible[53].

3.3.3 Duty of Confidentiality

Directors owe a common law duty to maintain the confidentiality of the company's information acquired in the course of their duties. They must not disclose or misuse sensitive information such as trade secrets, business strategies, or financial data for personal gain or to the detriment of the company[54]. This duty arises from the fiduciary relationship between directors and the company. The director's duty to maintain confidentiality lasts after leaving office, especially in relation to information which is confidential in nature. Misuse of Confidential Information We took a look at this in relation to companies generally but with directors, their own personal use for advantage that is detrimental to the company is of particular importance[55]. For example, a former director may use confidential information to compete with the company or to make a secret profit. Nigerian law recognises this (and reinforces this) duty under CAMA 2020 provisions relating to conflict of interest and misuse of corporate opportunities.

3.4 Managerial Powers and Responsibilities

Managerial responsibilities refer to the administrative, practical and strategic functions of a director in the administration of a company. They are the functions which a director is expected to carry out on a day-to-day basis and are in most cases not laid down by statute but are drawn from

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[53] A, Sulaiman, (2018). "Codification of Directors' Fiduciary Duties to Statutory Law in Nigeria and UK." ResearchGate Publication.

[54] EE Willie, (2021). "Directors' Duties and Relief in Common Law and CAMA 2020."

[55] HN Eluchie-Chike, (2024). "Consequences of Directors' Breach of Duty." Journal of Contemporary Company Law.

various sources such as codes of best practice, governance principles, common law, ethical and regulatory considerations and the increasing changes in the office of a director.

In addition to the legal obligations under Nigerian company law, the management functions of a director supply a sort of environment in which these legal duties are to be carried out. Not carrying out one's management functions may not attract any direct legal consequences, but may attract any of the following: regulatory penalties, loss of confidence from investors, removal from office or damage to reputation. Below are some of the management functions of directors of a company.

A company director exercises managerial powers delegated by the company's constitution and applicable company law to control and direct the business of the company. These powers include managing day to day operations, formulating corporate policies, making investment decisions, appointing and supervising senior officers, and entering into contracts on behalf of the company. Directors also have authority to allocate company resources, approve financial expenditure, and represent the company in dealings with third parties. These powers must be exercised collectively in board meetings or as delegated, subject to the company's articles and statutory provisions governing corporate governance.[56]

3.4.1 Oversight of Company Operations and Strategy

The monitoring of the company's affairs and strategies is one of the key managerial functions of the company's directors. The directors are expected to define the company's vision, mission and long-term goals and ensuring that the management adopts policies and strategies which accord with such objectives.

[56] Companies and Allied Matters Act 2020, ss 87, 88, 289–293

In accordance with CAMA 2020, the affairs of the company are to be managed by the board of directors. This is to ensure that the company's strategic plans, budgets and major transactions are approved by the board, and the board will also monitor the performance of executive management. The directors are to ensure that they exercise their independent judgment and provide effective leadership to the company rather than merely rubber-stamping management's decisions[57].

The courts also stress that there is a need for effective monitoring. In the case of In Re Barings Plc, the court considered that the directors had failed in their duty to monitor the activities of the company and had allowed the company to suffer severe losses. Thus, it is clear that a passive or cavalier attitude towards the affairs of a company is no longer acceptable.

Specifically, in Nigeria, a director is required to review management reports on a regular basis, attend board meetings and monitor the affairs of the company to ensure it is working towards the goals set out in the company's strategic plan. Furthermore, the SEC Code of Corporate Governance suggests that directors should set up board committees to ensure proper monitoring in areas such as audit, risk and remuneration."

3.4.2 Compliance with Regulatory Requirements

In Nigeria, one of the fundamental managerial duties of a director is to ensure adherence to legal and other regulatory obligations. The company's activities are subject to various laws and regulations, regulatory bodies and industry standards. The directors are ultimately responsible for the company's adherence to relevant laws and regulations. Pursuant to CAMA 2020, the directors of a company are responsible for ensuring that the company files the necessary returns within the stipulated timelines, render true financial accounts and make necessary disclosures. Non-

[57] NITEL Plc v Akwa Ibom State Government (2006) 8 NWLR (Pt.983) 114

compliance may lead to penalties on the company and in some cases, personal liability of the directors. Further, directors in sectors such as banking, telecommunications and the capital markets are required to comply with industry specific legislations such as the Banks and Other Financial Institutions Act (BOFIA) and the Investment and Securities Act (ISA) which impose additional obligations on directors. In this regard, the industry regulators such as the Central Bank of Nigeria (CBN) and the Securities and Exchange Commission (SEC) are empowered to impose penalties on directors who fail to comply with these legislations, including removal from office. In Nigeria, it has been held that no one can claim ignorance of the law and directors are expected to be conversant with the provisions of the law as they relate to the affairs of the company, *Union Bank of Nigeria Plc v Ajabule.*

3.4.3 Risk Management and Internal Controls

The second of the key managerial duties of directors is the duty to manage risk and establish effective internal control systems. In contemporary corporate law, it is acknowledged that companies are exposed to a range of risks which include financial, operational, legal and reputational risks. It is the duty of the directors to identify those risks and ensure that systems are put in place to manage those risks. While CAMA 2020 does not explicitly provide that managing risk is a duty of the director, it does impose a duty of care and skill which includes ensuring that a company keeps proper accounting records and that the company's financial statements give a true and fair view of the company's affairs. Directors may incur liability for a failure to establish an adequate system of internal control. In *Re City Equitable Fire Insurance Co Ltd*, the standard of care was low, but today, a higher standard would be expected. Developments in Nigeria, especially in the banking industry, have indicated that it is expected that directors should exercise oversight of the risk management of the company. Indeed, the SEC Code of Corporate Governance and other governance Codes recommend that the board should have a risk management committee and an internal audit department to ensure timely identification and rectification of potential problems and weaknesses.

3.4.4 Enforcement of Statutory Duties, Managerial Powers and Responsibilities of Directors.

The mechanism for enforcing the duties, powers and liabilities of directors under the Nigerian Law (as outlined in the new Companies and Allied Matters Act (CAMA) 2020) is a combination of civil, criminal, regulatory and administrative remedies. These enforcement mechanisms are designed to ensure compliance and to protect the interests of the company and its shareholders by sanctioning non-compliance and breaches of directors' duties. The basis for enforcing the duties of a director in a company is rooted in the fiduciary relationship between the director and the company, thus, the duties are owed to the company and enforceable by it, and through derivative actions. (Section 279 of CAMA 2020)[58].

The consequence of a breach may result in personal liability. A remedy may be provided that is aimed at benefiting the company, or is intended to punish the director. A lawsuit may be brought by the company against a director for breaches of, for example, the duty of care, or a breach of the duty to act in the best interest of the company. A derivative action is a lawsuit brought by a shareholder on behalf of the company. This action can be taken when the board refuses to bring an action against the director. For example, this action may be taken in cases of fraud, or self-dealing. An injunction, declaration, or order may be given to manage or regulate the affairs of the company, appoint a receiver, or investigate the affairs of the company.

[5858] Integrated Dimensional Systems Ltd v Afribank Nigeria Plc (2000) 8 NWLR (Pt.669) 607

A claim for an account of profits (s 280(3)), a claim for an indemnity for any loss (s 286), an application for the avoidance of an unenforceable contract (s 286(1)) and a claim for repayment (s 507(1)) together with interest. Claims in a Winding Up Misfeasance Proceedings: An application by a liquidator or a creditor for an order that a director pay for reckless or fraudulent trading (s 506), misapplication of monies (s 507) and/or failure to maintain adequate accounting records (s 505). This can also include public examination under oath (s 450) and referral to the Attorney General for criminal prosecution (s 508).

3.4.5 Judicial Attitude and Case Laws

The judicial attitude in Nigeria concerning the duties of directors is relatively consistent with the common law rule of utmost good faith. The judiciary holds the view that directors are trustees and agents of the company (see Section 283 of CAMA 2020), and if their duties are not properly exercised, such failure will attract great attention. In order to discourage abuse of power, any violations of their duties are scrutinized seriously. When relevant, Nigerian case law frequently refers to English case law; however, the outcomes are often modified in the context of Nigeria. Both procedural regularity and material observance are important in judicial attitude.

The following are few examples of this. Notable Case Laws *Okeowo & Ors v. Migliore* (1979) 11 SC 133: The Supreme Court held that directors are in a fiduciary relationship with the company and hence must display the utmost good faith in their dealings with the company. Eso JSC (as he then was) stated that, The powers of directors must be exercised in good faith in the interest of the company, not for an improper or collateral purpose…; and referred to the case of *Automatic Self-Cleansing Filter Syndicate Co Ltd v. Cuninghame (*1906) 2 Ch 34 (United Kingdom). Implication: Where there has been a breach of the duty of loyalty, the remedy is rescission. This shows that a very strict approach is also being adopted to breaches of the duty of avoiding conflicts of interest (similar to Section 280 of the new CAMA 2020).

Longe v First Bank of Nigeria Plc, [59]The removal of a managing director without notice and hearing is a violation of Sections 262 and 266 of CAMA (Pre-2020 - now contains similar provisions). "The Supreme Court emphasized the need for fair hearing when enforcing a duty and that suspension is not equal to removal. It has implications on procedural fairness in removal based on duty as the Courts will now uphold natural justice in the removal of persons performing a duty.

Odua Investment Company Ltd v. Oguntola (2024)[60]: The Court of Appeal has considered the removal of a non-executive director as a labour matter conferring jurisdiction in favour of the National Industrial Court rather than the Federal High Court (under Section 254C of the Nigerian Constitution). This could imply that the demarcation between executive and non-executive directors is being relaxed, and therefore, labour legislation could also apply to the roles of the directors governed by the CAMA 2020.

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[59] (2010) 6 NWLR (Pt 1189) 1 (SC)
[60] CA/IB/469/2022

CHAPTER FOUR

COMPARATIVE ANALYSIS WITH SELECTED JURISDICTION

The study of the laws of other countries in relation to directors' duties is important because it assists in assessing and developing Nigerian company law. It also helps in identifying points of comparison and contrast, as well as possible models for reform. In this regard, this chapter will discuss the law on directors' duties in three countries, namely: the United Kingdom, the United States of America and South Africa[61]. The reason for the selection of these countries is three-fold. Firstly, the United Kingdom is the parent law from which Nigerian company law is derived. Secondly, the United States of America has the largest capital market in the world and its corporate laws and regulations are among the most developed[62]. Thirdly, South Africa has a similar colonial history with Nigeria and it has recently updated its company law.

4.2.1 United Kingdom

The UK has one of the most comprehensive company law frameworks in the world. The Companies Act 2006 is the key legislation applicable to companies registered in England and Wales, Scotland and Northern Ireland. The Act brought into effect, among other things, major changes to the law on directors' duties by enacting certain common law and equitable principles that had been established through the case law.

A number of fiduciary duties had been developed by the courts which imposed on directors duties of loyalty, good faith and care[63]. However, the absence of a legislative framework made the law

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[61] Hannigan, B. (2018). *Company Law* (5th ed.). Oxford University Press

[62] Keay, A., 'Enlightened Shareholder Value, the Reform of the Duties of Company Directors and the Corporate Objective' (2006) *Lloyd's Maritime and Commercial Law Quarterly*.

[63] UK Law Commission, *Company Directors: Regulating Conflicts of Interests and Formulating a Statement of Duties* (Law Com No 261, 1999).

complex and difficult to access. The UK Law Commission advocated the codification of directors' duties in order to ensure greater certainty and accessibility of the law. After consultation with stakeholders, the Companies Act 2006 enacted the general duties of directors from Sections 170 to 177 of the Act. The codification aimed at making the law more accessible and clarifying its application without radically changing the nature and content of the law. The codification of the general duties of directors was made in pursuance of the objective of the Act to provide greater certainty and clarity in relation to the law on directors' duties without altering the substance of the law.

A company director must comply with the seven general obligations contained in the Companies Act 2006, which are: Section 171 - Duty to act within powers: Acting in accordance with the company's constitution and only exercising powers for the purpose for which they are conferred[64]. Section 172 - Duty to promote the success of the company: Acting in a way that the director considers, in good faith, will most likely achieve success for the company for the benefit of its members as a whole. When deciding how to achieve this, the director must consider: the long term; employees; relationships with suppliers and customers; reputation; impact on the community and environment; the need for high business standards; and acting fairly as between the members of the company. Section 173 - Duty to exercise independent judgment[65]: Exercising their own judgement and not simply following the wishes of another person, except where acting in accordance with an agreement that the company has lawfully entered into.

[64] Adeyemi, K., 'Derivative Actions and Minority Shareholder Protection in Nigeria' (2018) *Nigerian Law Journal*.
[65] UK Department of Trade and Industry, *Modern Company Law for a Competitive Economy* (Final Report, 2001).

These include: Duty to exercise reasonable care, skill and diligence (Section 174). The director must exercise the care, skill and diligence that would be exercised by a reasonably diligent person with: The general knowledge, skill and experience that may reasonably be expected of a person carrying out the director's functions, and The actual knowledge, skill and experience that the director has. Duty to avoid conflicts of interest (Section 175). The director must not authorise or permit a conflict, or a situation which may give rise to a conflict. Duty not to accept benefits from third parties (Section 176). The director must not accept a benefit from a third party conferred by reason of their being a director or doing (or not doing) anything as a director. Duty to declare an interest in proposed transactions (Section 177).

The director must declare the nature and extent of any direct or indirect interest in a proposed or existing transaction or arrangement with the company.

A company may bring an action against a director for breach of duty and claim damages, account of profits or an injunction. Pursuant to Part 11 of the Companies Act 2006, a shareholder may bring a derivative claim in respect of a cause of action arising from an actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by a director. A shareholder may petition the court under Section 994 of the Companies Act 2006 where the affairs of a company are being conducted in a manner that is unfairly prejudicial to the interests of its shareholders. The court may disqualify a person from acting as a director of a company where he is found to be unfit to be concerned in the management of a company. The Financial Conduct Authority and Prudential Regulation Authority have the power to sanction directors of regulated financial institutions.

If a director is in breach of the duty of care, skill and diligence, the company may claim damages for any loss that it suffers as a result of the breach. The measure of damages will be the loss caused by the director's negligence or default. *In Re D'Jan of London Ltd*, 81 Hoffmann LJ held that a director who signed an insurance proposal form without reading it was clearly negligent and was liable for the uninsured loss which the company suffered as a result. 82 It has been made clear that the directors are not expected to be infallible but they must meet the objective and subjective standard set out in Section 174 of the Companies Act 2006. A director who has a particular knowledge or skill will be expected to demonstrate that knowledge and skill.

The Company Directors Disqualification Act 1986 (CDDA) sets out the procedures for disqualifying an unfit director. Its dual purpose is to protect the public by removing an unfit director from management and to deter others from similar conduct[66]. Section 2 Conviction of indictable offence A person may be disqualified where he has been convicted of an indictable offence (whether on indictment or summarily) in connection with the promotion, formation, management, liquidation or striking off of a company, or with the receivership or management of a company's property.

A person may be disqualified where he has persistently been in default of filing requirements or has persistently failed to comply with other statutory obligations. Section 4 Fraud in winding up A person may be disqualified where, in the course of the winding up of a company, it appears that he has been guilty of an offence for which he is liable (on conviction on indictment or summary conviction) under section 206 or 207 of the Insolvency Act 1986. Section 6 Unfitness in insolvent companies The most common ground for disqualification. The court must make a disqualification

[66] B Hannigan, *Company Law* (6th edn, Oxford University Press 2018).

order where it is satisfied that (i) a person has been a director of a company which has at any time become insolvent (whether while he was a director or subsequently), and (ii) his conduct as a director of that company (either taken alone or taken together with his conduct as a director of any other company or companies) makes him unfit to be concerned in the management of a company.

The UK experience suggests the following implications for Nigerian company law:

-Codification of Directors' duties: The codification of directors' duties by the CA 2006 has brought about some clarity and ease of access to the law[67]. Although the CAMA 2020 also codifies the duties of directors, the Nigerian provisions could be made more specific for better guidance.

- Enlightened Shareholder Value approach: Section 172 of the CA 2006 imposes on directors an obligation to have regard to the interests of stakeholders while promoting the success of the company for the benefit of its members. This approach could be a model for law reform in Nigeria, especially with regards to the law on corporate social responsibility.

- Derivative claims procedure: Part 11 of the CA 2006 sets out a clear procedure for a derivative claim which gives a clear pathway for enforcement by shareholders. Nigeria could replicate this by making the derivative action provisions of the CAMA 2020 more robust.

- Disqualification regime: The UK's disqualification regime as provided by the CDDA is quite robust and effective in ensuring that unfit directors are removed from the helm of affairs of companies. Nigeria could borrow a leaf from the UK by strengthening its disqualification provisions.

[67]A Keay, *The Enlightened Shareholder Value Principle and Corporate Governance* (Routledge 2013).

4.2.2 United States of America

The United States has one of the world's most sophisticated and influential systems of corporate governance. Unlike Nigeria and the United Kingdom, the US does not have a single federal company law statute. Instead, corporate law is primarily a matter of state law, with each state having its own Corporations statute. However, federal securities law imposes significant disclosure and governance requirements on publicly traded companies.

In the United States, companies are incorporated under state law. The corporate law of the state in which a company is incorporated regulates its internal affairs, including the duties of directors. More than 50% of all U. S. publicly traded companies, and more than 60% of Fortune 500 companies, are incorporated in the State of Delaware. Therefore, the most important state jurisdiction for corporate law purposes is Delaware. The primary statute governing Delaware corporations is the Delaware General Corporation Law (DGCL). The Delaware Court of Chancery is a court of equity with jurisdiction over corporate governance matters. This court has developed a rich and highly influential body of case law interpreting directors' duties throughout the United States[68]. The Model Business Corporation Act (MBCA) is a template for state corporate legislation. The MBCA has been adopted in whole or in part by approximately 30 states.

Delaware law recognizes two basic fiduciary duties: the duty of care and the duty of loyalty. These duties are equitable in nature and have evolved primarily through the common law (i. e., cases brought before the courts) rather than through statute.

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[68] A Keay, 'Enlightened Shareholder Value, the Reform of the Duties of Company Directors and the Corporate Objective' (2006) *Lloyd's Maritime and Commercial Law Quarterly*.

The duty of care obligates a director to act with the care that an ordinarily prudent person would exercise in a like position under similar circumstances. The duty of care pertains to both the process of decision making and the actual substance of the decision. A breach of the duty of care was found in *Smith v Van Gorkom (1985) 488 A.2d 858 (Del).* The Delaware Supreme Court found that the directors had violated their duty of care in approving the merger without sufficient information and deliberation. The case established that a director may not abdicate his duty to inform himself of the basic facts surrounding a transaction prior to approving or authorising the transaction. Van Gorkom proved to be a troublesome decision because it resulted in the imposition of considerable liability on the directors for a decision that proved, in retrospect, to be a good one for the shareholders. In reaction to Van Gorkom, Delaware amended the DGCL to permit a corporation to include in its certificate of incorporation a provision limiting or eliminating the liability of a director to the corporation or its stockholders for monetary damages for a breach of the duty of care (but not a breach of the duty of loyalty).

There are a number of lessons which can be learned from the American example to improve Nigerian company law: a. Framework of fiduciary duties: The framework of fiduciary duties established in Delaware, particularly the duty of care and the duty of loyalty, are quite well established. They provide a framework of reference for what the law expects of a director in terms of fiduciary duties. In Nigeria, there is need for more judicial guidance on the scope and content of the fiduciary duties of a director.

For example, Nigeria might look to the US business judgment rule. Nigeria's corporate law does not have a statutory business judgment rule. While that rule shields disinterested, informed, good faith board decisions from judicial review (thereby allowing corporate directors to be wrong and not be liable for honest errors of judgment, so long as they have complied with the corporate law standard of conduct), breaches of fiduciary duty are actionable. Nigeria might adopt a statutory business judgment rule. As regards derivative suits, Nigeria might look to US derivative action procedures (including the demand requirement and demand futility test) to balance the right of a stockholder to prosecute a derivative claim against the risk of strike suits. Nigeria might also refine its derivative action provisions to address whether the stockholders who initiate the action fairly and adequately represent the interests of the stockholders similarly situated. Nigeria might also look to the US federal securities law system, which provides a broad array of remedies for investors who are damaged by securities violations. Nigeria might strengthen the SEC's authority to regulate the securities markets and the authority of the Nigerian SEC to enforce the securities laws, including in particular the authority to investigate and bring enforcement actions. In addition, Nigeria might strengthen the listing standards of the Nigerian Stock Exchange and the role of institutional investors in encouraging good corporate governance practices. Nigeria might also look to the enhanced scrutiny standard of conduct (Revlon and Unocal) for change of control transactions or responses to takeover threats, respectively, which require that corporate boards act in the interests of stockholders in high-stakes situations[69]. Nigerian law does not provide clear guidance as to the standard of conduct applicable in those situations.

4.2.3 South Africa (Companies Act 2008)

South Africa is a very relevant foreign jurisdiction to Nigeria in the sense that both countries share some similar historical, economic and development related features. Nigeria and South Africa are the two biggest economies in Africa and both have a similar mixed common law legal system. The recent company law reform in South Africa is relevant to the improvement of the law on directors'

[69] RC Clark, *Corporate Law* (Little, Brown & Co 1986).

duties and corporate governance in Nigeria. In 2004, the South African government appointed an expert panel to investigate the completeness and effectivity of the South African company law. This eventually led to the promulgation of the Companies Act 2008 which became effective on 1 May 2011. The Companies Act 2008 contains reforms to company law designed to make company law simpler and more accessible; promote entrepreneurship; enhance corporate governance; and bring South African company law in line with international best practice.

The Companies Act 2008 is radically different from the existing law. The essential elements of the new law are:

Easier company formation and management: The Act makes it easier and less onerous to form and manage a company.

Flexibility: The Act offers more flexibility in relation to the structure of companies as the governance of companies may now be specified in the memoranda of incorporation.

Codification of directors' duties: The Act codifies the directors' duties in statute, thus giving more certainty.

Stakeholder approach: The Act acknowledges that stakeholders other than shareholders such as employees, creditors and the community may have an interest in the affairs of a company. Increased accountability: The Act increases accountability through provisions on derivative actions, personal liability of directors and delinquency orders.

South Africa's recent company law reform experience provides the following useful insights for Nigeria: Clarification and codification of directors' duties: Sections 75 to 77 of the Companies Act 2008 provides a clearly stated and easily accessible code of the duties of directors. The statutory provisions on directors' duties in CAMA 2020 may be subjected to further clarity in a future amendment. A statutory business judgment rule: Section 76(4) of the Companies Act 2008 provides a statutory business judgment rule which may act as a safe harbour for directors and clarify the scope of the rule. Nigeria may also adopt a similar provision in a future reform of the law. Broader derivative action standing: Section 165 of the Companies Act 2008 extends standing to bring a derivative action to employees and their representatives. This stakeholder-oriented provision is consistent with a broader notion of corporate accountability and may inform Nigerian law reform in the future.

The delinquency and probation order provisions under Section 162 are further mechanisms that can be employed to tackle directorial misconduct. Nigeria should explore the possibility of enacting similar provisions to the disqualification sections. The business rescue regime in South Africa is one way to deal with a company in financial distress. There is a need for Nigeria to strengthen the company voluntary arrangement provisions under the CAMA 2020. The King Reports have contributed significantly to the implementation of good corporate governance in South Africa. Nigeria should further enhance the application of the Nigerian Code of Corporate Governance and encourage more entities to adhere to the code.

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 Summary of Findings

The general aim of this research was to investigate the statutory duties and administrative liabilities of company directors in Nigeria within the broader context of the statutory and regulatory framework of the Companies and Allied Matters Act (CAMA) 2020[70]. The doctrinal research methodology was employed for this purpose. In this regard, the research relied on the relevant provisions of CAMA 2020 as well as judicial authorities, statutory and regulatory provisions, as applicable in the United Kingdom, the United States of America and South Africa. The results of this research include the following based on the general analysis provided in the previous chapters.

The study has shown that Nigerian company law has come a long way in relation to the principles governing the affairs of company directors, from the Companies Ordinance of 1912 to the Companies Decree 1968[71], to CAMA 1990, to the very recent CAMA 2020, the law has been expanding, codifying and ameliorating directors' duties.

The CAMA 2020 is a step in the right direction as it now clearly states the various statutory duties which include: the duty to act within powers; the duty to promote the success of the company; the duty to exercise reasonable care, skill and diligence; the duty to avoid conflicts of interest; the duty not to accept benefits from third parties, amongst others[72]. The Act has also introduced provisions on derivative actions which have been broadened to increase the remedies available to shareholders

[70] Companies and Allied Matters Act, Cap C20 Laws of the Federation of Nigeria 2020
[71] Companies Decree 1968.
[72] Central Bank of Nigeria (CBN), *Code of Corporate Governance for Banks and Discount Houses in Nigeria* (2014).

of a company, as well as enhanced the disclosure requirements under the Act. All these are pointers to legislative intent geared towards enhancing accountability and bringing the Nigerian company law in tandem with modern corporate governance best practices. But the research revealed that despite the legal framework, the functionality of these obligations is largely hampered by issues of enforceability and other inherent defects in Nigeria's corporate system.

A second conclusion which can be drawn from this study is the distinction between the statutory duties and the general responsibilities of company directors[73]. By the term statutory duties' I refer to the legally prescribed duties under statute and common law, failure to comply with which leads to legal liability. These represent the minimum requirements for directors. In contrast, managerial responsibilities refer to the day-to-day, hands-on functions that directors are responsible for in the conduct of the affairs of the corporation, such as policy making, risk management, ensuring regulatory compliance, and dealing with constituents. Although these roles are not necessarily always legally enforceable through a court of law, if they are not well managed, the directors will end up breaching their legal roles[74].

A probable explanation for this finding may be the fact that in the Nigerian corporate governance context, the terms "governance" and "management" are frequently used interchangeably. In this way, the functions of the directors are more inclined towards governance, in its narrow sense, at the expense of other managerial functions such as control, risk management and ethical conduct.

[73] Securities and Exchange Commission (SEC), *Code of Corporate Governance for Public Companies in Nigeria* (2011).
[74] Securities and Exchange Commission (SEC), *Nigerian Code of Corporate Governance 2018*.

Incidence of Breaches and Poor Corporate Governance The study found that there is incidence of breaches of duties of directors in Nigeria in spite of the presence of comprehensive legislations. The incidence of corporate governance failures in the banking, manufacturing and capital market subsectors indicates a fundamental flaw in the mechanisms in place to curb breaches of directors' duties.

For instance, the *Cadbury Nigeria Plc's* accounting scandal, the banking crisis of 2008–2009 and the recent governance scandal in Oando Plc are evidence that a director has not exercised reasonable care and skill, not avoided conflicts of interest and not ensured that full and accurate disclosure has been made. This has caused serious economic consequences, loss of investors' trust and expensive regulatory action. The study revealed that most of the violations are as a result of concentrated ownership structure, family dominated board, weak internal control and a culture of informal governance especially in the privately-held entities, which constitute the majority of Nigeria's businesses. The empirical study has shown that the enforcement of directors' duties in Nigeria is poor and inadequate. Despite the availability of civil remedies, criminal sanctions and director disqualification under the CAMA 2020, these are rarely enforced in practice.

This is because: the private mechanisms of derivative actions and unfair prejudice remedy are still in their infant stages and are fraught with the problems of costly and time consuming litigation, cumbersome procedural rules, and perennial delays by the courts[75]. On the other hand, the public mechanisms of enforcement by CAC, SEC, CBN and others are plagued by the problems of inadequate resources, over lapping and even duplicated functions and lack of harmonization.

[75] A Keay, *Directors' Duties* (3rd edn, Jordan Publishing 2017).

Criminal enforcement is extremely weak, with very few prosecutions of company directors for breaches of law. Consequently, legal sanctions lack any real deterrent value, and a culture of immunity has developed[76].

As already indicated above, the research established that cultural and institutional variables also have significant impact on the discharge of directors' duties in Nigeria. Cultural factors like patronage networks, corruption and political influence have a way of compromising the independence and accountability of the board. In most organizations, directors are appointed on grounds of relationship rather than on the basis of competence.

The comparison demonstrates that Nigeria is still at the periphery when compared to other more developed jurisdictions in respect of the corporate governance topics examined. This is because the U.K. codified the directors' duties under the Companies Act 2006, operated by a robust regime of disqualification of directors and enlightened shareholder value (ESV)[77], as opposed to the prevailing situation in Nigeria. Examples of the application of the duty of care and the business judgment rule in the United States, as well as the comprehensive legislation in the United States regulating securities provide insight into the need to ensure that directors are given the freedom to manage the company without a duty to constantly seek protection from their decisions. Similarly, the introduction of a statutory business judgment rule in the Companies Act 2008, the extension of standing to bring a derivative action and the introduction of a new delinquency order remedy in South Africa are of relevance".

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[76] R Tomasic, S Bottomley and R McQueen, *Corporations Law in Australia* (2nd edn, Federation Press 2002).
[77] Company Directors Disqualification Act 1986 (UK).

These countries show that director liability coupled with certain elements of enforcement and governance regulations have a positive effect on the performance of the boards.

5.2 Recommendations

The conclusion from this research is that the legal obligations and managerial roles of company directors in Nigeria company law are to be improved by several proposals drawn from the research.

Strengthening Enforcement and Sanctions

It is imperative to improve the enforcement of directors' duties in Nigeria. The statutory sanctions provided in CAMA 2020 should be reviewed and strengthened to provide a suitable deterrent. Fines imposed should be consistent with the gravity of the corporate offense, particularly in an economically resurgent society[78].

Based on the foregoing, it is recommended that Nigeria should have in place a more robust and far reaching director disqualification regime akin to that in the United Kingdom and South Africa, with extended grounds for disqualification, lengthier period of disqualification for cases of severe misconduct and a publicly accessible register of disqualified directors.

Strengthening Criminal Enforcement

The creation of dedicated prosecution offices, special speedy-trial courts for commercial offenses, and sentencing guidelines will strengthen criminal enforcement. Further, some administrative

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[78] AO Sanda, AS Mikailu and T Garba, 'Corporate Governance Mechanisms and Firm Financial Performance in Nigeria' (2010) 2 *African Economic Research Consortium* 1.

powers to fine, without full-fledged court proceedings, should be granted to some regulatory authorities.

The introduction of a statutory business judgment rule in Nigeria, for instance, in the CAMA, will keep directors accountable for some of their business decisions and free to exercise business judgment in other areas without fear of reprisal. A director would be liable for business decisions that arise from bad faith or negligence or where they have a conflict of interest.

Liability Reform

This will promote healthy risk taking and alleviate the risk of over-deterrence that can arise from litigation threats, especially for non-executive and independent directors.

Harmonization of Corporate Governance Codes

It is critical to harmonize the various codes in Nigeria which can create confusion and a compliance nightmare. The Nigerian Code of Corporate Governance, SEC guidelines and sector-specific codes should be harmonized into a more coherent whole[79].

There should be clarity on the interplay between statutory responsibilities under CAMA and the provisions of the codes; and that the codes do not supersede the law.

The structure of the Board should be altered to ensure that it is more independent, skilled and diverse. Prescriptive provisions for independent Non-Executive Directors should be improved, especially for public companies and large private concerns. There should be a clear definition of what constitutes independence and mechanisms to monitor the application of the definition.

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[79] KO Adeyemi and BO Fagbohun, 'Corporate Governance in Nigeria: Problems and Prospects' (2016) 12 *Nigerian Journal of Commercial Law* 45.

Gender and professional diversity

Compulsory transparency, board renewal mechanisms and diversity objectives can all help in this respect. A more diverse board is likely to better scrutinize management, diminish potential conflicts of interest and increase the quality of decision making.

Increasing Availability of Shareholder Remedies

The derivative action rules under the CAMA should be relaxed and procedural obstacles and costs of litigation removed. Costs should be awarded by the courts in favor of a shareholder who has brought an action in good faith in the name of the company. There is also a need to consider granting standing in certain circumstances to employees or other interested parties, as is the case in South Africa, in order to increase the accountability of corporations and to recognize the wide-reaching effects of their decisions.

Conformity to International Best Practice

Nigeria should continue to adopt international best practice and follow up with necessary amendments to the principles of corporate governance as formulated by the OECD. This should include provisions which mandate directors to include in their duties, inter alia, long-term sustainability, stakeholder interests and ethical behavior[80]. It is also recommended that a mandatory (or at least recommended) ESG reporting by listed companies be introduced to promote transparency and encourage foreign direct investment.

Legal reform will not be sufficient without the necessary institutional and ethical capacity to implement them. Regulatory bodies should be well-resourced with capable and dedicated staff.

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[80] C Okike, 'Corporate Governance in Nigeria: The Status Quo' (2007) *Corporate Governance International* 173.

The law should also mandate directors to go through a compulsory periodic training on corporate governance, risk management and legal compliance.

Organizations can foster a culture of compliance by implementing a code of conduct, establishing a whistleblower policy, and setting the right tone from the top. A culture of compliance means less of a need for enforcement, and more of a willingness to comply.

5.3 Conclusion

This research has discussed the legal obligations and responsibilities of directors of a company within the Nigerian company law framework, with specific reference to the Companies and Allied Matters Act 2020. It has shown that directors play a key role in the corporate governance of a company and that their behavior has a positive or negative impact on the performance of a company, investors' trust and the economy as a whole[81].

In conclusion, it can be stated that with the coming into force of CAMA 2020, Nigeria has moved closer to having a full-fledged codification of the law on directors' duties. However, the obstacles to the application of these statutory provisions are still largely unresolved. The combination of enforcement, culture and institutional barriers means that the potential of the new law to achieve its intended objectives may not be fully realised. The experience of Nigeria in corporate governance matters lends credence to this assertion.

A comparative analysis of Nigeria with United Kingdom, United States of America and South Africa will provide a solid insight into the necessity of providing for legal and ethical

[81] AO Adegbite, 'Corporate Governance Regulation in Nigeria' (2015) 7 *Journal of Business Ethics* 1.

responsibilities, appropriate enforcement mechanisms, independent board, leadership culture, ethics and control environment for good corporate governance.

Consequently, there is the need to enhance the legal and management obligations of company directors in Nigeria in order to ensure economic development, investment security, and business morality. The adoption of the suggestions made in this study will move Nigerian company law closer to realising the desired corporate governance framework conducive for the long-term development of Nigeria.

BIBLIOGRAPHY

BOOKS

Davies, P., *Introduction to Company Law* (2nd edn, Oxford University Press 2010).

Cassim, F.H.I. (ed.), *Contemporary Company Law* (2nd edn, Juta & Co. Ltd. 2012).

Freeman, R.E., *Strategic Management: A Stakeholder Approach* (Pitman 1984).

Gower, L.C.B., *Principles of Modern Company Law*.

Orojo, J.O., *Company Law and Practice in Nigeria* (5th edn).

Palmer, *Palmer's Company Law*.

Pennington, R.R., *Pennington's Company Law*.

Hannigan, B., *Company Law*.

Sealy, L.S. and Worthington, S., *Cases and Materials in Company Law*.

JOURNAL ARTICLES

Adegbite AO, 'Corporate Governance Regulation in Nigeria' (2015) 7 Journal of Business Ethics.

Adegbite E, 'Corporate Governance in Nigeria: The Status Quo' (2012) Corporate Governance: An International Review 125–138.

Adeyemi K, 'Corporate Governance and Directors' Duties in Nigeria: A Comparative Perspective' (2017) Nigerian Law Journal.

Adeyemo D, 'Directors' Duties under the Companies and Allied Matters Act 2020: A Critical Appraisal' (2022) 66 Journal of African Law 1–25.

Afolayan MS and Awwal-Bolanta O, 'Duties of Directors Under the Companies and Allied Matters Act 2020 and Analysis of the Principle of Corporate Governance' (2024) International Journal of Social Sciences and Management Research 56–68.

Davis JH, Schoorman FD and Donaldson L, 'Toward a Stewardship Theory of Management' (1997) 22 Academy of Management Review 20–47.

Eluchie-Chike HN, 'Consequences of Directors' Breach of Duty' Journal of Commercial and Contemporary Law.

Jensen MC and Meckling WH, 'Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure' (1976) 3 Journal of Financial Economics 305–360.

Lynall MD, Golden BR and Hillman AJ, 'Board Composition from Adolescence to Maturity: A Multitheoretic View' (2003) 28 Academy of Management Review 416–431.

Oditah F, ‘Conflicts of Interest and Corporate Governance in Nigeria’ (2015) Nigerian Law Journal 33–58.

Oke A, ‘Insider Trading and Market Abuse in Nigeria: A Critical Appraisal’ (2018) Nigerian Journal of Commercial Law 45–67.

Osemeke L et al, ‘Corporate Social Responsibility and Stakeholder Management in Nigerian Banking’ Corporate Ownership and Control.

Ozili K, ‘Corporate Governance in Nigeria: The Role of Directors’ (2021).

Parmar BL, Freeman RE, Harrison JS, Wicks AC, Purnell L and de Colle S, ‘Stakeholder Theory: The State of the Art’ (2010) 4 Academy of Management Annals 403–445.

Uche C, ‘Corporate Governance in Nigeria’ (2002) 37 Journal of Business Ethics 149–161.

Umenweke MN, ‘Directors’ Liability for Corporate Misconduct in Nigeria under CAMA 2020’ (2024) Nigerian Journal of Contemporary Law.

Yakasai AG, ‘Corporate Governance in a Third World Country with Particular Reference to Nigeria’ (2001) 9 Corporate Governance: An International Review 238–253.

REPORTS, CODES AND INTERNATIONAL MATERIALS

Deloitte, Corporate Governance and Financial Performance Report (2024).

G20/OECD Principles of Corporate Governance (2015).

OECD, G20/OECD Principles of Corporate Governance (2015).

Transparency International, Corruption Perceptions Index (2024/2025).

World Bank, Ease of Doing Business Reports.

World Bank, Reports on the Observance of Standards and Codes (ROSC): Corporate Governance Nigeria.

U.S. Securities and Exchange Commission (SEC), Final Rules on Executive Compensation and Related Disclosure (2011).

ELECTRONIC SOURCES

A Compendium of the Historical, Legal and Institutional Framework for the Practice of Company Law and Corporate Governance in Nigeria. https://www.studocu.com/row/document/baze-university/land-law/examine-the-historical-development-of-company-law-throughout-the-years-in-nigeria/10558215

https://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID3849221_code2771053.pdf?abstractid=3849221&mirid=1
SSRN, 'Duties and Responsibilities of Directors of a Company; CAMA 2020' by Confidence Chinem Abraham.
Plymouth University Repository, 'Examining Corporate Governance in Nigeria under the Companies and Allied Matters Act 2020 and the Nigerian Code of Corporate Governance 2018: The Way Forward'.