



THE ROLE OF A SECRETARY IN COMPANY MANAGEMENT

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ABSTRACT

The position of a Company Secretary has developed with company practice in Nigeria from a mere servant whose functions were prima facie clerical and ministerial only to that which is equivalent to that of a director in the company with extensive powers and responsibilities. This appears not only in modern companies Act, but also by the role which he plays in the day to day business of the company.

Introduction

A company is a legal entity made up of an association of people, be they natural, legal or a mixture of both, for carrying on commercial or industrial enterprises. It was also defined by Cambridge English Dictionary as an organisation that sells goods or services in order to make money. The Company and Allied Matters Act did not define a company as such. The first Companies Ordinance was introduced in Lagos in 1912. This was then amended in 1917 to cover the whole country that is (Companies Amendment and Extension Act of 1977). Both acts were then repealed and replaced in 1922 by the Companies Act of 1922, The 1968 Company Act replaced the 1922 Act. Currently, the Companies and Allied Matters Act of 1990, regulates company management in Nigeria.

CLASSIFICATION OF COMPANIES

Private Company

This is a company that has been stated in its article of memorandum to be private. The transfer of its shares is restricted. The total number of members shall not exceed 50, excluding bonafide employees of the company. It shall not

allow the public to buy shares or debentures or deposits money for fixed period of payable at call whether or not interest bearing. If a company defaults on the provisions of section 22 of the Act, the company shall cease to be entitled to the privilege and exceptions referred on private companies by or under the Act. The Act shall then apply to the company as it is not a private company.

Public Company

Any company that is not private company shall be a public company and its memorandum shall state so. Every public company shall have a capital except those limited by guarantee. Generally, speaking in economic and financial terms, a public company has a greater capacity to embrace huge businesses and a wider scope for acquiring and sustaining its financial base.

ADMINISTRATIVE AND REGULATORY BODIES FOR COMPANIES

Before the establishment of the Corporate Affairs Commission, the administration and regulation of companies in Nigeria was under the Companies Registry in the Corporate Affairs Division of the Ministry of Trade. However, its organisation and staffing were the joint responsibility of both the Ministry of Trade and the Ministry of Justice. Although the Company Registry was revenue generating Government Agency, because it was completely integrated into the Ministry, it was grossly starved of funds and necessary facilities were non-existence. As a result of these inadequacies and deficiencies, the Government decided to establish the Corporate Affairs Commission (GAG).

CORPORATE AFFAIRS COMMISSION (CAC)

Corporate Affairs Commission is established under Section I of Company and Allied Matters Act as a body corporate with perpetual succession and common seal, capable of suing and being sued in its corporate name, and of acquiring, holding or disposing of all types of property for the purpose of its functions. The Headquarters of the Commission is situated in Abuja, the Federal Capital Territory. A Branch Offices is expected to be established in each state of the federation. See Section K3) of Company and Allied Matters Act, Laws of the Federation of Nigeria 2004.

MEMBERSHIP OF THE COMMISSION

The Commission consists of four members, namely:

- a. The Chairman of the Commission who shall be appointed by the President of the Federal Republic of Nigeria, on the recommendation of

the Minister of Commerce. The person to be appointed must be a persons who by reason of his ability, experience or specialized knowledge of Corporate, Industrial, Commercial, Financial or Economic matters or of business or professional attainments would in his opinion, be liable of making outstanding contributions to the work of the Commission.

- b. Six members representing the public section. Chosen from various Ministries.
- c. Seven members representing private sectors.
- d. The Registrar General of the Commission who is appointed by the Minister of Commerce. The Registrar General shall be anybody who is qualified to practice as a legal practitioner in Nigeria, and be so qualified for a period not less than ten (10) years, and eight years of which he must have experience in the Management of Companies in Nigeria.

FUNCTIONS OF THE COMMISSION

The functions of the Commission shall be to:

- a. Regulate and supervise the formation, incorporation, regulation, management and winding up of the companies under or pursuant to the Act. See Section 7W of CAMA.
- b. Establish and maintain a company registry and offices in all the states of the federation.
- c. Arrange or conduct an investigation into the affairs of any Company where the interest of the shareholders and the public so demand.
- d. Perform such other functions as may be specified by any Act or enactment.
- e. Undertake such other activities as are necessary or expedient for giving full effect to the provisions of this Act.

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The Company and Allied Matters Act 2004 in Section 293(1) provides for every company in Nigeria to have a Secretary. The Secretary is appointed by the Directors or the article may provide for his term of office and the conditions of his appointment subject to the provisions of the Act.

CRITERIA FOR APPOINTMENT

Section 295 of the Act empowers Directors of a Company to take all reasonable steps to ensure that Secretary is a person who appeared to them to have the requisite knowledge and experience to discharge the functions of the Secretary of the Company.

In view of the need to protect the interest of shareholders and the investing public, it is required that the Secretary of a public company must have one of the specified qualifications:

- a. A Legal practitioner within the meaning of the legal practitioner Act or
- b. A member of the Institute of Chartered Secretaries and Administrators or
- c. A member of Institute of Chartered Accountants of Nigeria or of such other bodies of Chartered Accountants as are approved from time to time by an Act or Decree or
- d. Any person who has held the office of a Secretary of a Public Company for at least three years of the five years immediately preceding his appointment or
- e. A body corporate or firm consisting of qualified persons under paragraph (a), (b), (c) or (d) of Company and Allied Matters Act.

THE POSITION OF A SECRETARY IN A COMPANY

The position of a Secretary has developed with company practice. In the early English Companies Statutes, no provisions were made for the appointment of a Secretary; it was only in 1948 that the appointment of a Secretary becomes mandatory by virtue of Section 17(1) of the United Kingdom Companies Act, 1948. Accordingly, it was only in 1968 under Section 169 of the Companies Act, 1968 that the appointment of a Secretary become mandatory under Nigerian Company Law even then, neither the English Act nor the Nigerian Act spelt out the general duties of the Secretary. These was left for the Directors, the general meeting and sometimes, the courts to determine as circumstances required. The attitude of the English Courts was to regard the Secretary as a mere servant whose functions were prima facie "Clerical and ministerial only". See *NEULANDS V. NATIONAL EMPLOYER'S ACCIDENT ASSOCIATION* (1885) 54 LJ. QBD. 428 and that his duties were of the limited and same what humble character See *GEORGE WHITECHURCH LTD V. CAVANAGH* (1902) AC. 117. In *MNORAMA*

DEVELOPMENT (GUILDFORD) LTD V. PIDELIS FURNISHING FABRICS LTD (1971) 2. QB 711 Where the question was the ostensible authority of a Secretary in that case, it was contended that the position of the Secretary still remained as stated by Lord Ester MR. in BRANETT, HOARES AND CO. V. SOUTH LONDON TRAMWAYS CO. But LORD DENNING in his judgement, referred to that statement of the law and said:

"But times have change; a Company Secretary is a much more important person nowadays than he was in 1887, He is an altar of the company with extensive duties and responsibilities. This appears not only in modern Companies Act, but also by the role which he plays in the day to day business of companies. He is no longer a mere clerk. He regularly makes representations on behalf of the company and enters into contracts on its behalf which came within the day to day running of the company. He is certainly entitled to sign contracts connected with the administrative side and so forth. All such matters now came within the ostensible authority of a Company's Secretary".

These views have since guided the English Courts in their approach to the question of the position of Company Secretaries. As Professor Gower observed:

"It is arguable, therefore, that the secretary has also graduated as an organ of the company. Though appointed by the Directors, he is not their servant but an officer of the company with ostensible authority in the administrative share and with powers and duties derived directly from the articles and the Companies Act. And in the performance of his statutory duties, he is clearly entitled to resist interference from the members, Board of Directors or Managing Director...."

In Nigeria, the Courts have generally followed the same approach. Thus, in OKEOWO V. MIGUORE (1979) 11.SC. 138. It was held that a Company Secretary is a principal officer of the company. Similarly, in WIMPEY LTD V. BALAGUN (1957) 2.MWLR. 322. When the question was whether service of a process on a Clerk Secretary employee instead of the Company Secretary was valid, the Court of Appeal held that the service was bad and that a Company Secretary is indeed a higher ranking officer in the company set up and is indeed part of the management of the company. The Company Secretary has also been described as the administrative officer of the company and as an officer of the

company with important duties and responsibilities. See *ADEBECIM V. MAY AND BAKER NIGERIA LTD (1973) FDCR. 232.*

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These are generally provided for in Section 29MC2) of Company and Allied Matters Act. But before the promulgation of Company and Allied Matters Act the general duties of Company Secretary was not specified. Now, the Company Secretary has a duty to attend meeting of the Company that is meetings of Board of Directors and its Committees, to also render all necessary secretarial services in respect of the meeting and advising on compliance by the meeting within the applicable rules and regulations. See Section 298MC2) of the Act.

A Company secretary has the duty for maintaining the registers and other records required to be maintained by the Company under this Act. See Section 298^{(1)(b)}. The Secretary shall carry out such administrative and other secretarial duties as directed by the Directors of the Company. See Section 298 WW of the Act. And finally the Secretary shall not without the authority of the Board of Directors exercise any powers vest in the Directors. See Section 298⁽²⁾.

In conclusion, the position of Company Secretary has grown overtime from that of mere clerk, or office boy to a position which is equivalent to that of a Director in the Company with ostensible authority to bind the company with third parties.

REFERENCES

- NOLLAH EDVN. Company Secretaries in Public Companies (1989)2. GRBPL*
OLAKUNLE, O. Company Law and Practice in Nigeria (Butterworths) (2008). 8th Edition. 285.
ADEBEUM, V. MAY AND BAKER NIGERIA LTD. (1973) EDCR. 232.
BRAMETT, HORRES AND CO. V. SOUTH LONDON TRAMWAYS CO.
GEORGE WHITE CHURCH LTD V. CAVANAGIL (1902) AC. 117
MNORAMA DEVELOPMENT (GUILDFORD) LTD. (1971)2. QB. 711
NEWLANDS. V. NATIONAL EMPLOYERS ACCIDENT ASSOCIATION (1885) 54. LJ. OBD. 428
OKEOWOV. MIGYORE (1979)11.SC.138
WIMPEY LTD V. BALOGUN (1957)2 NWLR. 322.
Company ordinance of 1912
Company (amendment) ordinance of 1917
The Company Act of 1922
The Company Act of 1968
Company and allied matters Act of 1990
Company and allied matters Act of 2004
The united Kingdom Companies Act, 1948