Directors' Duties Under the Laws of Nigeria

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INTRODUCTION

The Companies and Allied Matters Act 2020 (CAMA 2020) represents a watershed moment in Nigerian corporate law, repealing and replacing the Companies and Allied Matters Act 1990. Among its most significant reforms are provisions codifying and expanding the duties of company directors.

Prior to CAMA 2020, directors' duties existed primarily under common law and equitable principles developed through centuries of case law. While this provided flexibility, it also created uncertainty. Directors and their advisers had to navigate complex jurisprudence spanning decades to understand their obligations.

The codification in CAMA 2020 brings welcome clarity and accessibility. Sections 305 to 311 now set out directors' core fiduciary duties in statutory form. This article explores these duties, their practical implications, and analyses the civil and criminal consequences of breaching them.

Who is a Director?

Under Section 257 of CAMA 2020, a director includes any person occupying the position of director by whatever name called. This broad definition captures several categories of directors with important implications for liability.

De jure directors are formally appointed in accordance with the company's constitution. They hold office through proper appointment procedures and appear in the company's register of directors filed with the Corporate Affairs Commission.

De facto directors, though not formally appointed, act as directors and exercise directorial functions. Courts determine de facto director status by examining whether the person performed functions that only a director could properly discharge, regardless of their formal title or position.

Shadow directors are persons in accordance with whose directions or instructions the board of directors is accustomed to act. These individuals pull strings from behind the scenes without formal appointment. Section 257 explicitly includes shadow directors within the definition, ensuring they cannot escape directorial duties and liabilities by avoiding formal appointment.

Codification of Directors' Duties

The codification of directors' duties in Sections 305-311 represents one of CAMA 2020's most important innovations. These provisions draw heavily from the UK Companies Act 2006, which itself codified centuries of common law and equitable principles developed through judicial decisions.

While codification provides clarity, it does not completely displace the common law. Section 312 provides that the general duties in Sections 305-311 are to be interpreted and applied in the same way as common law rules or equitable principles. Courts may therefore continue to reference case law when interpreting the statutory duties.

The codified duties are owed by directors to the company, not to individual shareholders or creditors except in limited insolvency contexts. This reflects the fundamental principle that directors manage the company's affairs for the benefit of the company as a separate legal person.

KEY STATUTORY PROVISIONS

Section 87: Transactions Requiring Members' Approval

Section 87 addresses substantial property transactions between companies and their directors. The provision requires shareholder approval for transactions that could involve self-dealing and potential conflicts of interest.

An asset is deemed substantial if its value exceeds 10% of the company's asset value and is more than ₦1,000,000, or if it exceeds ₦5,000,000 regardless of the percentage threshold. These dual thresholds ensure the requirement applies to genuinely material transactions while avoiding excessive burdens for minor dealings.

The section applies not only to transactions with directors themselves but also with persons connected to directors, including family members, associated companies, trustees of relevant trusts, and business partners. This wide scope prevents circumvention through related party structures.

Where a transaction contravenes Section 87, it is voidable at the company's instance unless certain exceptions apply protecting third party rights. The director and connected person must account to the company for any gain and indemnify it for any loss. Other directors who authorized the transaction are jointly and severally liable unless they took reasonable steps to secure compliance.

Section 279(3): Personal Liability for Unlawful Distributions

Section 279(3) imposes severe personal liability on directors who authorize unlawful distributions to shareholders. This provision protects creditors by ensuring company assets are not improperly distributed when the company cannot meet its obligations.

A distribution is unlawful if made when the company is unable to pay its debts as they fall due, or if the distribution would render the company unable to pay its debts. Directors must conduct a rigorous solvency test before approving any distribution.

The solvency test requires directors to assess not only current liabilities but also projected liabilities over a reasonable period, typically 12 months. Directors should review management accounts, cash flow forecasts, and consider contingent liabilities and off-balance sheet obligations.

Where directors authorize an unlawful distribution knowing or having reasonable grounds to believe the company cannot pay its debts, every director who authorized the distribution is jointly and severally liable for the amount distributed. This means the company can pursue any director for the full amount, creating powerful incentives for careful solvency assessment.

Section 305: Duty to Act in Accordance with Constitution

Section 305 enshrines two related but distinct duties. First, directors must act in accordance with the company's constitution. Second, they must exercise powers only for the purposes for which they were conferred.

The company's constitution comprises the articles of association and any resolutions or agreements affecting the company's constitutional arrangements. Directors must respect limitations on their powers contained in these documents and follow prescribed procedures for decision-making.

The second limb embodies the "proper purposes doctrine," a fundamental equitable principle. Even where directors have power to do something under the constitution, they must exercise that power for its proper purpose, not for a collateral purpose.

The classic application involves share issuance. The power to issue shares is conferred primarily to raise capital for the company. Directors breach Section 305 if they issue shares primarily to defeat a takeover bid, dilute a hostile shareholder's voting power, or entrench management, even if the company incidentally raises capital.

Courts apply both a subjective test—what was the director's actual purpose?—and an objective test—was that purpose one for which the power was conferred? If directors had multiple purposes, the court examines which purpose was dominant or substantial.

Section 306: Duty to Promote the Success of the Company

Section 306 establishes the cornerstone fiduciary duty: directors must act in the manner they consider, in good faith, would be most likely to promote the company's success for the benefit of members as a whole.

This duty incorporates the traditional obligation to act in good faith in the company's interests while adding an important gloss: the "enlightened shareholder value" approach. Directors must have regard to six specific factors when promoting company success.

The first factor is the likely consequences of any decision in the long term. This requires directors to look beyond immediate profits and consider sustainable long-term value creation. Short-termism that maximizes quarterly results while damaging long-term prospects breaches this duty.

The second factor is the interests of the company's employees. While directors' primary duty runs to the company, not employees, they must consider how decisions affect the workforce. Employee satisfaction drives productivity, retention, and ultimately company success.

The third factor addresses the need to foster business relationships with suppliers, customers, and others. Modern business depends on networks of relationships built on trust and mutual benefit. Directors must consider how decisions affect these vital relationships.

The fourth factor requires directors to consider the impact of operations on the community and environment. This reflects growing recognition that corporate social responsibility and environmental stewardship affect long-term value, regulatory compliance, reputation, and social license to operate.

The fifth factor is maintaining a reputation for high standards of business conduct. Reputation is a valuable intangible asset. Damage to reputation through ethical lapses, corruption, or unfair practices can destroy shareholder value rapidly and permanently.

The sixth factor requires acting fairly as between members. Directors must treat all shareholders fairly, regardless of shareholding size, duration of membership, or personal relationships, subject to different rights attaching to different share classes.

Section 307: Duty to Exercise Independent Judgment

Section 307 requires directors to exercise independent judgment. This duty prevents directors from abdicating responsibility or blindly following others' directions. Each director must think for themselves and form their own views on company matters.

Independent judgment means directors must actively engage with decisions, understand the matters being decided, question and probe where necessary, and not simply defer to others. A director cannot defend breach by claiming they relied on the chairman's judgment, assumed management knew best, or voted with the majority.

The duty does not prohibit directors from relying on management, officers, professional advisers, committees, or fellow directors. Such reliance is necessary and appropriate. However, reliance must be reasonable, and directors must exercise ultimate judgment on advice received.

Proper reliance requires: belief that the person relied upon is competent and reliable; adequate understanding of the matter to evaluate advice; reasonable reliance in the circumstances; and exercise of judgment on the advice received. Directors cannot outsource decision-making entirely.

Other Key Sections

Section 308 requires directors to exercise reasonable care, skill and diligence meeting both objective standards expected of any director and subjective standards based on their actual knowledge and expertise. Directors with special qualifications are held to higher standards in their areas of expertise.

Section 309 prohibits conflicts of interest, including exploitation of company property, information or opportunities. The corporate opportunity doctrine prevents directors from appropriating business opportunities that properly belong to the company.

Section 310 prohibits accepting benefits from third parties conferred by reason of being a director. This addresses bribery and corruption. Section 311 requires declaring interests in proposed transactions before the company enters into them.

Section 313 establishes the overarching principle: directors stand in a fiduciary relationship to the company and must observe utmost good faith in all transactions. This general statement underpins all specific duties in Sections 305-311.

CIVIL LIABILITY OF DIRECTORS

Breach of Fiduciary Duty

Directors who breach fiduciary duties face various remedies. Compensatory damages require directors to personally compensate the company for losses caused by the breach. Account of profits requires surrendering all profits made through breach, regardless of whether the company suffered loss.

Rescission allows the company to set aside self-interested transactions without proper disclosure. Constructive trusts may be imposed on property or benefits directors acquire that rightfully belong to the company. Injunctive relief can restrain threatened breaches or compel specific actions.

Misfeasance (Section 475)

Section 475 provides a statutory remedy particularly relevant in liquidation or administration contexts. Liquidators, administrators, creditors, or contributories may pursue directors for misapplication of company money or property, breach of fiduciary duty or trust, or any other misfeasance.

Remedies include repayment of misapplied money with interest, restoration of misappropriated property, or contribution to company assets as compensation. Misfeasance proceedings allow recovery of assets for creditors' benefit when directors have breached their duties.

Fraudulent Trading (Section 544)

Section 544 imposes both civil and criminal liability on directors who carry on business with intent to defraud creditors or for any fraudulent purpose. The court may declare that directors knowingly party to fraudulent trading shall be personally responsible, without any limitation of liability, for all or any company debts.

This represents complete piercing of the corporate veil, exposing directors' personal assets to unlimited creditor claims. Intent to defraud is broadly interpreted to include incurring debts without honest belief in ability to pay and deliberately misleading creditors about the company's financial position.

Wrongful Trading (Section 545)

Section 545 creates liability without requiring proof of dishonest intent, making it more readily actionable than fraudulent trading. Where a company goes into insolvent liquidation, directors are liable if at some time before winding up they knew or ought to have concluded there was no reasonable prospect of avoiding insolvent liquidation.

The test is objective-subjective: what directors knew or ought to have concluded by reference to both the general knowledge expected of a director and their actual knowledge and experience. Directors with special expertise are judged by higher standards.

Directors avoid liability if they took every step with a view to minimizing potential loss to creditors that they ought to have taken. This requires seeking professional advice, seriously considering rescue procedures like administration or CVAs, stopping incurring further credit, preserving assets, and not withdrawing money for personal benefit.

CRIMINAL LIABILITY OF DIRECTORS

Fraudulent Trading - Criminal Offense

While Section 544 creates civil liability, subsection (3) provides that where fraudulent trading is proved, the matter shall be referred to the Attorney-General for criminal prosecution. Penalties include imprisonment, substantial fines, and potential disqualification from acting as director.

Failure to Declare Interest

Section 311(4) makes it a criminal offense for directors to fail to declare interests in proposed transactions or arrangements. Upon conviction, directors face a fine of ₦500,000. While the penalty may seem modest, conviction creates a criminal record and may trigger disqualification proceedings.

False Statements to Auditors

Section 426 criminalizes knowingly or recklessly making misleading, false, or deceptive statements to auditors. The offense carries imprisonment for up to two years, fines, or both. This provision protects audit integrity and financial reporting reliability.

Failure to File Statutory Returns

Section 850 makes it an offense for directors to fail to deliver documents, returns, or notices to the Corporate Affairs Commission within prescribed timeframes. The Act prescribes escalating fines—initial default fines and continuing daily fines for persistent default. Directors are personally liable alongside the company.

Offenses Under Related Legislation

Beyond CAMA-specific offenses, directors face criminal liability under numerous related statutes. The Companies Income Tax Act criminalizes false tax returns and tax evasion. The VAT Act criminalizes failure to collect and remit VAT. The Pension Reform Act imposes criminal liability for failure to remit pension contributions.

Anti-corruption legislation—the Corrupt Practices and Other Related Offences Act and the Money Laundering (Prevention and Prohibition) Act—criminalize bribery, money laundering, and terrorist financing. The Securities and Exchange Commission Act criminalizes market manipulation, insider dealing, and false disclosures.

CORPORATE GOVERNANCE BEST PRACTICES

To minimize exposure to civil and criminal liability, directors should implement robust governance practices across multiple areas.

Maintain detailed board minutes documenting consideration of statutory factors in decisions. Implement formal conflict of interest disclosure procedures at every meeting. Monitor financial position closely with management accounts, cash flow forecasts, and early warning systems. Conduct regular solvency assessments, particularly before approving distributions.

Implement comprehensive compliance management systems covering all applicable laws and regulations. Engage a qualified company secretary or compliance officer. Conduct periodic compliance audits and ensure timely filing of all statutory returns.

Participate in induction programs for new directors and attend regular training on directors' duties, corporate governance, and legal developments. Seek professional advice on significant or complex transactions and document reliance on such advice.

Address financial difficulties immediately when identified. Seek insolvency practitioner advice at first sign of potential insolvency. Seriously consider rescue procedures like administration or CVAs when appropriate. Do not continue trading if insolvency is inevitable without reasonable prospect of rescue.

Maintain adequate directors' and officers' liability insurance with appropriate coverage limits. Review coverage annually and understand policy exclusions. Ensure run-off cover for past directorships to protect against claims arising after resignation.

CONCLUSION

The codification of directors' duties in CAMA 2020 provides welcome clarity to Nigerian corporate governance. Directors must understand that their role carries significant legal responsibilities requiring active engagement, independence of judgment, and unwavering loyalty to the company.

The comprehensive civil and criminal liability framework serves critical accountability functions. Civil remedies ensure directors compensate for losses caused by their breaches and cannot profit from misconduct. Criminal sanctions deter and punish serious wrongdoing, protecting the integrity of the corporate system.

Effective discharge of directorial duties requires ongoing diligence, proper governance systems, transparent disclosure of conflicts, and careful documentation of decision-making processes. Directors who understand and conscientiously discharge these duties not only comply with legal requirements but contribute to building sustainable, well-governed companies.

The law recognizes that business involves risk and courts will not penalize directors for honest business judgments that prove unsuccessful. The "business judgment rule" protects directors who act in good faith, on reasonable information, and in what they genuinely believe are the company's interests. However, this protection is available only to directors who actually discharge their duties.