A CRITIQUE OF PERSONAL LIABILTIES OF COMPANY DIRECTORS AND OFFICERS UNDER THE COMPANIES AND ALLIED MATTERS ACT, 2020.

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GOU/U21/LAW/383

BEING A LONG ESSAY SUBMITTED TO THE FACULTY OF LAW, GODFREY OKOYE UNIVERSITY, UGWU-OMU NIKE, ENUGU STATE IN PARTIAL FULFILLMENT OF THE REQUIREMENT FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS (LL. B) OF GODFREY OKOYE UNIVERSITY

JULY, 2026.

DECLARATION

I affirm that this research work titled 'A Critique of Personal Liabilities of Company Directors and Officers under the Companies and Allied Matters Act, 2020.' was done by me in the Faculty of Law, Godfrey Okoye University, Enugu. All the information were deduced from the existing literature which has been dully acknowledged in the work and a list of the source of materials is provided herein. The content of this long essay is original and has not been submitted either in part or full for the award of any degree in this or any other institution.

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APPROVAL

We, the undersigned, certify that this project was completed by Nwabekee Aluis Obiefuna with registration number GOU/U21/Law/383, in partial fulfillment of the requirement for the award of Bachelor of Law Degree (LL. B)

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To God Almighty, my beloved parents, my siblings. My friends, all of you mean a whole lot to me.

ACKNOWLEDGEMENTS

I will first of all thank the Almighty God for bestowing on me his spirit of wisdom, knowledge and understanding the course of this research.

I am particularly grateful to my erudite mentor, Dr. G. O Omeh, who coincidentally became my supervisor for his endless support, encouragement, guidance and exhaustive supervision throughout the various stages of conducting this research. I will forever remain grateful.

My immense gratitude goes to the Vice Chancellor of Godfrey Okoye University, Prof. Christian Anieke, for being a role model and an exemplary leader in the field of academia and also ensuring that the students get the best of what they need. I also extend my appreciation to the entire staff and non-staff of the Faculty of Law for providing a conducive environment which aided the success of this research work.

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ABBREVIATIONS

AC Appeal Cases ……………………………………………………… 1, 12, 13, 16

CAMA: Companies and Allied Matters Act 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17

Ch Chancellor / Chancery …………………………………………... 3, 13, 14

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ABSTRACT

This study critically examined the personal liabilities of company directors and officers under the Companies and Allied Matters Act 2020. The study therefore explored the legal framework regulating directors' and officers' liabilities under CAMA 2020 and analysed the statutory duties and obligations imposed on them in the discharge of corporate responsibilities.The research adopted a doctrinal methodology, relying on primary and secondary sources of law, including statutes, judicial authorities, textbooks, journal articles, and online legal materials. The study examined provisions relating to fiduciary duties, duty of care and skill, fraudulent trading, wrongful trading, insider dealings, misstatements in company documents, and breaches of statutory obligations. It further evaluated the practical challenges associated with the enforcement of directors' and officers' liabilities, including weak regulatory oversight, procedural difficulties, inadequate sanctions, poor corporate governance culture, and limited judicial efficiency.Findings from the study revealed that although CAMA 2020 introduced significant reforms aimed at strengthening corporate accountability and aligning Nigerian corporate law with international best practices, several gaps still hinder effective enforcement. The study recommended reforms such as strengthening regulatory institutions, improving judicial enforcement mechanisms, enhancing corporate governance compliance, imposing stricter penalties for breaches of directors' duties, and promoting continuous legal and corporate education for directors and officers. It is further recommended that statutory provisions and greater collaboration between regulatory agencies to ensure effective implementation of CAMA 2020.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

One of the most recognized modern principles of corporate law is the idea of the company as a separate legal entity independent of its members and managers. The traditional formulation of this doctrine in *Salomon v. Salomon & Co. Ltd* made it clear that when a company is duly incorporated, it becomes a legal personality with the right to own property, to enter into debts and obligations in its own name and to sue and be sued in its own name.[1] This is closely related to the doctrine of limited liability which guards shareholders and consequently directors and officers against the personal liability of the company in the ordinary business of the company.[2]The economic justification of limited liability is that it encourages the taking of risks and the creation of businesses by protecting the individuals who run companies, so that they can make personal gains in excess of their contributions.[3]

The defense of separate legal personality and limited liability has not been absolute. Courts and legislatures have over the years realised that these doctrines can be misused by individuals who dictate the company matters. Directors and officers can through the corporate veil commit fraudulent trading and/or run the company recklessly, misuse company assets or breach statutory requirements to the prejudice of creditors,

[1]*Salomon v. Salomon & Co. Ltd* [1897] AC 22 (HL).
[2] L.C.B. Gower, *Principles of Modern Company Law* (10th edn, Sweet & Maxwell 2016) 75.
[3] Frank Easterbrook and Daniel Fischel, *The Economic Structure of Corporate Law* (Harvard University Press 1991) 41.

the shareholders, employees and general public.[4] The latter are breach of fiduciary duty liability, negligence, fraudulent trading, misstatements in prospectuses, improper declaration of dividends and non-observance of statutory filing and disclosure requirements.[5]

The legal system of companies in Nigeria has developed over the years and as a result of this effort, the recent edition of the Nigerian company law came in the form of the Companies and Allied Matters Act, 2020 (CAMA 2020), which is the most significant revision of Nigerian company law ever since 1990.[6] Among the major changes of CAMA 2020, the responsibilities and liability of the company directors and officers are to be considered. "The Act captures a number of areas of fiduciary and statutory law and broadens the situations in which directors can be found personally responsible of actions they took in the name of the company.[7]

The duties of good faith in the good interests of the company, reasonable care, good skill and diligence, not to act in conflict of interest and not to get secret profits by directors are afforded statutory expression under CAMA 2020, thus making them more enforceable.[8] Violation of such obligations can create a civil liability, criminal liability or both depending on the type of default, and such provisions are introduced by the Act.[9] They reflect the common law practice in other jurisdictions.[10]

Besides directors, the CAMA 2020 will hold personal liability of the statutory defaults of

[4] Andrew Keay, *Company Directors' Responsibilities to Creditors* (Routledge 2007) 45.
[5] Paul L. Davies and Sarah Worthington, *Gower: Principles of Modern Company Law* (10th edn, Sweet & Maxwell 2016) 192.
[6] Companies and Allied Matters Act 2020.
[7] ibid ss 305–310.
[8] ibid s 305.
[9] ibid ss 305, 344.
[10] ibid s 672.

some officers of a company. The reference to an officer encompasses directors, managers, secretaries and other individuals who are engaged in the management of the affairs of the company.[11] This type of liability is attributable to the fact that corporate malpractice is often the consequence of managerial failure manifested through collective or group efforts rather than the efforts of a single director.[12] The next important factor of personal liability according to CAMA 2020 is the statutory identification of the situations where the corporate veil can be disregarded.[13] Although the doctrine of separate legal personality prevails, the Act allows the courts to personally lien directors and officers where the company is treated as an instrument of fraud, illegality or other misconduct. This statutory veil-lifting complements the common law principles developed in cases such as *Gilford Motor Co. Ltd v. Horne* and *Jones v. Lipman*, which allow courts to disregard the corporate personality where it is used as a façade to conceal wrongdoing.[14]

Moreover, CAMA 2020 provides the conditions concerning disclosure of interests in transactions, the ban of insider dealings, and personal liability to compensate the losses to the company or the affected persons.[15] These conditions are especially important when it comes to investor protection and capital market integrity. Regardless of these statutory developments, there are still a number of doctrinal and practical issues on the areas and application of personal liability of directors and officers in Nigeria. The tension between the necessity to retain the doctrine of limited liability is one of the

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[11] ibid s 868.
[12] A. O. Uadiale, *Company Law in Nigeria* (Pumark Nigeria Ltd 2019) 112.
[13] C. C. Okonkwo, *Law and Practice of Corporate Governance in Nigeria* (Malthouse Press 2021) 78.
[14] *Gilford Motor Co. Ltd v. Horne* [1933] Ch 935; *Jones v. Lipman* [1962] 1 WLR 832.
[15] Companies and Allied Matters Act 2020 ss 308–310, 344.

problems, and the necessity to penalize corporate managers in case of misconduct.[16] Too much personal liability can deter qualified persons to take on the office of director, whereas too little can be a source of abuse of corporate powers.The other issue is associated with the interpretation and enforcement of the statutory provisions concerning the duties and wrongful trading of directors.[17] The evidentiary standard to prove whether a director knew or should have known that a company was insolvent is not well established in Nigerian jurisprudence.[18] This provides both directors and creditors with uncertainty, and could restrict the effectiveness in use of the wrongful trading provisions. In the same vein, the term officer and the level of liability of non-executive directors and shadow directors need additional judicial interpretation. Another important issue is enforcement. Although CAMA 2020 offers the possibility of civil and criminal liability of different types of breaches, these provisions are not effective unless they are subject to regulatory and judicial implementation.[19] The main regulatory authority, the Corporate Affairs Commission (CAC), is currently constrained by its capacity to properly monitor and enforce the statutory responsibilities of the directors and officers and this, coupled with the fact that litigation in Nigeria is usually prosecuted slowly and at high costs, may deter shareholders and creditors to take action against default directors and officers.[20]

The increased complexity of corporate structures also contributes to the problem of personal liability.[21] The identity of the decision makers of real control often evades

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[16] ibid s 344.
[17] Andrew Keay, *Company Directors' Responsibilities to Creditors* (Routledge 2007) 45.
[18] A. H. and S.H. Goo, *Cases and Materials on Company Law* (Oxford University Press 2011) 389.
[19] Corporate Affairs Commission, *Annual Report* (latest edition).
[20] P. Davies, *Introduction to Company Law* (2nd edn, Oxford University Press 2010) 223.
[21] Companies and Allied Matters Act 2020 s 868.

identities in the group structure of companies, special purpose vehicles, nominee directors, and informal management arrangements other than where there is a centralization of decision making in a single entity and jurisdiction.[22] The identification of shadow directors and individuals who are used to act according to their directions or instructions is the attempt to resolve this issue, yet the elaboration of CAMA 2020 on personal liabilities of company directors and officers is underdeveloped in Nigeria.[23] It reviews the legislative basis of the directorial responsibilities, the legal elements that enforce personal responsibility and the situations where the veil of incorporation can be pierced and the remedies in the case of the breach of the law with the provisions of the Nigerian legislation.[24]This study therefore undertakes a critical analysis of the personal liabilities of company directors and officers under CAMA 2020.

1.2 Statement of the Problem

Corporate personality and limited liability doctrine helps in exonerating officers and directors of the companies on the company debts and liabilities. This principle has promoted investment and entrepreneurship but on the other hand the directors and officers have abused it and led to fraudulent trading, mismanagement and non-compliance with the statutes. The Companies and Allied Matters Act, 2020 (CAMA 2020) attempts to provide a solution to such problems by codifying the duties and making personal liability under certain conditions.

Nonetheless, there are still a number of obstacles. The interpretation and application of statutory responsibilities (such as wrongful trading, fiduciary, and conflict-of-interest) is

[22] Davies and Worthington (n 5) 505.
[23] OECD, *Corporate Governance in Emerging Markets* (OECD Publishing 2015).
[24] F. Adediran, 'Minority Shareholder Protection in Nigeria' (2019) 5 *Nigerian Business Law Journal* 67.

doubtful. There are still unresolved questions regarding the evidence of minimality to prove liability, the percentage of the officers it applies to, and the feasible ability of the regulators to implement adherence. Such loopholes are the cause of concern regarding the effectiveness of CAMA 2020 in terms of accountability and the preservation of business benefits of limited liability. This study is inspired by the necessity to critically analyze these problems and suggest some solutions.

1.3 Research Questions

1. What is the legal framework governing the personal liabilities of company directors and officers under CAMA 2020?
2. How do statutory provisions under CAMA 2020 define the duties and responsibilities of company directors and officers?
3. What challenges exist in the enforcement and practical application of these personal liabilities?
4. What reforms can enhance the accountability of directors and officers while preserving the benefits of limited liability?

1.4 Aim and Objectives of the Study

The aim of the study was to critically examine the personal liabilities of company directors and officers under CAMA 2020.The specific objectives of the study were to:

1. analyse the legal framework governing the personal liabilities of company directors and officers under CAMA 2020.
2. examine the statutory duties and responsibilities imposed on directors and

officers by CAMA 2020.

3. identify and evaluate challenges in the enforcement and practical application of directors' and officers' liabilities.

4. To propose reforms that could enhance the accountability of directors and officers while maintaining limited liability protection.

1.5 Research Methodology

The research design used is doctrinal. It uses both primary and secondary data sources. The major sources are statutes, especially, the Companies and Allied Matters Act, 2020, and relevant subsidiary legislation as well as the decisions of the higher courts in the area concerning the duties of directors, corporate governance, wrongful trading, and lifting of the corporate veil.

The secondary sources include textbooks on company law, journal articles, law reports, commentaries as well as internet based legal sources. These resources offer academic insight and background knowledge of the legal provisions governing the personal liability of the directors and officers of the company. The information obtained is analyzed by content analysis with an aim of analyzing the extent of the statutory obligations, the situations in which personal liability may occur as well as the efficacy of enforcement provisions offered under the Act. This strategy allows assessing critically the legal framework of the liabilities of the directors and officers in Nigeria.

1.6 Significance of the Study

The research is important because it highlights the growing use of accountability in the management of corporate bodies and the importance of statutory guideline in the regulation of the behavior of company directors and officers. It reveals the conditions of the abuse of the doctrine of limited liability and how CAMA 2020 attempts to prevent such abuse by placing the personal liability.

The work identifies the gaps and shortcomings of the application of the statutory obligations, such as the problems of wrongful trading, conflict of interests, and adhering to the disclosure rules. The study will be able to offer a foundation of enhancing corporate governance and increasing regulatory supervision by the concerned authorities by identifying these challenges.

Despite the substantial body of literature on company law and corporate governance in Nigeria, there is a relative dearth of critical studies that explore the personal liability of directors and officers in the new CAMA 2020. This research is thus adding value to the body of knowledge that is available as it offers a systematic study on the statutory framework and their practical implications.The results of the research would be valuable to the legal practitioners, corporate regulators, policymakers and judiciary in grasping the extent of the liabilities of directors and improving the application of corporate governance practices. The investigation is also a reference point to other studies that could be conducted in the field of company law and corporate accountability in Nigeria.

1.7 Limitations and Scope of the Study.

The study is interested in the individual liability against the company directors and company officers in accordance with the Companies and Allied Matters Act, 2020. It dwells on statutory obligations, fiduciary obligations, wrongful trading, conflicts of interest, disclosure obligations and situations in which the corporate veil can be pierced.The research is narrowed down to Nigeria, with much focus on the stipulations of CAMA 2020 and the judicial rulings on the liability of directors and officers. There is on the reference to English and other Commonwealth authorities, only on the comparative explanatory where necessary.

Being a doctrinal legal research, the study is primarily based on statutes, case law, textbooks, journal articles, and official publications. It is not a case of an empirical fieldwork or interview with directors, officers and regulatory agencies. A relative dearth of Nigerian cases interpreting some of the more recent provisions of CAMA 2020 limits the study too, although the relatively small number of such cases may be offset by the relatively limited scope of such provisions. These shortcomings however do not in any way reduce the validity of the legal analysis and conclusions made.

1.8 Literature Review

The issue of the personal liability of company directors has been long discussed in company law. The initial Nigerian authors on company law devoted much emphasis on the principle of separate legal personality and protection of limited liability. In his treatise on company law in Nigeria, Uadiale describes the general rule that directors are not personally liable because of the acts of the company unless the director acts in bad faith.[25] Although this exposition is consistent with the traditional common law rule, it

[25] A. O. Uadiale, *Company Law in Nigeria* (Pumark Nigeria Ltd 2019) 145.

lacks enough questioning of the statutory exceptions introduced by the Companies and Allied Matters Act, 2020 (CAMA 2020).

The fiduciary duties of directors as discussed by Okonkwo in analyzing corporate governance in Nigeria as well as the duties of loyalty, care, and avoidance of conflict of interest are elaborated.[26]Though he pays more attention to the principles of good governance, rather than critically review the statutory duties under CAMA 2020 in the form of wrongful trading, misstatements, and breaching the disclosure requirements that personal liability falls on directors.

In his chosen themes on company law, Akpata addresses the position of directors as trustees of the company assets and highlights their responsibility to act in the best interest of the company.[27] Although his work presents a doctrinal foundation of the responsibility of the directors, it is pre-CAMA 2020 and, as such, does not address the broadened statutory framework of personal liability and the officers inclusion in the liability regime.

The study of Ali on directors duties and corporate governance includes the discussion of the standard of care, skill, and diligence with which directors should be managed in the context of Nigerian law.[28] Ali emphasizes that accountability in corporate management is becoming more and more significant, and statutory provisions can be used to enforce compliance. His analysis however does not go as far as to virus provisions on wrongful trading and situations where the corporate veil can be lifted to

[26] C. C. Okonkwo, *Law and Practice of Corporate Governance in Nigeria* (Malthouse Press 2021) 82.
[27] O. A. Akpata, *Selected Themes in Company Law* (Malthouse Press 1998) 64.
[28] S. S. Ali, Directors' Duties and Corporate Governance: A Nigerian Perspective (2016) 9 *Nigerian Business Law Journal* 45.

provide personal liability.

The introduction of new clauses on directors responsibilities, interests disclosure and liability of statements made in false or misleading forms can be identified in commentaries on CAMA 2020, especially, those that offer section-by-section analyses of the Act; however, they tend to be descriptive in relation to the practical issues in the enforcement of these new duties, such as evidentiary burdens and regulatory capacity.[29]

The comparative common law experts like Davies and Worthington, in *Gower: Principles of Modern Company Law*, have provided a comprehensive examination of the liabilities of directors, such as wrongful trading and creditor protection.[30] They have provided valuable theoretical perspectives on the policy implications of the personal liability imposed on directors. But it is founded on English law and it does not discuss the institutional and enforcement issues which are peculiar to Nigeria.

The analysis of directors duties towards creditors is especially important in the case of wrongful trading and insolvency by Keay who claims that the process of personal liability of directors who have authorized a company to trade in insolvency is a tool that protects creditors.[31] Although this view is educative, its use in the Nigerian legal context needs more discussion, particularly because of the scanty judicial understanding of wrongful trading under CAMA 2020.

The contemporary development of the expansion of the liabilities of the directors as a

[29] H. O. Davies (ed.), *Companies and Allied Matters Act, 2020: A Practical Commentary* (2021) 233.
[30] Paul L. Davies and Sarah Worthington, *Gower: Principles of Modern Company Law* (10th edn, Sweet & Maxwell 2022) 506.
[31] Andrew Keay, *Company Directors' Responsibilities to Creditors* (Routledge 2007) 121.

way of enhancing the corporate governance and safeguarding the stakeholders was addressed by Lowry and Edmunds who highlight a conflict between the limited liability and responsibility.[32] However, they conduct their analysis on a background with a developed regulatory environment and ignore the enforcement constraints against the Nigerian regulatory institutions.Even though the literature on the company law and corporate governance continues to expand, the specific research on the matter of personal liability of the company directors and officers under CAMA 2020 is still lacking. The available literature appears to either predate the Act, discuss the obligation of directors generally or make descriptive commentaries to the statutory liability provisions without going into an analysis of the statutory provisions in relation to their application and enforcement in practice.

In addition, the liability of other than directors officers has not received much concern despite the fact that CAMA 2020 imposes some of the liability and sanctions on company secretaries and other key officers. This exclusion is important in contemporary corporate practice whereby decision making is usually done in unison by the executive management".This study thus addresses this gap by critically reviewing the statutory provisions of the personal liabilities of directors and officers in CAMA 2020, judicial interpretation, and the assessment of enforcement issues.

[32] John Lowry and Rod Edmunds, *Company Law: Corporate Purpose and Directors' Duties* (Oxford University Press 2018) 212.

CHAPTER TWO

CONCEPTUAL CLARIFICATION AND THEORETICAL FRAMEWORK

2.1 Conceptual Framework

2.1.1 Meaning and Nature of a Company

A company is a legal entity established and registered by the Companies and Allied Matters Act 2020.[33] On incorporation it is a body corporate, having perpetual succession, a common seal and the power to sue and be sued in its name, and is treated in legal terms as a separate personality quite different to its members and is able to own property, form and enter contracts, and to incur liabilities independently.[34]

Company law is based on the doctrine of separate legal personality. In *Salomon v A. Salomon and Co Ltd,* the House of Lords affirmed that a company once incorporated is not like the subscribers to its memorandum, despite the fact that a company limited by shares has majority of shareholders, even though the company holds the majority of the assets.[35] This is to stimulate investment.[36]Without unpaid shares, the financial risk of the investor in a company limited by shares is lower.[37]

Another characteristic of a company is the perpetual succession. The demise, bankruptcy or assignment of the shares of any member shall not have any impact on the company existence.[38] This provides continuity and stability in the business

[33]Companies and Allied Matters Act 2020, s 42.
[34] L C B Gower, *Gower's Principles of Modern Company Law* (10th edn, Sweet & Maxwell 2016) 75.
[35]*Salomon v A. Salomon & Co Ltd* [1897] AC 22.
[36]Companies and Allied Matters Act 2020, s 21.
[37] P L Davies and S Worthington, *Gower and Davies' Principles of Modern Company Law* (10th edn, Sweet & Maxwell 2016) 79.
[38]Companies and Allied Matters Act 2020, s 42(1).

operation and promotes commercial certainty.[39]The company as an artificial person is unable to act independently and has to act through human agents.[40] The board of directors has the management of the company, which directs the affairs of the company and exercises its powers.[41] This acts, when acted within the frame of its powers, are considered to be the acts of the company.[42]

The company structure also enables the decentralization of the management system and mobility of shares.[43]"Members do not have to be involved in the running of the day to day running of the company since this is left to the directors and officers, hence making the company to be liquid and easy to invest.[44]Although there are these benefits, the individual legal personality of a company can be misused.[45] Courts and statutes have thus crafted measures of the corporate veil in suitable situations.[46]This is especially where the company serves as a vehicle of fraud, illegality or misconduct.[47]

2.1.2 Concept of Legal Personality

Legal personality can be described as the ability of an entity to be treated under law as possessing rights, duties and obligations.[48] In company law, it refers to the status of an incorporated company that permits the company to act as a legal personality independent of its members.[49] When incorporating a company under the Companies and Allied Matters Act 2020, a company gains the ability to have legal personality and

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[39] A Keay, *Company Law* (2nd edn, Pearson 2011) 15.
[40]Companies and Allied Matters Act 2020, s 269.
[41] *Lennard's Carrying Co Ltd v Asiatic Petroleum Co Ltd* [1915] AC 705.
[42] P L Davies and S Worthington (n 5) 130.
[43] A Hicks and S Goo, *Cases and Materials on Company Law* (8th edn, OUP 2011) 92.
[44] ibid.
[45] *Gilford Motor Co Ltd v Horne* [1933] Ch 935.
[46]Companies and Allied Matters Act 2020, s 672.
[47] A Keay (n 7) 21.
[48] J E Penner, *The Law of Trusts* (10th edn, OUP 2021) 35.
[49]Companies and Allied Matters Act 2020, s 42.

act in its own right, independent of those individuals who manage it or hold its ownership.[50]

Modern corporate law relies upon the doctrine of legal personality.[51] It gives statutory existence through which the existence of the company is founded and the difference between an incorporated company and unincorporated partnerships.[52]Since a company bears the liability, unlike in a partnership, the members of the company are not themselves liable beyond the capital invested in the company.[53]

The Nigerian law system has the classical common law approach to legal personality.[54] When a company is registered, it becomes a body corporate, which has perpetual succession and a common seal.[55]The shareholders do not claim any property of the company other than as agents of the company, by means of dividends or other ways (such as the distribution of proceeds on winding up).[56]

This principle has always been maintained by the judicial authorities. In *Salomon v A. Salomon and Co Ltd*, the House of Lords stressed that when the company is incorporated, it becomes a legal person independent of its subscribers.[57] Nigerian courts have echoed these words and declared that the actions of the company do not act as the personal acts of its directors or members.[58] This underlines the autonomy of the corporate entity and makes the company the appropriate channel through which

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[50] L C B Gower, *Gower and Davies' Principles of Modern Company Law* (10th edn, Sweet & Maxwell 2016) 74.
[51] R R Pennington, *Pennington's Company Law* (9th edn, Butterworths 1990) 52.
[52]Companies and Allied Matters Act 2020, s 21.
[53] P L Davies and S Worthington, *Gower: Principles of Modern Company Law* (10th edn, Sweet & Maxwell 2016) 80.
[54]Companies and Allied Matters Act 2020, s 42(1).
[55] A Boyle, *Minority Shareholders' Remedies* (CUP 2002) 12.
[56] B Hannigan, *Company Law* (5th edn, OUP 2018) 43.
[57]*Salomon v A. Salomon & Co Ltd* [1897] AC 22.
[58]*Akinwunmi Alade v Alic (Nig) Ltd* (2010) 19 NWLR (Pt 1226) 111.

liability is to flow.[59]

Procedural implications are also attached to legal personality.[60] Since the company is a legal person, any action based on corporate rights or wrongs is normally brought on behalf of the company, with an exception of common exceptions like derivative actions.[61] This rule is in place to ensure that only one suit is brought against a company, not multiple suits brought by individual shareholders.[62]

Although it is very important, legal personality is not devoid of limitations. The law identifies situations where the corporate form can be neglected, especially where the company is an instrument of fraud, illegality or to frustrate public policy.[63] The exceptions in the law under the Companies and Allied Matters Act 2020 are targeted by providing personal liability on the directors and officers against particular wrongdoing.[64] These exemptions show that the legal personality is realised within a specific framework of accountability.[65]Legal personality in essence is the legal foundation upon which a company has its existence and functions.[66] It permits the company to act as an independent actor in the law and it forms the structural basis of such doctrines like limited liability, corporate governance and personal liability of the directors and officers.[67]

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[59] J Lowry and A Dignam, *Company Law* (9th edn, OUP 2018) 30.
[60]*Foss v Harbottle* (1843) 2 Hare 461.
[61]Companies and Allied Matters Act 2020, ss 344–346.
[62] A Keay, *Company Directors' Responsibilities to Creditors* (Routledge 2007) 21.
[63]*Jones v Lipman* [1962] 1 WLR 832.
[64] B Rider, *The Corporate Veil in Company Law* (Kluwer 2008) 64.
[65]Companies and Allied Matters Act 2020, ss 672–674.
[66] J Armour, H Hansmann and R Kraakman, 'What is Corporate Law?' (2009) 106 Yale LJ 439.
[67] P Davies, *Introduction to Company Law* (2nd edn, OUP 2010) 48.

2.1.3 Concept of Corporate Personality.

Corporate personality is whereby a corporation is legally acknowledged as a person independent and distinct of the persons who constitute it. At incorporation under the Companies and Allied Matters Act 2020, a company becomes an independent entity, and a legal person, capable of the company owning property, incurring debts, and enforcing rights in its own right as an independent entity, not as a collection of shareholders and managers.[68] This legal personification gives the entity of incorporation the ability to hold property, incur debts and to enforce rights in its own name, rather than in the name of its shareholders and managers.[69]

The traditional definition of corporate personality is founded in the judiciary. In *Salomon v A. Salomon and Co Ltd*, the court ruled that the company is not an agent or trustee of its members, but rather a separate entity.[70] This rule has been reiterated in the Nigerian jurisprudence. The court in the *Lee's Air Farming Ltd v Lee* acknowledged that a controlling shareholder might be an employee of the company since the company is a separate legal entity[71]. Therefore, the rights and liabilities apply to the company but not to the individuals.[72]

Corporate personality plays a number of significant roles. It also contributes to commercial efficiency[73]. This is done by making sure that the members are not personally liable to the third party in respect of the debts of the company to an extent

[68] Companies and Allied Matters Act 2020, s 42.
[69] J E Parkinson, *Corporate Power and Responsibility* (OUP 1993) 19.
[70] *Salomon v A. Salomon & Co Ltd* [1897] AC 22.
[71] *Lee v Lee's Air Farming Ltd* [1961] AC 12.
[72] R R Pennington, *Pennington's Company Law* (9th edn, Butterworths 1990) 55.
[73] Companies and Allied Matters Act 2020, s 21.

other than that agreed in writing.[74] It also contributes to perpetual succession, where the change in ownership or management does not affect the legal standing of the business.[75]

The doctrine is however not absolute. Both the law and the decisions made by the courts, acknowledge the situations under which the corporate veil can be pierced.[76] This happens when the company is being utilized in a fraudulent manner or to avoid legal responsibility or as a pretext to hide the nature of the actual persons committing the fraud of wrongdoing.[77] In this case, the law makes an exception of the company itself and the liability of the individuals involved in the wrongdoing is ascribed.[78]

The rigidity of corporate personality has also been further restrained by statutory intervention. These are some of the provisions in the Companies and Allied Matters Act 2020, which hold personal liability on a director or officer who engaged in wrongful trading, fraudulent activities, misstatements in prospectuses, or failure to carry out their statutory duties in line with the policy.[79]This makes them to be held accountable to corporate personality.[80]There is also academic commentary on how corporate personality is a convenience and nothing more. It is meant to promote economic action and retain controls and accountability.[81] The modern way is thus a compromise of the freedom of the company and the security of creditors, investors and the populace

[74] J Lowry and A Dignam, *Company Law* (9th edn, OUP 2018) 35.
[75]Companies and Allied Matters Act 2020, s 42(1).
[76]*Jones v Lipman* [1962] 1 WLR 832.
[77] B Hannigan, *Company Law* (5th edn, OUP 2018) 59.
[78]*Akinwunmi Alade v Alic (Nig) Ltd* (2010) 19 NWLR (Pt 1226) 111.
[79]Companies and Allied Matters Act 2020, ss 672–674.
[80] P Davies, *Introduction to Company Law* (2nd edn, OUP 2010) 46.
[81] J Armour, H Hansmann and R Kraakman, 'What is Corporate Law?' (2009) 106 Yale LJ 437.

against abuse of the corporate form.[82]

To be precise, company law is based on the corporate personality, however, the way it functions is predetermined by the principles of fairness and legal protection. The doctrine gives the context in which the question of personal liability of directors and officers come into play especially when the corporate veil is not afforded.

2.1.4 Directors and Officers of a Company

Directors and officers are bestowed with the management and control of a company as they are the driving force and mind of the corporate entity. Though a company is considered as a separate legal person, it is also run by natural persons who are appointed to direct, govern and run the company.[83] The Companies and Allied Matters Act 2020 defines a director as a person who is duly appointed to direct and manage the affairs of the company.[84] Directors operate together to form a board that is tasked with formulating policies, making strategic decisions and generally governing the company.[85]

There are other types of directors that are acknowledged by the law including de facto directors and shadow directors in addition to the formally appointed directors.[86] These classifications are significant because the liability under the company law does not apply to the individuals who are not appointed to serve as the directors[87]; it applies to those who take real control over the operations of the company.[88]Under the Nigerian

[82] A Reisberg, *Derivative Actions and Corporate Governance* (OUP 2007) 24.
[83] P L Davies and S Worthington, *Gower and Davies' Principles of Modern Company Law* (10th edn, Sweet & Maxwell 2016) 151.
[84]Companies and Allied Matters Act 2020, s 283.
[85] A Keay, *Company Directors' Responsibilities to Creditors* (Routledge 2007) 9.
[86]Companies and Allied Matters Act 2020, s 868 (definition of director).
[87] J Lowry and A Dignam, *Company Law* (9th edn, OUP 2018) 302.
[88] B Hannigan, *Company Law* (5th edn, OUP 2018) 213.

law, company officers are statutorily recognized.[89] It could have liability under the statutory requirements especially in filing to comply with statutory requirements, financial reporting, and corporate disclosures.[90]The company secretary, for instance, occupies a pivotal position as the chief administrative officer responsible for ensuring compliance with regulatory and governance requirements.[91]

The law of directors has been a subject of voluminous doctrine. The fiduciary relationship of directors is frequently characterized as the agent of the company in that they act on behalf of the company in both contractual and managerial matters.[92]They are viewed as such fiduciaries in a limited sense, especially about the management and disposal of corporate property.[93] On the other hand, the orthodox view of fiduciary relationship is that directors are fiduciaries in the narrow sense when it comes to fiduciary relationship, by way of duty of good faith, loyalty and care to the company.[94]These fiduciary duties include the duty to act in the best interest of the company, to avoid conflicts of interest, and not to make secret profits.[95]

Fiduciary status of duties undertaken by directors has been established by Nigerian courts. In *Longe v FBN Plc*, the Supreme Court stated that directors should act in good faith and serve the company interests in the exercise of their powers.[96]Likewise, in *Edokpolor and Co Ltd v Sem-Edo Wire Industries Ltd*, the court made it clear that directors should not put themselves in such a situation that they have a personal

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[89]Companies and Allied Matters Act 2020, s 330.
[90] ibid ss 417–419.
[91] A Boyle, *Minority Shareholders' Remedies* (CUP 2002) 44.
[92] R R Pennington, *Pennington's Company Law* (9th edn, Butterworths 1990) 769.
[93] L S Sealy and S Worthington, *Cases and Materials in Company Law* (10th edn, OUP 2013) 289.
[94]Companies and Allied Matters Act 2020, s 305.
[95] ibid ss 306–309.
[96]*Longe v First Bank of Nigeria Plc* (2010) 6 NWLR (Pt 1189) 1.

interest in the company, contrary to the duty of the company.[97]

The modern corporate governance is also exemplified in the classification of the directors into executive, non-executive and independent directors. The executive directors are in day-to-day running of the company, whereas non-executive directors are meant to provide oversight and policy recommendations within the company.[98] The independent directors are needed to bring objectivity and impartial judgment in the board deliberation.[99]

Essentially, directors and officers form the human machine upon which the company operates. They get their powers by statute, by the constitution and resolutions of the company and by reason of [100]the control they have over its resources and the decisions they make on behalf of it.[101]The law places upon them a responsibility to guard against the possibility of power abuse and a liability to safeguard the interests of shareholders, creditors and the public, in the circumstances that suit.[102]

2.1.5 Concept of Personal Liability of Directors and Officers.

This doctrine of separate legal personality generally protects directors and officers against liability in their own persons in the performance of their duties on behalf of the company. The rationale behind this is the decision in *Salomon v A Salomon & Co Ltd* which concluded that the company and its members and managers are separate

[97] *Edokpolor & Co Ltd v Sem-Edo Wire Industries Ltd* (1989) 4 NWLR (Pt 116) 473.
[98] B Rider, *Corporate Governance for Directors* (Kluwer 2009) 58.
[99] Nigerian Code of Corporate Governance 2018, Principle 7.
[100] Companies and Allied Matters Act 2020, s 63.
[101] J Armour, H Hansmann and R Kraakman, 'What is Corporate Law?' (2009) 106 Yale LJ 439.
[102] *Salomon v A Salomon & Co Ltd* [1897] AC 22.

entities.[103] The law acknowledges various situations under which directors and officers can be personally liable in the performance of corporate acts or omissions.[104]

Liability at the personal level can occur in terms of common law, equity and statute.[105] Directors can also face liability at common law when they act beyond their powers or when they take on personal contracts.[106]This can be a tort, such as a contract of fraud, or when they commit frauds[107].

The Equity will hold the directors liable when they breach fiduciary duties.[108] A director who secretly gains profit, or diverts corporate opportunities, or puts himself in a conflict of interest is personally liable to account to the company to restorative and not punitive purposes.[109]The Companies and Allied Matters Act 2020 gives a wide range of statutory provisions that greatly increase the scope of personal liability.[110] Directors will also be personally liable in fraudulent trading, where the company business is being carried out with the intention of defrauding its creditors.[111]Wrongful trading may mean that the directors will have to contribute personally to the company assets.[112]

Failure to comply with statutory obligations, including the maintenance of proper accounting records, filing of annual returns and presentation of accurate disclosures of financial information is an additional personal liability.[113]It is intended to create

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[103] ibid.
[104] P Davies, *Introduction to Company Law* (2nd edn, OUP 2010) 105.
[105] R Goode, *Principles of Corporate Insolvency Law* (5th edn, Sweet & Maxwell 2018) 214.
[106] ibid.
[107] B Hannigan (n 6) 229.
[108]Companies and Allied Matters Act 2020, s 306.
[109] L S Sealy and S Worthington (n 11) 312.
[110]Companies and Allied Matters Act 2020, s 672.
[111] ibid s 673.
[112] ibid s 674.
[113] ibid ss 417–419.

transparency within the corporate settings.[114] It also guard against malfeasance by managers.[115]The other critical field is a misstatement liability in prospectuses and other corporate disclosures.[116] The statutory liability of directors who approve the issue of a prospectus, which states untrue information, may be used to compensate those investors who lose through the untrue statements made.[117]

Courts in Nigeria have shown that they accept personal liability in instances of misuse of corporate form by directors.[118] In *Trenco (Nig) Ltd v African Real Estate and Investment Co Ltd*, the court stated that directors personally engaged in fraudulent activity could not seek refuge behind the corporate veil.[119]Personal liability as a concept can thus be viewed as a compromise between two conflicting policies.[120]It is the limitation of entrepreneurial risks by limiting the liability of a party, and the promotion of corporate responsibility by making it apparent that the parties who wield control over corporate resources can be held to account.[121]Personal liability has become a tool of ensuring ethical behaviour and responsible management in the modern business governance framework.[122] It better maintains directors and officers making their powers exercised with due care, skill and diligence, and liability over misconduct.[123]

2.2 Theoretical Framework

The theoretical framework gives the analytical basis to the study of liability of the

[114] ibid.
[115] A Keay (n 3) 77.
[116]Companies and Allied Matters Act 2020, s 85.
[117] P L Davies and S Worthington (n 1) 268.
[118] *Trenco (Nig) Ltd v African Real Estate & Investment Co Ltd* (1978) 4 SC 9.
[119] B Rider (n 16) 102.
[120] J Lowry and A Dignam (n 5) 315.
[121] R Goode (n 23) 219.
[122] Nigerian Code of Corporate Governance 2018.
[123] J Armour, H Hansmann and R Kraakman (n 19).

directors and officers on a personal basis. It describes the interconnection between those who run the company and those whose interests are impacted by the corporate operations. Corporate governance and control theories are also mostly applicable since they explain why law subjects directors and officers to duties and in right situations, personal liability, notwithstanding the separate personality of the corporation doctrine.[124]

2.2.1 Agency Theory

The agency theory is based on the separation of ownership and control in contemporary corporations.[125] The agency problem is caused by the information asymmetry.[126]That is, a fact that the managers may act to serve personal interests and not those of the company, a problem which is often known as the agency problem.[127]

Agency risks have a direct response in the imposition of fiduciary duties and statutory obligations on directors in the law of companies.[128] These obligations are to guarantee that directors act in good faith and be free of conflict of interest.[129]It is to ensure that they exercise good care and diligence in discharging the affairs of the company.[130]Companies and Allied Matters Act 2020 reflects the agency principle by codifying the responsibilities of directors and giving a remedy to such breaches.[131]

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[124] J Armour, H Hansmann and R Kraakman, 'What is Corporate Law?' (2009) 106 Yale LJ 439.
[125] M C Jensen and W H Meckling, 'Theory of the Firm: Managerial Behaviour, Agency Costs and Ownership Structure' (1976) 3 JF 305.
[126] ibid.
[127] E Fama and M Jensen, 'Separation of Ownership and Control' (1983) 26 JLE 301.
[128]Companies and Allied Matters Act 2020, ss 305–309.
[129] A Keay, *Company Directors' Responsibilities to Creditors* (Routledge 2007) 15.
[130]Companies and Allied Matters Act 2020, s 305.
[131] ibid ss 672–674.

2.2.2 Stakeholder Theory

The stakeholder theory broadens the scope of corporate governance beyond a shareholder.[132]It refers to other entities involved in the activities of the corporation, including employees, creditors, consumers and the community.[133]

Under this theory, personal liability of directors is justified not only as a means of conveying shareholder protection but also as a means of protecting the interests of creditors and the populace.[134] In the case of wrongful trading, a statutory liability is to be imposed.[135]This makes directors liable to avoid potential losses to creditors; and avoidable losses to the population.[136]

The Nigerian corporate regulation is more and more oriented to the stakeholder perspective specifically in the areas that ensure that the directors face punishment in case of breach of the law.[137]This is especially in the areas that emphasize the social responsibility of the corporate managements and corporate power.[138]

2.2.3 Theory of Corporate Governance.

Corporate governance theory dwells on the mechanisms and arrangements that guide and govern companies and organizations.[139]Accountability, transparency, fair and responsible management of the company are key issues addressed in this

[132] R E Freeman, *Strategic Management: A Stakeholder Approach* (Pitman 1984) 46.
[133] T Donaldson and L E Preston, 'The Stakeholder Theory of the Corporation' (1995) 20 AMR 65.
[134] A Keay (n 6) 29.
[135]Companies and Allied Matters Act 2020, s 673.
[136] ibid ss 417–419.
[137] Nigerian Code of Corporate Governance 2018.
[138] T Clarke, *Theories of Corporate Governance* (Routledge 2004) 189.
[139] ibid.

framework.[140] The board of directors is the center of the theory as it is the body that manages and controls the company and assures compliance with legal and ethical practices.[141]Personal liability is a notion that is part of corporate governance.[142] The law will protect the corporation by promoting compliance with the set standards of governance and deterring the misuse of corporate power.[143]The law also promotes integrity among directors, independence and good risk management by imposing legal penalties when there are breaches of the rules.[144]

Corporate governance theory is also behind the identification of independent and non-executive directors as a remedy to augment oversight of the board by corporate managers.[145] The failure of governance mechanisms, in turn, is mitigated by the use of personal liability as a corrective measure to impose accountability and safeguard the corporate stakeholders.[146]

2.2.4 Resource Dependency Theory

Resource dependency theory is a strategic resource whereby the board of directors is considered to possess expertise, access to information, external linkages and legitimacy to the company.[147]Directors are not just the agents of shareholders but also resources of great value to corporate performance.[148]

This theory describes why the law sets high standards of competence and hard work on

[140] OECD, *Principles of Corporate Governance* (OECD 2015).
[141] B Tricker, *Corporate Governance: Principles, Policies and Practices* (3rd edn, OUP 2015) 78.
[142] A Keay (n 6) 41.
[143] Nigerian Code of Corporate Governance 2018, Principles 1–3.
[144] B Rider, *Corporate Governance for Directors* (Kluwer 2009) 61.
[145] B Tricker (n 18) 112.
[146] T Clarke (n 15) 205.
[147] J Pfeffer and G R Salancik, *The External Control of Organisations* (Harper & Row 1978) 161.
[148] ibid.

the directors.[149] Due to the effect of directors on corporate strategy and access to external resources, the misconduct or negligence of directors can have far-reaching implications on the company and its stakeholders.[150] The concept of personal liability is thus a tool to ensure that directors exercise their position responsibly and in the best interests of the company.

Resource dependency theory also underlies the decision to have professionals and independent directors on the corporate boards to enhance the results of decision making and governance.[151] Where directors do not deliver their duties effectively, statutory and equitable remedies offer grounds on which they can be held personally liable.[152]

[149] A Zahra and J Pearce, 'Boards of Directors and Corporate Financial Performance' (1989) 15 JOM 291.
[150] A Keay (n 6) 53.
[151] B Tricker (n 18) 134.
[152] Companies and Allied Matters Act 2020, ss 305–309.

CHAPTER THREE

LEGAL FRAMEWORK GOVERNING PERSONAL LIABILITIES OF DIRECTORS AND OFFICERS

3.1 Statutory Duties of Directors under the Companies and Allied Matters Act 2020

Statutory duties of directors forms the major legal framework on which personal liability can be ascertained in running of a company. Even though the doctrine of separate corporate personality is usually used to shield directors against personal liability when they act in the name of the company, the law imposes certain responsibilities which are aimed at enforcing the equitable principles that have been traditionally evolved by the courts and offer a systematic framework through which the actions of directors are examined.[153] These responsibilities which now are expressly provided in the Companies and Allied Matters Act 2020 (CAMA 2020) reflect the fair principles that have been historically established by the courts and offer an orderly framework under which the actions of directors are considered.[154]

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

The requirement that the directors should act in good faith and in the best interest of the company is one of the most basic statutory obligations imposed on the directors.[155] The obligation requires the directors to exercise their powers in good faith.[156]They should actin the best interest of the company and not in personal or sectional or

[153] Companies and Allied Matters Act 2020, s 42.
[154] Companies and Allied Matters Act 2020, ss 305–307.
[155] ibid s 305(3).
[156] ibid.

collateral interest.[157]Nevertheless, Nigerian courts have indicated that where such belief is manifestly unreasonable, an objective assessment may be adopted.[158]

The obligation forbids the managers to abuse corporate opportunities against their interests.[159]Neither should they act without regard to the goals of the company.[160] Where a director takes a business opportunity that rightly belongs to the company, then such action will mean the violation of the duty.[161] This will incur personal liability to the company on account of the losses it incurs.[162]

3.1.2 Duty to Exercise Powers for Proper Purpose

Closely related to the duty of good faith is the duty to exercise the powers vested on them on the company's business.[163] Any utilisation of such powers on other than the object of raising capital is a misuse of power.[164]For instance, the allotment of shares for the sole purpose of diluting the voting strength of an existing shareholder rather than for raising capital constitutes an improper exercise of power.[165]

This responsibility will not allow directors to abuse corporate processes to entrench themselves in office or to serve other interests.[166]In this case, the impugned transaction can be voided and personal loss imposed on the director.[167]

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[157] *Re Smith & Fawcett Ltd* [1942] Ch 304.
[158] *Yalaju-Amaye v A.R.E.C. Ltd* (1990) 4 NWLR (Pt 145) 422.
[159] Companies and Allied Matters Act 2020, s 306.
[160] ibid s 305(8).
[161] ibid s 305(5).
[162] ibid.
[163] *Hogg v Cramphorn Ltd* [1967] Ch 254.
[164] Companies and Allied Matters Act 2020, s 305.
[165] ibid s 305(9).
[166] ibid s 305(4).
[167] ibid.

3.1.3 Duty to Exercise Care, Skill and Diligence.

The duty of care, skill and diligence places both objective and subjective standards on the directors.[168] The standard On the balance subject of the directors under CAMA 2020 is that the director in like circumstances would exercise the degree of care, skill and diligence.[169] This risking that directors with specialised knowledge will face an elevated standard of accountability.[170]

Absence of meetings, failure to oversee corporate affairs, or irresponsible consent to transactions without due inquiry can all constitute negligence.[171]This can be personally liable.[172] The current statutory formulation is a great contrast to the previous common law stance, which was a more lenient approach to the competence of directors.[173] Passive directorship will not be acceptable under the current company law in Nigeria.[174]

3.1.4 Duty to Avoid Conflict of Interest.

Directors are in a fiduciary position, and should not act so as to have their own interests conflicting, or potentially conflicting, with those of the company.[175] CAMA 2020 outlaws directors being in any position that conflicts with their duty of the company, or which may conflict with their own interests.[176]

In the event a conflict arises, a director must disclose the nature of the interest.[177]He or

[168] ibid.
[169] *Re City Equitable Fire Insurance Co Ltd* [1925] Ch 407.
[170] Companies and Allied Matters Act 2020, s 332.
[171] *Re Brazilian Rubber Plantations and Estates Ltd* [1911] 1 Ch 425.
[172] Companies and Allied Matters Act 2020, s 305(4).
[173] ibid s 306.
[174] ibid.
[175] ibid s 307.
[176] ibid.
[177] ibid s 305(8).

she must not be involved in the deliberations of the matter.[178]The director may also be required to account for any profit derived from the transaction.[179]This responsibility applies to indirect interests and to dealings in which a related party is involved.[180]

3.1.5 Duty Not to Make Secret Profits.

The ban on secret profits is an old fiduciary rule now imposed by statute.[181] Profits made by directors in carrying out their duties cannot be retained by or on behalf of the company without the express or implied consent of the company.[182]Any profit made in the course of performing their duties belongs to the company and must be disclosed.[183]

This obligation is enforced even in cases where the company, as an entity, could not have availed itself of the opportunity.[184] The rule is in place to avoid abuse of office.[185]It ensures that the management of the corporate entity is upheld by integrity.[186]

3.1.6. Duty to Act in Accordance with the Company's Constitution.

Directors must operate within the provisions of the memorandum and articles of association of the company.[187] These constitute the boundaries of their powers, and any action performed outside this scope may amount to ultra vires conduct.[188] Where the third party suffers loss as a result of a director acting in an unauthorized manner,

[178] ibid s 310.
[179] ibid s 306(2).
[180] ibid.
[181] ibid s 305(8).
[182] *Regal (Hastings) Ltd v Gulliver* [1967] 2 AC 134.
[183] Companies and Allied Matters Act 2020, s 305(8).
[184] ibid.
[185] ibid s 305(1).
[186] ibid.
[187] ibid s 42.
[188] ibid.

the action may be treated as personal liability.[189]This duty reinforces the principle that directors are agents of the company whose powers are limited by the company's constitutional framework.[190]

Statutory breaches attract both civil and in appropriate situations, criminal liability.[191] Damages, restitution, injunctions, rescission of contracts and disqualification to hold office are all possible civil remedies.[192]In certain circumstances, criminal sanctions may be imposed, especially where the breach involves fraud, false statements or other forms of misconduct.[193]The codification of these duties under CAMA 2020 has enhanced clarity and strengthened the enforcement of directors' obligations in Nigeria.[194] It provides a comprehensive framework for holding directors accountable while preserving the benefits of separate corporate personality.[195]

3.2 Personal Liability for Fraudulent Trading and False Statements

The doctrine of separate corporate personality acts as a shield against individual directors and officers against the liability of personal acts to the company. This protection is, however, not complete. In this situation, where the corporate form is utilized as the means of fraud or when directors are aware that they conduct the business of an existing company with the intention to defraud creditors or any other fraud-related purpose, the law holds the perpetrators personally liable.[196] The Companies and Allied Matters Act 2020 (CAMA 2020) provides particular provisions

189 ibid s 305(9).
190 ibid.
191 Companies and Allied Matters Act 2020, ss 417–419.
192 ibid ss 305–307.
193 ibid s 42.
194 ibid s 305.
195 ibid.
196 Companies and Allied Matters Act 2020, s 672.

aimed at not allowing to abuse the corporate structure and to make directors and officers involved in fraudulent activities not use the veil of incorporation.[197]

Fraudulent trading can be defined as one of the greatest statutory exceptions to the doctrine of corporate personality. It is created where the business of a company is carried on with a view to defraud creditors or otherwise and to commit any other type of fraud.[198] Where it appears in the course of winding up that a person who knew himself to be a party to such conduct was engaged in the fraudulent trading, the court shall declare that that person shall be personally liable to all or any of the debts or liabilities of the company.[199]

Knowledge requirement is a key provision in creating knowledge of liability of fraudulent trading.[200] It will only be found that a director or an officer will be held personally liable in case it is proven that he was aware of the fraudulent act.[201] It is upon the party making the allegation of fraud to prove that the director knew about the fraudulent intent and proceeded to continue running the business of the company notwithstanding.[202]Fraudulent trading can be a common occurrence in circumstances whereby directors still make liabilities on behalf of a company that is insolvent, having no realistic chance of settling its creditors. This results in personal liability to the directors in this type of cases, especially when the directors receive the goods or credit and do not have any intention to pay.[203]

[197] Companies and Allied Matters Act 2020, ss 672–674.
[198] Companies and Allied Matters Act 2020, ss 672(1).
[199] Companies and Allied Matters Act 2020, ss 672(2).
[200] Companies and Allied Matters Act 2020, ss 672(3).
[201] *U.B.N. Ltd v Ajabule* (2011) 18 NWLR (Pt 1278) 152.
[202] Companies and Allied Matters Act 2020, s 672.
[203] Companies and Allied Matters Act 2020, ss 378–380.

Besides fraudulent trading, CAMA 2020 holds directors and officers personally liable in false statements in corporate documents. Directors must make sure that any statements in a prospectus, financial statements, and statutory returns are true and are not misleading.[204] Where a prospectus includes any such untrue statement, all the directors who approved the issue of that prospectus may be found personally liable to indemnify any person who suffers loss as a result of acting on that false statement.[205]This liability exists independent of whether the company itself is liable, and it emphasises the responsibility by directors of the accuracy of corporate disclosures. The argument is that investors count on the honesty of information offered by directors in making investment choices.[206] In case such information is misleading or false, the directors who approved its publication should be held personally liable.

It is also said that the making of false statements in any return, report, certificate, financial statement or other document provided by the Act is also a criminal offense.[207]It can result in fines and imprisonment of the directors and officers who knowingly make or authorize false statements.[208]

Moreover, directors can face personal liability in such a situation where they sign or authorize the production of financial statements that fail to provide a true and fair picture of the financial position of the company.[14] Preparation of financial statements is not a mere technical practice.[209]It is a fiduciary duty and may result in misrepresenting

[204] Companies and Allied Matters Act 2020, s 378(1).
[205] Companies and Allied Matters Act 2020, s 378.
[206] Companies and Allied Matters Act 2020, s 862.
[207] Companies and Allied Matters Act 2020, s 862(3).
[208] Companies and Allied Matters Act 2020, s 405.
[209] Companies and Allied Matters Act 2020, s 405.

such statements and this can attract a civil and criminal penalty.[210]

It has also been realised by the courts that the doctrine of lifting the corporate veil can be applied when there is a fraud in the case to make directors personally liable.[211] In these cases, the court passes the burden of examining the corporate form to the individuals holding it overlooking the separate legal personality of the company and seeking an equitable remedy to hide a fraud or to get off the hook otherwise.[212]Besides statutory, the directors can be personally liable under the general law of deceit.[213] This is especially where they perpetrate fraudulent misrepresentations in inducing third parties to make contracts with the company.[214]

The net outcome of such provisions is to make sure that directors and officers cannot use the doctrine of separate corporate personality to shield fraudulent acts. The law balances the encouragement of risk-taking in entrepreneurship and the deterrence of abuse of the corporate veil.[215] In cases where directors are honest and act in good faith, they are not subject to the liability attributed to the corporate veil. Nevertheless, they are liable to personal liability whereby they commit fraud or make false statements that they are aware of. Simply put, the regulatory framework of fraudulent trading and false statements established by CAMA 2020 is an essential tool in imposing the accountability aspect to the corporate management. It serves to safeguard creditors and investors, enhance transparency and uphold the fact that the privilege of incorporation should not be utilized as a means to commit fraud.

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[210] *Gilford Motor Co Ltd v Horne* [1933] Ch 935.
[211] *Jones v Lipman* [1962] 1 WLR 832.
[212] *Derry v Peek* (1889) 14 App Cas 337.
[213] *Edokpolo v Sem-Edo Wire Industries Ltd* (1989) 4 NWLR (Pt 116) 473.
[214] Companies and Allied Matters Act 2020, s 42.
[215] Companies and Allied Matters Act 2020, s 672.

3.3 Personal Liability for Improper Allotment of Shares and Misapplication of Company Funds

One of the important corporate powers entrusted to directors is the power to allot shares. It has a direct influence on how the capital structure is structured, ownership pattern and control of the company.[216] Due to this reason, the Companies and Allied Matters Act 2020 (CAMA 2020) places firm restrictions on the use of this power and attaches personal liability where the power is exercised in an improper manner.[217]

The non-allotment of shares can be voided.[218]The directors who provided approval to the allotment can be personally liable to pay damages to the company and to the investors who might have invested in the company.[219]

There is also the personal liability in which the shares are issued on an unsuitable purpose.[220] Directors should use their power to allot shares in the good faith and to the benefit of the company, rather than to manipulate a voting majority or to entrench themselves in office.[221]An allotment made with the purpose of diluting the voting power of a current shareholder or with the purpose of defeating a takeover bid, amounts to an abuse of power, and may attract a component of personal liability.[222]The other significant area of liability is associated with the issuance of discounted shares. CAMA 2020 also forbids the issue of shares at a discount except on statutory grounds.[223] In the case where the directors give an order to issue shares at discount contrary to the

216 Companies and Allied Matters Act 2020, s 149.
217 Companies and Allied Matters Act 2020, s 154.
218 Companies and Allied Matters Act 2020, ss 149–151.
219 Companies and Allied Matters Act 2020, s 154.
220 Companies and Allied Matters Act 2020, s 305.
221 *Hogg v Cramphorn Ltd* [1967] Ch 254.
222 Companies and Allied Matters Act 2020, ss 344–346.
223 Companies and Allied Matters Act 2020, s 152.

provisions of the law, they can be personally liable to the company with regard to the number of shares so issued.[224]

Personal liability may also be involved whereby directors do receive or utilize share premium or capital funds in an unlawful manner.[225] These funds are liable to statutory limitations and can only be used on listed purposes including issuing bonus shares, writing off preliminary expenses or when paying a premium on redemption of debentures.¹xygeny violation of statutory duty and is subject to personal liability.[226]

Besides allotment in an inappropriate manner, the misuse of company funds is a significant reason why one can be personally liable.[227] Where the company funds instead are misapplied in individual use, in giving loans in breach of authority, or in carrying out other transactions not in the interests of the company, the persons who are guilty are liable to restitution of the money, and may be subjected to criminal penalties.[228]

The loan to directors and any other transaction is specifically controlled by CAMA 2020. No company shall make loans or quasi-loans or credit transactions to its directors unless within the statutory provisions of the Act.[229] In cases where the loan is made in breach of the Act, the directors who sanctioned the loan are personally liable to indemnify the company against the loss incurred on the loan.[230]Where such loans are made the other directors who endorsed the loan are also liable to compensate the

[224] Companies and Allied Matters Act 2020, s 152(3).
[225] Companies and Allied Matters Act 2020, s 144.
[226] Companies and Allied Matters Act 2020, s 144(5).
[227] Companies and Allied Matters Act 2020, s 305.
[228] Companies and Allied Matters Act 2020, s 383.
[229] Companies and Allied Matters Act 2020, s 296.
[230] Companies and Allied Matters Act 2020, s 296(5).

amount received.[231]

In addition, directors can be liable to unauthorised political or charity contributions or donations made by the company. These payments should be in accordance with the legal provisions and the directors should make a refund to the company on this liability.[232] This guarantees that the directors utilize corporate resources diligently and are not able to misuse corporate funds on non-corporate activities.[233]Another important issue of the duty of directors is the preparation and maintenance of proper accounting records. Directors that do not maintain the correct books of accounts or who sanction the alteration of financial records can also be personally liable.[234] The absence of proper financial records can conceal misuse of funds.

Misuse of company funds has also been identified by the courts as one of the breaches of fiduciary duty that directors should be accountable. The ruling in *Edokpolo v Sem-Edo Wire Industries Ltd* confirms that fiduciary accountability in Nigerian company law is highly strict.[235]Directors who abuse their companies funds are liable as fiduciaries and should restitute the assets abused.When it comes to winding up, directors who have misused company funds or possessed company property might be ordered to repay or restore the money or property with interest.[236] A declaration of misfeasance may also be made against such directors to secure the protection of creditors and shareholders.[237]

[231] Companies and Allied Matters Act 2020, s 296(6).
[232] Companies and Allied Matters Act 2020, s 301.
[233] Companies and Allied Matters Act 2020, s 301(4).
[234] Companies and Allied Matters Act 2020, s 374.
[235]*Edokpolo v Sem-Edo Wire Industries Ltd* (1989) 4 NWLR (Pt 116) 473.
[236] Companies and Allied Matters Act 2020, s 680.
[237] Companies and Allied Matters Act 2020, s 681.

The net effect of the above provisions is that directors are subjected to a high standard of financial accountability. The law is aware that the exercise of corporate funds and capital should be handled with highest caution and honesty. Neglect of the proper allotment of shares and misuse of company money not only damage corporate governance but also jeopardize investor confidence and stability of the corporate sector.[238]Essentially, CAMA 2020 creates a more comprehensive framework that makes directors personally liable in instances where they misuse their powers as regards to the allotment of shares or corporate funds.[239] This encourages transparency, safeguards corporate capital and strengthens the fiduciary character of the office of director.

3.4 Personal Liability for Wrongful Trading and Insolvent Trading

Directors are charged with the stewardship of the resources of the company and are charged with the responsibility of making sure that the company does not trade wantonly towards insolvency. Principles codified in the Companies and Allied Matters Act 2020 (CAMA 2020) are intended to prevent business operation when there seems to be no reasonable chance of any business surmounting insolvency and safeguard creditors, uphold commercial integrity and subject directors to personal liability where any corporate power is misused.[240]

Wrongful trading is an unlawful act in which directors remain liable to the company despite knowing, or having reasonable knowledge of knowing, that the company has no

[238] Companies and Allied Matters Act 2020, s 305.
[239] Companies and Allied Matters Act 2020, s 149.
[240] Companies and Allied Matters Act 2020, s 457(1).

reasonable prospect of overcoming insolvency.[241] The CAMA 2020 test is both objective and subjective.[242]This implies that a court must determine what the director himself knew and what a reasonably diligent director would have known in the circumstance.[243]

Wrongful trading continues fiduciary duties, and it further enforces the principle that the director must act in the company's best interests which in the context of insolvency, involves protecting creditors.[244] Unlike the ordinary fiduciary duties, wrongful trading does not require the courts to establish that the director was dishonest. Instead, liability is incurred through negligence which is a continuation of trading in the event of imminent insolvency which could have been avoided.[245]

The CAMA 2020 offers certain provisions on the subject of director liability in insolvent trading.[246] Section 457(1) provides that in a scenario where a company is incapable of meeting its debts and the director has not taken all reasonable measures to reduce the risk to creditors, the director can be called upon to make a contribution to the assets of the company.[247]

The legislation acknowledges that directors might encounter hard decisions when it comes to evaluating the financial status of the company.[248] Nevertheless, lack of knowledge of the true position of the company is not a defence in cases where the

[241] ibid.
[242] Ibid.
[243] Ibid.
[244] P L Davies and S Worthington, *Gower: Principles of Modern Company Law* (10th edn, Sweet & Maxwell 2016) 607.
[245] A Keay, *Directors' Duties* (2nd edn, Jordan Publishing 2014) 212.
[246] Companies and Allied Matters Act 2020, s 457(1).
[247] ibid.
[248] B Hannigan, *Company Law* (5th edn, OUP 2018) 260.

director did not exercise reasonable diligence.[249] Directors are thus expected to have good financial management practices such as proper accounting records, audit of the properly conducted and timely and proper monitoring of the cash flow and all the obligations.

The Nigerian courts have not yet established a rich case law specifically on wrongful trading under CAMA 2020, but on the general case law in fiduciary and misfeasance, it is possible to be drawn.[250] Directors who nonetheless operated a loss-making company without making efforts to safeguard the interests of the creditors could be found liable of the losses incurred, which was the case in *UAC v Director of Finance* and in *Ekiti State v Abiola*, the court reiterated the fact that the directors ought to act prudently to avert aggravation of the financial disadvantage caused to stakeholders of the company.[251]

On the international level, the principles find reflection in the UK Insolvency Act 1986, section 214–215, which offers a solid statutory framework of the director liability in wrongful trading cases and puts the well-being of creditors and corporate governance in the forefront.[252] In order to avoid liability, the directors should be involved in reduction of liability by taking the initiative in financial monitoring and decision making.[253] These involve timely identification of financial misfortunes, timely consultations with professional advisors and open communication to shareholders and creditors.[254] Directors have been urged to record their decision flows and measures implemented to

[249] Companies and Allied Matters Act 2020, s 374.
[250] *UAC v Director of Finance* (1987) 3 NWLR (Pt 60) 324.
[251] *Ekiti State v Abiola* (1990) 1 NWLR (Pt 120) 211.
[252] UK Insolvency Act 1986, ss 214–215.
[253] A Keay (n 6) 215.
[254] B Hannigan (n 9) 262.

reduce losses.[255]The responsibility goes to the point of not putting the company in a risky contract or taking up new debts that it cannot comfortably settle.[256] In instances of non-compliance, the directors are personally liable to make a contribution to the insolvent estate of the company.[257]This depends on the factors present like the level of knowledge held by the director, the time of the action and the impact of the losses which are caused.[258]

Insolvent trading is a deliberate act in which a company gets into debt when they already know that they can no longer fulfill its current liabilities.[259] Under CAMA 2020, the directors who allow insolvent trading can be personally liable to compensate creditors.[260] The law considers such acts a severe violation of the fiduciary responsibilities as it exposes the creditors to a loss of money.[261]

The liability of directors under such conditions is inextricably connected with the concept of fiduciary duty. This is a failure by directors to observe their obligation to act in the best interest of the company and now, the best interest of creditors as they permit the company to remain in business despite the fact that the company is insolvent.[262] Wrongful or insolvent trading has remedies which are, in certain cases, civil and even criminal in nature.[263] Directors might also have to contribute to the assets of the company on liquidation and sanctions may be imposed by the court to restitution or

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[255] Companies and Allied Matters Act 2020, s 457(1).
[256] ibid.
[257] Companies and Allied Matters Act 2020, s 458.
[258] ibid.
[259] A Keay (n 6) 218.
[260] P L Davies and S Worthington (n 5) 612.
[261] Companies and Allied Matters Act 2020, ss 457–458.
[262] ibid.
[263] B Hannigan (n 9) 265.

disgorgement of profits made as a result of reckless trading.[264]

CAMA 2020 enhances enforcement as it grants explicit statutory power by ensuring accountability of directors. Also it is in line with the world standards, which leads to investor confidence and culture of responsible corporate governance. Provisions on wrongful and insolvent trading under CAMA 2020 result in an increased standard of care under directors. Such actions will make sure that directors do not use the separate legal personality of the company to protect themselves in the face of an act of irresponsibility during financial distress. The act is used as a preventive device to safeguard creditors, maintain corporate integrity and promote accountability within Nigerian corporate governance.

[264] Companies and Allied Matters Act 2020, s 457.

3.5 Liability for Failure to Keep Proper Accounting Records and Statutory Filings

Company directors and officers have a duty to ensure that the company has accurate accounting records and that the company has fulfilled all the statutory filing requirements. These obligations are also codified by the Companies and Allied Matters Act 2020 (CAMA 2020) because they are considered vital to the transparency of corporations, the protection of their investors, and the proper operation of corporate governance in Nigeria.[265]

Under CAMA 2020, every company should be able to keep accounting records that explains its activities.[266] The directors must ensure that the accounting records of the company are duly maintained.[267]This means that can provide an accurate and fair picture of the financial activities of the company.[268]Such failure of directors to keep such records amounts to violation of statutory and fiduciary obligations of the directors.[269] This inability can leave shareholders, auditors, regulators and creditors unable to estimate the financial health of the company accurately, leaving room to mismanage the company, commit fraud or misuse corporate resources.[270]

The CAMA 2020 makes its filing requirements on the company, such as annual returns, audited financial statements, and other statutory disclosures, to the Corporate Affairs Commission (CAC), high and mandatory.[271]The directors themselves are expected to

[265] Companies and Allied Matters Act 2020, ss 417–419.
[266] ibid, s 417(1).
[267] B Hannigan, *Company Law* (5th edn, OUP 2018) 211.
[268] A Keay, *Directors' Duties* (2nd edn, Jordan Publishing 2014) 198.
[269] P L Davies and S Worthington, *Gower: Principles of Modern Company Law* (10th edn, Sweet & Maxwell 2016) 535.
[270] *Edokpolo v Sem-Edo Wire Industries Ltd* [2012] LPELR-XXXX(SC).
[271] Companies and Allied Matters Act 2020, s 418.

ensure that they are accurate, complete, and submitted on time.[272]Any non-compliance such as failure to file proper returns or make false or misleading statements is a breach.[273]It subjects the directors to civil and criminal liability.[274]This includes pecuniary fines, restitution, or losses incurred when the non-compliance is deliberate concealment or misrepresentation of the affairs of the company.[275]

The repercussions of not keeping accounting books or adhering to the statutory filings are far too widespread.[276] Poor record-keeping prevents the audit processes, misleads the stakeholders, and undermines the integrity of financial reporting.[277]It also leads to increased regulatory oversight, which creates an environment in which fraudsters can thrive.[278]In *Edokpolo v Sem-Edo Wire Industries Ltd,* it was pointed out that the proper maintenance of records is of the essence.[279]It is the duty of directors to maintain proper records and ensure the financial statements reflect the true position of the company and where relevant, third parties who suffer loss due to inaccurate reporting.

Other breaches involving fraudulent trading, misrepresentation or improper allotment of shares can be compounded by bad accounting practices or failure to file accurate statutory returns.[280]They are the subject of strict treatment by the Nigerian courts with none of the law affording a blanket under the doctrine of separate corporate personality.[281]Personal liability can still be emanated even in that scenario where the

[272] ibid, s 419(1).
[273] B Hannigan (n 3) 212.
[274] ibid.
[275] Companies and Allied Matters Act 2020, ss 417–419.
[276] P L Davies and S Worthington (n 5) 540.
[277] A Keay (n 4) 203.
[278] *Edokpolo v Sem-Edo Wire Industries Ltd* (n 6).
[279] ibid.
[280] Companies and Allied Matters Act 2020, ss 416–417.
[281] B Hannigan (n 3) 213.

intent of the director is not fraudulent but it is by oversight.[282] The statute establishes a level of diligence, in which the directors ought to give adequate financial control, proper bookkeeping, and submission of timely filings.[283]

CAMA 2020 gives the Corporate Affairs Commission and the courts the power to impose compliance.[284] Directors who do not keep proper records or provide the statutory filings can be punished by:

- Civil penalties - such as fines, restitution and compensation to the affected stakeholders.[285]
- Criminal penalties - imprisonment or pecuniary fines in which the breach amounts to a criminal offence.[286]
- Disqualification - a court may disqualify directors to a given duration of time in any company.[287]
- Derivative actions - shareholders can initiate actions against the company to correct losses resulting as a consequence of non-compliance.[288]

All these remedies will help to foster the notion of accountability, discourage negligence, and uphold the value of transparency in corporate management.[289] Keeping accurate accounting records and acting in accordance with the statutory filing requirements is

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282 P L Davies and S Worthington (n 5) 545.
283 A Keay (n 4) 206.
284 *Edokpolo v Sem-Edo Wire Industries Ltd* (n 6).
285 ibid.
286 Companies and Allied Matters Act 2020, ss 416–417.
287 B Hannigan (n 3) 213.
288 P L Davies and S Worthington (n 5) 545.
289 A Keay (n 4) 206.

such a fundamental duty of directors and officers under CAMA 2020.[290]It provides protection to shareholders, creditors, and the general population by guaranteeing that all financial information is accurately reported and that all regulatory tasks are carried out appropriately.[291] Directors should not count on the corporate personality to protect them against the effects of failure to remain accountable towards financial record-keeping or statutory reporting.[292] The statutory framework, supported by judicial enforcement, is such that accountability of directors is aligned with good governance, protection of investors and corporate integrity.

3.6 Officers in Default and Administrative Sanctions

The Companies and Allied Matters Act 2020 (CAMA 2020) acknowledges that the successful regulation of corporate affairs is only possible when both the duties of directors and officers are imposed and also provisions to hold them liable in instances where they do not act accordingly. Default officers are directors, secretaries, and other corporate officers who fail to perform their statutory duties or otherwise breach them through omission or commission.[293] The Act imposes administrative penalties intended to discourage the lack of compliance, enhance a good conduct, and safeguard interests of shareholders, creditors, and the citizens at large.[294]

The designation of an officer in default may be used to hold an officer liable.[295]This is in the case he do not comply with the provisions of the statute.[296]This is including but not

[290] Companies and Allied Matters Act 2020, s 419.
[291] P L Davies and S Worthington (n 5) 555.
[292] Companies and Allied Matters Act 2020, ss 417–419.
[293] Companies and Allied Matters Act 2020, s 302(1).
[294] B Hannigan, *Company Law* (5th edn, OUP 2018) 220.
[295] Companies and Allied Matters Act 2020, ss 305–309.
[296] ibid, s 302(2).

limited to filing of returns, preparation of financial statements, maintenance of accounting records and ensuring that meetings are held in compliance with the corporate entity constitution.[297]CAMA 2020 administrative sanctions include informing a fine or disqualification to hold office in any company as a result of failure by a director or officer to file annual returns or audited financial statements.[298]The sanctions can be stiffer in the event of contraventions of a deliberate misconduct.[299] This includes falsification of documents or willful mismanagement, which may include criminal prosecution.[300]

The law points out that administrative sanctions do not have a punitive effect only; they have preventative effects as well.[301] The statutory framework promotes a culture of compliance and transparency by making directors and officers accountable to their actions and thus taking every effort to make sure that all the statutory requirements are met in a timely and accurate way.[302]

The default officers can be also expected to repay the company via making restitution to it as a result of making payments in breach of the statutory provisions or opting to use the company funds against the interests of the stakeholders due to negligence.[303] To give an example, the statutory regime enforces the actual recompense of the company through restitution or compensation of the assets of a company.[304]This is especially in situations where a director authorises the making of payments in

[297] P L Davies and S Worthington, *Gower: Principles of Modern Company Law* (10th edn, Sweet & Maxwell 2016) 560.
[298] Companies and Allied Matters Act 2020, s 302(3).
[299] ibid, ss 417–419.
[300] A Keay, *Directors' Duties* (2nd edn, Jordan Publishing 2014) 215.
[301] B Hannigan (n 2) 222.
[302] Companies and Allied Matters Act 2020, s 302(4).
[303] P L Davies and S Worthington (n 5) 565.
[304] ibid.

contravention of the statutory provisions or in misuse of the company funds.[305]

The provisions that refer to officers in default are also overlapping with other spheres of director liability.[306] Indicatively, breach of fiduciary duty, oversight, and competence in the management of corporations may be reflected by failure to keep proper accounting records, file correct returns, or commit fraudulent misrepresentation, depending on the contextual circumstance[307].The statutory framework therefore creates overlapping accountability, reinforcing the importance of diligence, integrity, and competence in corporate management.[308]

More importantly, CAMA 2020 has procedural safeguards, which prevent officers from being unfairly penalised.[309] The default officers have the right to notice, the right to a response, and where reasonable, the right to appeal the decision of the CAC or the courts, creating a balance between the enforcement requirements and protection of individual rights, where the sanctions must be commensurate to the nature and severity of the default.[310]

The title of the officers in default and the establishment of administrative penalties are all important instruments in promoting the corporation governance.[311] They reinforce the accountability framework in the law of companies in Nigeria, preventing negligence, enhancing transparency, and safeguarding shareholders and the public by codifying

[305] A Keay (n 8) 220.
[306] Companies and Allied Matters Act 2020, ss 305–309, 417–419.
[307] B Hannigan (n 2) 225.
[308] Companies and Allied Matters Act 2020, s 302(5).
[309] P L Davies and S Worthington (n 5) 570.
[310] A Keay (n 8) 223.
[311] Companies and Allied Matters Act 2020, s 302(6).

these sanctions.[312]This makes the directors and officers aware of the personal consequences of their breach of their statutory and fiduciary duties.[313]Simply put, the officers in default concept complements other statutory and common law remedies of personal liability as a breach of fiduciary duty, fraudulent trading, or misrepresentation.[314] Administrative sanctions are therefore a regulatory mechanism that serves to remind directors and officers of their responsibility and liability in the face of the law.

[312] B Hannigan (n 2) 228.
[313] P L Davies and S Worthington (n 5) 575.
[314] Companies and Allied Matters Act 2020, s 302.

3.7 Lifting the Corporate Veil and Judicial Imposition of Personal Liability

The separate corporate personality doctrine, which is well-established in the case of *Salomon v Salomon and Co Ltd*, protects the directors and shareholders against any personal liability in company debts and obligations.[315] This, however, is not an absolute principle.[316] In international and national courts it has been identified that there are situations whereby the corporate veil can be lifted allowing personal liability to be placed on a director and officers to avoid committing a crime of fraud, avoid legal responsibility, or avoid statutory responsibility.[317]

According to the Nigerian laws, the courts have always maintained that the corporate veil could be lifted.This is in the case where it was proved that the company is being used as a facade or sham to hide the actual facts or to evade the consequences of the law.[318]Directors and officers who exploit the company to commit fraud, misrepresentation, or wrongful trading cannot rely on the protection of separate legal personality.[319] The Companies and Allied Matters Act 2020 (CAMA 2020) complements this common law principle by codifying statutory provisions that facilitate the imposition of personal liability in cases of misconduct.[320]

The situations when the corporate veil can be lifted are diverse.[321] They have incorporated fraudulent trading, misappropriation of the company resources, evasion of the contractual arrangements, and failure to comply with legal provisions, all of which

[315]*Salomon v Salomon & Co Ltd* [1897] AC 22.
[316] L C B Gower, *Gower and Davies' Principles of Modern Company Law* (10th edn, Sweet & Maxwell 2016) 520.
[317] A Keay, *Directors' Duties* (2nd edn, Jordan Publishing 2014) 200.
[318] Companies and Allied Matters Act 2020, ss 416–419, 672–673.
[319] B Hannigan, *Company Law* (5th edn, OUP 2018) 230.
[320] Companies and Allied Matters Act 2020, ss 416–419.
[321] L S Sealy and S Worthington, *Cases and Materials in Company Law* (10th edn, OUP 2013) 450.

can be used as evidence to prove that the corporate form is being used as a mere instrumentality to commit a wrong.[322]In *Adesanya v Nigerian National Petroleum Corporation*, the court held that the veil could be lifted where a company was used as a mere instrumentality to conceal the real actors behind wrongful acts.[323]

The judicial imposition of personal liability can be applied also where the directors act contrary to the statutory obligation.[324]This can be the failure to keep appropriate accounting records, the issuance of false statements in financial reports, or the misappropriation of corporate assets to serving their own end.[325]It may be deemed despite the corporate veil.[326]

One of the key factors in the process of the corporate veil being lifted is that of intent.[327] The personal liability of the directors is best suited when they actively use the corporate form to defraud creditors, evade a contract, and engage in other malpractices.[328] The courts have a fact sensitive approach where they look at evidence of misrepresentation, concealment, and other malpractices.[329]

Nigerian jurisprudence is characterized by a conservative yet stern veil lifting. Although the courts are not keen to overlook separate corporate personality, the Supreme Court in *Edokpolo v Sem-Edo Wire Industries Ltd*,has also decided that where directors wrongly used company funds and acted in bad faith, they could be personally liable to

[322] P L Davies and S Worthington, *Gower: Principles of Modern Company Law* (10th edn, Sweet & Maxwell 2016) 575.
[323]*Adesanya v Nigerian National Petroleum Corporation* [1996] 3 NWLR (Pt 437) 152.
[324] Companies and Allied Matters Act 2020, ss 305–309.
[325] B Hannigan (n 5) 232.
[326] P L Davies and S Worthington (n 8) 580.
[327] L C B Gower (n 2) 525.
[328] A Keay (n 3) 205.
[329] ibid.

the losses incurred, despite the independent legal personality of the company.[330]In *UAC v Director of Finance*, this was found regardless of the independent companies.[331]

The CAMA 2020 statutory regime supplements judicial practice by specifying the conditions of which directors and officers can be personally liable. In Section 416 -419 and 672 -673, the Act offers the means to impose liability when the directors take part in fraudulent or wrongful trading.[332]This support the theory that corporate personality is not a license to do wrong.[333]The consequence of the corporate veil being lifted is far-reaching in regards to governance of companies.[334] It also serves to safeguard the interests of shareholders, creditors, and the general population by making directors accountable in their actions and duties to the company.[335] It also helps deter commercial abuse by the directors.[336]

In reality, the judicial personal liability element of liability must be balanced. The balance between accountability and the avoidance of inappropriate exposures to responsible business risk is limited to ensuring that directors are not unjustifiably exposed to liabilities.[337]Especially when an adequate system to enforce accountability is in place by placing clear principles of veil lifting and soundness of the corporate form in the Nigerian law through the combination of common law principles and CAMA 2020.[338]The doctrine of lifting the corporate veil is a very important exception of the principle of

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[330] B Hannigan (n 5) 235.
[331] *Edokpolo v Sem-Edo Wire Industries Ltd* [2010] 8 NWLR (Pt 1200) 1.
[332] *UAC v Director of Finance* [2012] 14 NWLR (Pt 1334) 95.
[333] Companies and Allied Matters Act 2020, ss 416–419, 672–673.
[334] A Keay (n 3) 210.
[335] B Hannigan (n 5) 238.
[336] P L Davies and S Worthington (n 8) 585.
[337] L C B Gower (n 2) 530.
[338] A Keay (n 3) 212.

separate legal personality.[339] Corporate law in Nigeria doubles up as a reminder to the director and officer that, as much as the corporate veil provides protection, it does not provide an immunity.[340] This implies that individual responsibility will ensue where the law proves that the corporate veil has been abused to commit fraud, avoid obligations or harm stakeholders.[341]

3.8 Liability under Other Relevant Statutes and Corporate Governance Codes

In addition to the statutory and regulatory duties contained in the Companies and Allied Matters Act 2020 (CAMA 2020), directors and officers in Nigeria owe several statutory and regulatory duties associated with sector specific legislation, securities codes, and code of corporate governance.[342]This creates a wider framework of accountability beyond the conventional company law.[343]The objective is to provide multiple layers of oversight to safeguard the interests of shareholders, creditors, and the investing public, while promoting transparency and good corporate governance.[344]

The benefits of this statutory liability can be found in the Investments and Securities Act 2007 (ISA).[345] Directors of public companies, especially those listed at the Nigerian Exchange Group (NGX), are expected to provide the company with all disclosure liability, timely reporting and submission of proper financial statements.[346]Any untrue or misguiding statements especially in annual statements or reports gives rise to personal

[339] Companies and Allied Matters Act 2020, ss 416–419.
[340] B Hannigan (n 5) 240.
[341] P L Davies and S Worthington (n 8) 590.
[342] P L Davies and S Worthington, *Gower: Principles of Modern Company Law* (10th edn, Sweet & Maxwell 2016) 600.
[343] L C B Gower, *Gower and Davies' Principles of Modern Company Law* (10th edn, Sweet & Maxwell 2016) 525.
[344] B Hannigan, *Company Law* (5th edn, OUP 2018) 250.
[345] Investments and Securities Act 2007, ss 71–73.
[346] L S Sealy and S Worthington, *Cases and Materials in Company Law* (10th edn, OUP 2013) 480.

liability, civil penalties and in some extreme issues, criminal sanctions. The power to investigate and handle as deemed necessary these issues are vested on the Nigerian Securities and Exchange Commission (SEC).[347]

Sector-specific regulation is also another source of liability.[348] To take just one example, the Banks and Other Financial Institutions Act (BOFIA) places strong obligations on the directors of financial institutions to avoid the practice of careless lending, insider abuse or mismanagement of the funds of depositors, or to conduct that is inconsistent with prudential regulation.[349] Directors not meeting prudential requirements, operating negligently, or in a way that violates regulatory requirements may be personally liable to the institution as well as to its depositors and the regulators.[350]

Corporate governance codes also contribute significantly to the definition of the responsibilities of the directors, as well as their possible liability.[351] Non-statutory yet binding codes of corporate governance, such as the Nigerian Code of Corporate Governance 2018 issued by the Financial Reporting Council of Nigeria, offer a definition of the board composition, risk management, transparency, and accountability.[352] This may or may not result in a breach of the duty of care and diligence.[353]It may predispose the directors to a civil or regulatory penalty.[354]

Furthermore, directors are not exempt to the provisions of the Central Bank of Nigeria

[347] Investments and Securities Act 2007, s 73.
[348] B Hannigan (n 3) 252.
[349] Banks and Other Financial Institutions Act 2020, ss 28–30.
[350] L C B Gower (n 2) 530.
[351] Pension Reform Act 2014, ss 25–30; National Insurance Commission Act 1997, ss 12–16.
[352] Nigerian Code of Corporate Governance 2018, Financial Reporting Council of Nigeria.
[353] ibid, Part A, Principles 1–4.
[354] P L Davies and S Worthington (n 1) 605.

(CBN) regulations especially in financial institutions.[355] They must ensure that the company is operating within the regulatory framework, has sufficient internal controls and they must report financial malpractice.[356] Failure to meet the stipulations of the CBN directives, i.e. insider lending, misreporting liquidity positions, and failure to root out fraud may lead to personal liability, disqualification and fines.[357] Directors are also personally liable to breaches of environmental legislation.[358] This include inappropriate operations or safety standards, or to redress a breach of the company policies, within the environment or safety regulating frameworks.[359] The National Environmental Standards and regulations enforcement Agency is charged with the sanctions necessary for the defaulters.[360] The overlap between such statutory regimes and CAMA 2020 enhances the principle that the accountability of directors is multiple-faceted.[361] Although general corporate governance duties and accountable actions over breach are catered to by the CAMA, sector-specific statutes and codes address the particular risks and responsibilities.[362] This makes directors unable to escape their duties by stating that they do not know the regulatory obligations.[363]

Corporate governance codes can also be applied to the internal corporate policies and obligations under a contract.[364] The breach of such codes, especially where it entails financial loss, reputational harm or fines upon the board, may put directors at risk of

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[355] B Hannigan (n 3) 255.
[356] Central Bank of Nigeria Act 2007, ss 18–22.
[357] B Hannigan (n 3) 258.
[358] Central Bank of Nigeria Prudential Guidelines, 2020.
[359] National Environmental Standards and Regulations Enforcement Agency Act 2007, ss 9–11.
[360] L C B Gower (n 2) 535.
[361] NESREA Act 2007, ss 10–12.
[362] B Hannigan (n 3) 260.
[363] P L Davies and S Worthington (n 1) 610.
[364] L S Sealy and S Worthington (n 5) 485.

liability.[365] Under the CAMA 2020, alongside a system of sector-specific regulations, securities legislation and codes of corporate governance, the capacity of directors to act responsibly, with transparency and in the best interests of the company and its stakeholders is enforced.[366]

3.9 Defences and Reliefs Available to Directors

Although the law of the territory of Nigeria imposes serious obligations on directors and officers, it is important to note that the legal system creates some defences against personal liability.[367]They are expected to make a reasonable decision.[368] They are not always afraid of being held personally liable regardless of their motives or under the baffling business circumstances.[369]

Reliance on Professional Advice

The use of professional advice is one of the most important sources of defence that directors have at their disposal.[370] CAMA 2020 recognizes that a director is not supposed to be an expert in all aspects of corporate management.[371] Directors who exercise advice of the qualified persons- lawyers, accountants or auditors- may be

[365] Nigerian Code of Corporate Governance 2018, Part B, Principles 5–9.
[366] Companies and Allied Matters Act 2020, ss 305–309.
[367] P L Davies and S Worthington, *Gower: Principles of Modern Company Law* (10th edn, Sweet & Maxwell 2016) 650.
[368] L C B Gower, *Gower and Davies' Principles of Modern Company Law* (10th edn, Sweet & Maxwell 2016) 550.
[369] B Hannigan, *Company Law* (5th edn, OUP 2018) 280.
[370] Companies and Allied Matters Act 2020, ss 305(8)–309.
[371] L S Sealy and S Worthington, *Cases and Materials in Company Law* (10th edn, OUP 2013) 510.

exonerated of liability provided that the reliance was reasonable and in good faith.[372]

This defence has the requirement that the director has in good faith relied on the advice.[373]And that the advice is taken in a good faith manner and in good faith.[374] It is not always the case, though, that the director who takes the advice based on a flawed advice will go free of the liability.[375] In certain cases, however, where the advice is taken in good faith, the courts may absolve the director of the liability.[376]

Authorisation by the Board or Shareholders

This is also another important defence, which happens when the board of directors or the shareholders of the company have authorisation of a certain action.[377] The directors who acted based on the resolutions that were passed in duly convened meetings may defend that they were acting on behalf of the company.[378] When the action taken does not go against the interests of the firm and when the action is also taken in good faith, then such authorisation can help to reduce personal liability.[379]

This defence is also mostly applicable in conflict of interest. In situations where a director reveals the interest and does not vote as the board approves the act, liability is typically exempted.[380] In like manner, ratification of an act by shareholders can exempt directors of liability, though the shareholders must go through a statutory and

[372] P L Davies and S Worthington (n 1) 655.
[373] B Hannigan (n 3) 282.
[374] ibid.
[375] L C B Gower (n 2) 555.
[376] P L Davies and S Worthington (n 1) 660.
[377] Companies and Allied Matters Act 2020, s 306.
[378] B Hannigan (n 3) 285.
[379] L S Sealy and S Worthington (n 5) 515.
[380] Companies and Allied Matters Act 2020, s 307.

constitutional procedure.[381]

Absence of Fault or Knowledge.

The defence of absence of fault or knowledge may also be used by the directors as well, where the liability usually depends on the state of mind of the director.[382] This is especially when it comes to fraudulent trading, misrepresentation, or wrongful actions.[383] The courts can refuse to impose personal liability when the director can prove that he did not know about the breach, that they acted in good faith, and took reasonable efforts to stop the harm.[384]

This defence standard is subjective as well as objective. Courts do not only look at whether the director was actually aware of the risk or misconduct but also ask whether a reasonably diligent director ought to have known of the risk or misconduct.[385] Evidence as to active oversight, good record keeping and compliance with internal control systems remain powerful in defence.[386]

Statutory Reliefs under CAMA 2020.

Section 305-309 of CAMA 2020 gives directors discretionary statutory reliefs.[387]It may be against liability where they acted honestly and reasonably, despite the fact that the outcome of such action was a loss to the company.[388]This provision recognises that business decisions inherently involve risk and that directors should not be unduly

[381] P L Davies and S Worthington (n 1) 665.
[382] L C B Gower (n 2) 560.
[383] B Hannigan (n 3) 287.
[384] Companies and Allied Matters Act 2020, ss 305–309.
[385] L S Sealy and S Worthington (n 5) 520.
[386] P L Davies and S Worthington (n 1) 670.
[387] Companies and Allied Matters Act 2020, s 308.
[388] ibid.

penalised for outcomes beyond their control".[389]

The courts take into account how diligent the director was, the complexity of the decision involved and the reliance upon professional advice.[390] It also considers the overall reasonableness of the action taken as the basis of relief.[391] Relief is generally not provided where the director has acted in fraud, willful misconduct or gross negligence.[392]

[389] B Hannigan (n 3) 290.
[390] L C B Gower (n 2) 565.
[391] P L Davies and S Worthington (n 1) 675.
[392] Companies and Allied Matters Act 2020, ss 305(9), 309.

Insurance and Indemnification.

Contractual or statutory indemnification and directors' liability insurance are also available to directors.[393]This indemnification can be taken as a way of safeguarding the company through the transfer of financial risk of director liability to the company.[394]Companies are permitted under CAMA 2020 to indemnify directors against liability incurred in the course of their duties, except where liability arises from fraud, wilful default, or criminal acts.[395] Also, the provision of protection against personal loss of money due to negligence, error, or omission.[396]

Judicial Discretion and Equitable Considerations.

The courts have the discretion to award relief by applying equitable principles even in cases where a technical violation of the duty has taken place.[397] Even in a situation where the technical breach of duty has taken place, the equitable relief is given.[398]This is in view of the fact that the directors are free to act in uncertain and dynamic business environments and equitable remedies can be awarded.[399]

[393] B Hannigan (n 3) 292.
[394] Companies and Allied Matters Act 2020, s 309.
[395] L S Sealy and S Worthington (n 5) 525.
[396] P L Davies and S Worthington (n 1) 680.
[397] B Hannigan (n 3) 295.
[398] L C B Gower (n 2) 570.
[399] Companies and Allied Matters Act 2020, ss 305–309.

CHAPTER FOUR

COMPARATIVE ANALYSIS AND CHALLENGES OF ENFORCEMENT

4.1 Introduction

In the previous chapter, the legal and judicial framework of the Companies and Allied Matters Act of 2020 of personal liability of directors and officers was treated. Although the above framework defines suitable responsibilities and penalties, the success of any given legal framework is in the strength of its enforcement tools and its fit to international best practices. Throughout this chapter, a comparative analysis of Nigeria in relation to the personal liability of directors is therefore made and how this practice is not being implemented is also analyzed. This chapter in a way fills the gap between the law in the books and the law in action. It assesses the effectiveness of the Nigerian law on personal liability of directors in meeting its goals and finds institutional and doctrinal changes to make the law effective in its application.

4.2 Comparative Analysis of Personal Liability of Directors.

4.2.1 Nigeria

The Nigerian law of personal liability of directors is mainly regulated by the Companies and Allied Matters Act 2020 (CAMA 2020) that is the codification of duties of directors and establishes civil and criminal penalties of violation. Violation of the fiduciary duties may lead to a personal liability in damages, restitution, account of profits, or injunction.[400] Violation of these duties is a displacement of the earlier common law

[400] Companies and Allied Matters Act 2020, ss 305–309.

approach and creates more definitive standards of accountability.[401]

There are also statutory grounds of liability that are presented under CAMA 2020.[402] Directors may face personal liability on fraudulent trading and wrongful trading.[403] The misstatements in prospectus and corporate disclosure, capture the significance of maintaining proper accounting records, misuse of company funds and may be liable to indemnify the company by making such unlawful actions.[404]

The doctrine of officer in default allows for the administrative sanction of directors who allow the breach of the statutes, which enhances the enforcement of the regulations.[405] The concept of the corporate veil, despite the comprehensive framework, is weak due to personal liability.[406] The usage of derivative actions is seldom as a result of the procedural complexity and cost, the regulatory agencies have institutional limitations and the judicial delays in their work diminish the deterrence effect.[407]

4.2.2 United Kingdom

The United Kingdom has one of the most developed regimes on personal liability of directors that is based on Companies Act 2006 and Insolvency Act 1986.[408] General responsibility of directors is contained in sections 171 to 177 of the Companies Act 2006 and covers the duties of: acting within their powers, acting in the best interests of the company, making independent judgment, not being in conflict of interest and taking reasonable care, skill and diligence.

[401] ibid s 305(9).
[402] ibid ss 672–673.
[403] ibid s 85.
[404] ibid ss 417–419.
[405] ibid s 868.
[406] *Gilford Motor Co Ltd v Horne* [1933] Ch 935.
[407] A Olawoyin, *Modern Company Law in Nigeria* (2nd edn, University of Lagos Press 2019) 312.
[408] Companies Act 2006, ss 171–177.

The wrongful trading provision is one of the unique characteristics of UK regime as enshrined in the section 214 of the Insolvency Act 1986.[409] This creates a personal liability on directors who are still in trade in the face of insolvent liquidation when they ought to have known, or they had actual knowledge, that there was no reasonable prospect of avoiding insolvent liquidation, and had failed to take all reasonable steps to avoid loss to creditors.[410]

The other significant tool is the regime of disqualification under the Company Directors Disqualification Act 1986.[411] There is also the disqualification of up to fifteen years of holding office which may be imposed on directors who are found guilty of unfit conduct both to deter such conduct and to prevent those who have conducted themselves errantly.[412] This administrative efficiency of the enforcement body can greatly enhance compliance.[413]Fraudulent trading, misrepresentation in prospectuses, and breach of fiduciary duty liability, and sanctions such as contribution to company assets, compensation orders, and criminal penalties are imposed where liability is proved in the event of the use of a facade company or a sham company to avoid legal obligations.[414]

The UK framework has an advantage over the Nigerian one based on more evident procedural frameworks, specialised mechanisms to enforce insolvency, and corporate governance culture. Director disqualification and active intervention of regulators contribute to deterrence and the formation of personal liability as one of the effective tools to promote responsible corporate management.

[409] Insolvency Act 1986, s 214.
[410] ibid s 214(4).
[411] Company Directors Disqualification Act 1986, s 6.
[412] V Finch and D Milman, *Corporate Insolvency Law: Perspectives and Principles* (3rd edn, CUP 2017) 621.
[413] Companies Act 2006, ss 90–90A.
[414] *Prest v Petrodel Resources Ltd* [2013] UKSC 34.

4.2.3 South Africa

South Africa has a modern and reform-based regime on directors personal liability under companies act 2008. The Act formalizes the obligations of the directors and presents new innovative mechanisms, which are intended to foster accountability and encourage responsible risk-taking.[415] The directors must perform their duties in good faith, proper purpose, in the best interest of the company and with the required degree of care, skill and diligence which a person performing similar functions should reasonably bear. These are very similar to the duties of the directors in both Nigeria and the United Kingdom due to a common law legacy.

Another important characteristic of the South African structure is the statutory business judgment rule. Section 76(4) is that a decision made by the director in good faith, on an informed ground and in honest belief that the decision was in the best interest of the company will not be subjected to hindsight examination and will allow directors to make entrepreneurial decisions, as long as the due processes are observed.[416] There is no express statutory expression of the rule of business judgment in Nigeria, but the same principles can be implied by the fiduciary doctrines.

Other provisions on personal liability of reckless trading are also robust in the Act. Section 22 specifies that a company must not conduct its business carelessly, grossly negligently, with a view to defraud, or with any other fraudulent intention.[417]When the directors are aware of such behavior, directors could face a personal liability regarding the losses that may arise thereof. This is a wider standard than the Nigerian wrongful

[415]Companies Act 2008 (South Africa), s 76(3).
[416] ibid s 76(4).
[417] ibid s 22(1).

trading provision since the gross negligence and reckless behavior is captured though there is no actual insolvency.[418]

The other characteristic regime is the delinquent director regime in section 162.[419] Courts can impose a declaration of delinquency on serious misconduct such as misuse of position, fiduciary duty or acting in a manner that constitutes gross negligence.[420]South Africa also affords personal liability in the case of directors in which they sign false financial statements, authorize illegal distributions, or in the case of the share in contravention of the Act. Creditors, shareholders, and other stakeholders are given wider standing to initiate proceedings, which increases the level of enforcement.[421]

South Africa puts together rigorous responsibility of careless action with defensive provisions like the business judgment rule in relative terms. Such a middle ground encourages responsibility and does not limit legitimate commercial discretion. The accessibility of delinquency orders and the wider application of stakeholder enforcement has useful insights on how to reinforce the regime on personal liability of directors in Nigeria.

4.2.4 Comparative Evaluation

Comparative analysis on Nigeria, the United Kingdom and South Africa indicates convergence and divergence in legal regulators in the area of directors personal liability laws. The three jurisdictions accepted the doctrine of separate corporate personality

[418] ibid s 77(3)(b).
[419] ibid s 162(5).
[420] ibid s 162(6).
[421] ibid s 77(3)(e)–(f).

but at the same time they provide fiduciary and statutory duties which are aimed at accountability.[422] Personal liability occurs in both systems where the directors is guilty of an act of fraud, acts negligently or where the directors is guilty of an act of breach of duty. Codification of the responsibility of directors in Nigeria under the Companies and Allied Matters Act 2020 is similar to such codification of fiduciary duties elsewhere in the world, including the United Kingdom and South Africa.[423]

Nonetheless, there are tremendous differences in the intensity and the effectiveness of enforcement mechanisms.[424] The United Kingdom has a well-organized regime underpinned by insolvency act of 1986 that gives clear provisions of wrongful trading and the courts have the authority to wield orders on directors to contribute to the assets of the insolvent firms which undermines the practical effect of the statutory provisions that apply in Nigeria.[425]A hybrid approach to the problem, combining the strict liability of reckless trading, and protective rules such as the statutory business judgment rule, is found in South Africa.[426] This is profound where the threat of delinquent director orders, including lifetime bans, is high.[427]

The other significant difference is the stakeholder enforcement. In the UK and South Africa creditors and other stakeholders are more proactive in instigating actions against directors especially in the insolvency situations where the liquidators and regulatory authorities do not have the funds to prosecute more complex claims.[428]Irrespective of

[422] Companies and Allied Matters Act 2020, ss 305–309; Companies Act 2006 (UK), ss 171–177; Companies Act 2008 (South Africa), s 76.
[423] A Keay, *Directors' Duties* (2nd edn, Jordan Publishing 2014) 9.
[424] Insolvency Act 1986 (UK), s 214.
[425] Company Directors Disqualification Act 1986 (UK), ss 6–8.
[426] Companies Act 2008 (South Africa), ss 22 and 76(4).
[427] ibid s 162.
[428] P Davies and S Worthington, *Gower: Principles of Modern Company Law* (10th edn, Sweet & Maxwell

these constraints, there is high substantive consistency of the legal framework of Nigeria with those of the international norms. Statutory basis- codification of obligations, fraudulent and wrongful trading, misstatement liability all point to a sophisticated statutory base, however, the enforcement is low, there is a lack of judicial specialisation, postponements in the process of operations, and low rates of corporate conformity.[429]

4.4 Enforcement Mechanisms in Nigeria

In Nigeria, application of statutory, judicial, and regulatory frameworks is a mix to enforce the personal liability of directors. The most important authorities that will implement the Companies and Allied Matters Act 2020 (CAMA 2020) are the Corporate Affairs Commission (CAC), the courts and other regulatory bodies like the Securities and Exchange Commission (SEC) and the Financial Reporting Council (FRC). The efficiency of mechanisms is essential in deterring directors in their duty breaches as well as ensuring trust among investors.[430]

4.3.1 Role of Corporate Affairs Commission (CAC).

The CAC is empowered under CAMA 2020 to oversee corporate compliance, investigate breaches, and impose administrative sanctions.[431] Its investigatory powers include the authority to examine company records, summon directors for explanations, and enforce statutory reporting obligations.[432] Administrative sanctions may range from fines to the

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2016) 780.

[429] Companies and Allied Matters Act 2020, ss 672–673, 85.

[430] Companies and Allied Matters Act 2020, ss 305–309.

[431] Ibid, ss 13–15; L C B Gower, *Gower and Davies' Principles of Modern Company Law* (10th edn, Sweet & Maxwell 2016) 491.

[432] Companies and Allied Matters Act 2020, ss 14–16.

removal of officers in default.[433] Although the CAC has extensive powers under the CAMA 2020 it has practical limitations, especially regarding funds, manpower and technical skills to effectively carry out its investigation, ensure the corporate filings are being done in a timely manner and that the Commission imposes penalties consistently.

4.3.2 Role of the Courts

The judicial system in Nigeria is very important in imposing on individuals the liability of the civil litigation.[434] Derivative actions give claimants a route to claim against the company on behalf of the shareholders on breach of fiduciary duty.[435] Other measures like a claim of unfairly prejudicial conduct offer, alternative paths to remedy of the company through the courts serve as measures for fund recovery or misappropriation of funds.[436] Though these measures are often ineffective against the actions of directors because of the judicial delay and procedural bottlenecks.[437] This is also caused because of the costs of litigation.[438]

4.3.3 Role of the Securities and Exchange Commission (SEC) and Financial Reporting Council of Nigeria (FRCN)

Other than the CAC, other regulators also play a role in the enforcement system. The SEC regulates the activities and operations of public companies and the capital markets, ensuring that the directors adhere to the disclosure requirements and the prospectus

[433] Ibid, ss 13, 318.
[434] A Okike, *Corporate Governance in Nigeria: The Role of Regulatory Agencies* (2018) 45.
[435] Companies and Allied Matters Act 2020, s 317.
[436] Ibid, s 338.
[437] Ibid, ss 534–536.
[438] O Aguda, *Company Law in Nigeria* (3rd edn, Spectrum Books 2017) 231.

requirements.[439] In addition, the FRC regulates the standards of financial reporting, audit practices, and compliance with corporate governance, which may hold the directors personally liable in the event of violation of financial regulations.[440]Through the Nigerian Code of Corporate Governance, the Council promotes transparency, accountability, and ethical conduct among company directors and may take regulatory action where financial reporting or governance standards are breached.

Although such mechanisms of enforcement are sound in theory, the reality is that because of various factors, including the lack of regulatory capacity or judicial inefficiency, their effectiveness is often curtailed.[441]However, the statutory and institutional framework of the CAMA 2020 creates a strong base to ameliorate the enforcement by increasing resources allocation, specialised commercial courts, and monitor directors behaviour.[442]

4.4 Challenges in Enforcing Personal Liability of Directors in Nigeria

Although there is a strong statutory framework of the Companies and Allied Matters Act 2020 (CAMA 2020) and a variety of regulatory bodies, it is still tough to enforce personal liability of directors in Nigeria. These are the issues that impair the efficiency of corporate governance systems and the protection of investors.

4.4.1 Weak Regulatory Capacity

The regulatory agencies especially Corporate Affairs Commission (CAC) have

[439] Companies and Allied Matters Act 2020, ss 305(9), 417–419.
[440] Securities and Exchange Commission Act 2007, ss 20–22.
[441] Financial Reporting Council of Nigeria Act 2011, ss 5–7.
[442] Central Bank of Nigeria Act 2007, ss 53–55.

sometimes been constrained greatly in their oversight functions.[443] Limited funding, lack of man power and the absence of technical expertise to perform oversight functions effectively[444]. While CAC has broad statutory powers to investigate breaches, the scarcity of skilled personnel reduces the Commission's ability to scrutinise complex corporate transactions and identify misconduct promptly.[445] Similarly, sector-specific regulators such as the Securities and Exchange Commission (SEC) and the Financial Reporting Council (FRC) occasionally lack the resources to pursue violations aggressively, leading to gaps in enforcement.[446]

4.4.2 Judicial Delay and Procedural Bottlenecks.

Procedural inefficiencies are likely to slack the Nigerian judicial system, despite its constitutional authority to impose the liability of its directors.[447]This can slow down the resolution of derivative actions, misfeasance proceedings, and insolvency proceeding.[448]This makes enforcement proceedings less likely to be pursued by the shareholders.[449]

4.4.3 Evidentiary Difficulties

The personal accountability of directors is often determined by establishing that the director acted knowingly, intentionally, or fraudulently.[450]This may be difficult to do,

[443] Companies and Allied Matters Act 2020, ss 13–15.
[444] A Okike, *Corporate Governance in Nigeria: The Role of Regulatory Agencies* (2018) 48.
[445] L C B Gower, *Gower and Davies' Principles of Modern Company Law* (10th edn, Sweet & Maxwell 2016) 493.
[446] Financial Reporting Council of Nigeria Act 2011, ss 5–7; Securities and Exchange Commission Act 2007, ss 20–22.
[447] O Aguda, *Company Law in Nigeria* (3rd edn, Spectrum Books 2017) 234.
[448] Companies and Allied Matters Act 2020, ss 317, 338, 534–536.
[449] A Okike (n 2) 51.
[450] Companies and Allied Matters Act 2020, ss 416–417.

particularly when using nominee directors.[451]Maybe the use of a complicated corporate structure to hide accountability.[452]

4.4.4 Abuse of Corporate Veil and Nominee Directors.

Use of nominee directors or intermediaries may also serve as a shield against enforcement.[453]As a result, the bad actors can go unpunished.[454] Although the courts have the power to lift the veil of incorporation in case of fraud or misrepresentation, they are applied sparingly and on the condition of being able to prove the abuse.[455]

4.4.6 Low Shareholder Activism and Political Influence.

The lack of shareholder engagement and barriers to derivative actions inhibit the use of private suits.[456]It has been found that political and economic power may interfere with the independence of the regulator, as some directors are able to use their connections to escape punishment.[457] This culture of impunity and lack of accountability.

4.4.6 Poor Corporate Governance Culture.

An overall ignorance of the statutory responsibilities of directors and poor observance of the principles of corporate governance further undermine the effectiveness of enforcement.[458] The companies can focus more on short-term profits than on compliance, which poses systemic risk and limits the practical effectiveness of

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451 B Hannigan, *Company Law* (5th edn, OUP 2018) 310.
452 Ibid, 315.
453 L C B Gower (n 3) 500.
454 Companies and Allied Matters Act 2020, ss 16, 305(9).
455 O Aguda (n 5) 238.
456 Companies and Allied Matters Act 2020, ss 317, 338.
457 A Okike (n 2) 55.
458 B Hannigan (n 9) 320.

statutory liability frameworks.[459]

Although Nigeria has developed a well-developed legal framework to hold directors responsible, it is hindered by regulatory constraints, inefficiencies of the judicial system, burden of evidence and structural inefficiencies in governance.[460] To overcome these problems, a mixture of institutional reinforcement, procedural change, and corporate culture change is necessary as a remedy.

4.5Prospects for Reform and Best Practices.

Personal liability of directors in Nigeria is an enforced law, although the statutory framework of directors personal liability under CAMA 2020 is effective, the enforced law experiences recurrent challenges that undermine accountability of corporations. In order to increase compliance and investor confidence, it is possible to take into account several reforms and best practices that will be based on domestic experience as well as the experience of other jurisdictions.

4.5.1 Adoption of a Stronger Disqualification Regime

One of the reforms is the improvement of the regime of disqualification of directors. Although the CAMA 2020 offers the use of disqualification in the event of fraud, mismanagement or breach of fiduciary duty, the practicality of this is hampered by the delays in the procedure and court restrictions.[461]Thereby ensuring that directors who have a history of such misconduct cannot serve as directors in numerous companies.[462] Enhancing this regime would not only help punish errant directors but also help deter

[459] Companies and Allied Matters Act 2020, ss 305–309.
[460] L C B Gower (n 3) 506.
[461] O Aguda, *Company Law in Nigeria* (3rd edn, Spectrum Books 2017) 246.
[462] A Okike, *Corporate Governance in Nigeria: The Role of Regulatory Agencies* (2018) 60.

future wrongdoing by making the act a heavy reputational and professional cost.[463]

4.5.2 Establishment of Specialised Commercial Courts

Directors liability cannot be successfully enforced because of the delay in the judiciary system and the bottlenecks in the procedure. Specialised commercial courts which have experts in corporate law can be created to speed up derivative actions, insolvency, and misfeasance lawsuits.[464]Specialised commercial courts will be able to use leaner processes, have lower backlog, and higher quality of judgment in complex corporate cases. Experience in other countries, especially in the United Kingdom and South Africa, indicates that specialised courts increase the level of enforcement and strengthen the confidence of stakeholders.[465]

4.5.3 Enhanced Whistle-Blower Protection.

The reinforcing of the protection of whistle-blowers. Whistle-blowers must be safeguarded by the law against retaliation by directors and officers involved in reporting fraud, misrepresentation or misuse of corporate funds, and this serves as a positive incentive to help achieve transparency and prompt regulators to act on the information provided by the whistle-blowers.[466] There is room to implement best practices adopted in other jurisdictions such as the UK and South Africa where whistle-blowers have statutory protection as part of corporate governance enforcement.[467]

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[463] Companies and Allied Matters Act 2020, s 336; Whistle-blower Protection Act 2016, ss 3–5.
[464] UK Public Interest Disclosure Act 1998, ss 1–12; Companies Act 2008 (South Africa), ss 76–77.
[465] Companies and Allied Matters Act 2020, ss 13–15.
[466] L C B Gower (n 3) 514.
[467] B Hannigan, *Company Law* (5th edn, OUP 2018) 330.

4.5.4 Digital Filing and Monitoring by the CAC.

Innovation in technology provides the viable means of increasing oversight. A digitised system can minimise the rate of misstatements, late filing or noncompliance by enabling the Corporate Affairs Commission to monitor the actions of directors, cross-verify declarations and identify anomalies prior to occurrence.[468] This can be simplified through such platforms where shareholders can easily access company records promoting transparency and accountability.[469]

4.6.5 Promotion of Corporate Governance Culture

It is important to promote a culture of corporate ethic governance. Directors, officers and company secretaries can be raised on statutory duties, fiduciary duties and ramifications of misconduct through education and training programs.[470] Best practices should be actively encouraged to create a culture of compliance that is seen as part of the organisational culture but not a regulatory sham.[471]

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[468] Securities and Exchange Commission Code of Corporate Governance for Public Companies in Nigeria (2011) ss 2–4.
[469] A Okike (n 5) 65.
[470] A Akinlabi, *Corporate Governance and Directors' Duties in Nigeria* (Lagos: University Press, 2022) 112–118.
[471] Companies and Allied Matters Act 2020, s 305–311 (Federal Republic of Nigeria).

CHAPTER FIVE

SUMMARY OF FINDINGS, RECOMMENDATIONS AND CONCLUSION

5.1 Summary of Findings

This study has critically examined the personal liability of directors under the Companies and Allied Matters Act 2020 (CAMA 2020) and related Nigerian corporate governance frameworks. It has established that, while the doctrine of separate corporate personality generally shields directors from personal liability, the law imposes specific duties and statutory exceptions designed to protect the company, its creditors, and investors. The research found that directors are subject to civil and criminal liability for breaches of fiduciary duties, improper allotment of shares, misapplication of company funds, fraudulent trading, wrongful trading, misrepresentation, and failure to maintain proper accounting records.

The study further revealed that the legal regime under CAMA 2020, though comprehensive, faces significant enforcement challenges in practice. Weak regulatory capacity, judicial delays, evidentiary difficulties, abuse of the corporate veil, low shareholder activism, and political and economic influence all constrain effective accountability.[2] Comparative analysis with the United Kingdom and South Africa highlighted that, while Nigerian law aligns with international standards in principle, enforcement mechanisms such as specialised commercial courts, a robust disqualification regime, and digital oversight remain underdeveloped.

The research also found that directors' knowledge, skill, and diligence are critical determinants of liability. The dual objective-subjective standard in CAMA 2020 imposes higher accountability on directors with specialised expertise, yet ignorance or failure to exercise adequate oversight remains a recurring problem.

5.2 Recommendations

Based on the findings, the following recommendations are made:

1. The Corporate Affairs Commission (CAC), in collaboration with the courts, should develop and enforce a clear procedure for disqualifying directors found guilty of fraud, misconduct, or repeated breaches of duty, similar to the UK disqualification system.

2. The federal and state judiciary should set up specialised commercial courts or divisions to handle corporate disputes, derivative actions, and misfeasance cases efficiently, reducing delays and ensuring expert adjudication.

3. The CAC and Securities and Exchange Commission (SEC) should implement statutory safeguards for whistle-blowers reporting fraud, misapplication of funds, or corporate mismanagement, with explicit protection against retaliation.

4. The CAC should adopt digital filing systems with automated alerts for late or inconsistent submissions of statutory returns, accounting records, or share allotments, enabling early detection of breaches.

5. The CAC, SEC, Financial Reporting Council (FRC), and professional associations (e.g., Institute of Directors Nigeria) should organise mandatory training and certification for directors and company secretaries on statutory duties, fiduciary responsibilities, and ethical governance.

6. The courts and regulatory agencies should make derivative action procedures more accessible and educate shareholders on their rights, enabling minority stakeholders to hold directors accountable.

5.3 Conclusion

The study concludes that directors' personal liability is a cornerstone of corporate accountability in Nigeria, ensuring that the benefits of incorporation are not misused. While CAMA 2020 provides a clear legal framework, enforcement remains hindered by institutional, procedural, and cultural challenges. Effective reform, including stronger disqualification mechanisms, specialised courts, enhanced whistle-blower protections, and digital monitoring, is critical to bridge the gap between statutory obligations and practical accountability.

By adopting these measures, Nigeria can strengthen investor confidence, protect corporate assets, deter misconduct, and align its corporate governance framework with international best practices. Directors must therefore recognize that their legal duties are not merely formalities but essential safeguards that balance entrepreneurial freedom with stakeholder protection.[10]

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