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DIRECTORS' FIDUCIARY DUTIES UNDER NIGERIAN LAW: RISKS, LIABILITIES AND PRACTICAL COMPLIANCE

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POINTS TO DISCUSS

- Introduction
- Legal Basis of fiduciary Duties
- Fundamental fiduciary Duties
- Risk and Liabilities for Breach
- Practical Compliance Mechanisms
- Conclusion

INTRODUCTION

Directors occupy a position of trust and authority within a corporate structure. In Nigeria, the law imposes on directors a set of obligations that transcend mere contractual duties. These obligations are fiduciary in character: directors must act in the best interests of the company, avoiding conflicts, exercising care and diligence, and ensuring that their decisions respect both statutory prescriptions and the public interest.

This workshop examines the core fiduciary duties of directors under Nigerian law, the attendant risks and liabilities for breach, and practical compliance mechanisms for boards and individual directors.

LEGAL BASIS OF FIDUCIARY DUTIES

The principal statutory framework governing directors' duties in Nigeria is the Companies and Allied Matters Act, 2020 (CAMA 2020). CAMA 2020 consolidates and reforms earlier company law provisions, imposing clear duties on directors and establishing standards of conduct. Beyond CAMA, the Nigerian Code of Corporate Governance 2018 (the Code) promulgated by the Financial Reporting Council of Nigeria provides best practice standards that, although technically non-statutory, have become influential benchmarks for compliance, particularly in listed and regulated entities.

Additionally, the Securities and Exchange Commission (SEC) Rules and Regulations impose further obligations on directors of public companies, especially in the areas of disclosure, insider dealings, and corporate governance reporting.

Judicial decisions continue to shape the contours of fiduciary duties where statutory language is silent or ambiguous.

FUNDAMENTAL FIDUCIARY DUTIES

Fiduciary duties arise from the relationship of trust between a director and the company. They are rooted in equity, equity's historical treatment of trustees, and the need to ensure that corporate power is exercised for legitimate corporate ends.

Duty to Act in Good Faith and in the Best Interests of the Company

A director must exercise powers for the purposes for which they were conferred and in good faith, with the ultimate objective of promoting the success of the company.

CAMA 2020 expressly enjoins directors to act in the best interests of the company and to exercise powers for proper purposes. This obligation extends to considering the interests of shareholders collectively and, in appropriate circumstances, the interests of creditors, employees, regulators and other stakeholders.

Directors who place personal interests above corporate interest commit a fundamental breach of duty. The remedy for such breach includes rescission of the impugned transaction and, where loss accrues to the company, an award of damages or an order for the account of profits.

Duty to Avoid Conflicts of Interest

A central fiduciary obligation is to avoid situations in which personal interest conflict, or may possibly conflict, with the interests of the company. CAMA 2020 addresses this through provisions requiring disclosure of interests in contracts and transactions. A director who fails to disclose an interest in a material contract or arrangement with the company may be liable both civilly and, in some cases, criminally.

Best practice extends beyond mere disclosure: where a conflict exists, directors should absent themselves from deliberations and decisions relating to the matter to safeguard the board's independence of judgment.

Duty of Care, Skill and Diligence

CAMA imposes a standard of care on directors that is both objective and subjective. Directors must exercise the care, skill and diligence that would be exercised by a reasonably diligent person with both: the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions of a director; and the particular knowledge, skill and experience that the director has.

This dual standard elevates expectations for directors with specialized expertise. A director with professional qualifications, for example, will be held to a higher standard than a lay director.

Duty to Act Within Powers

Directors must exercise powers conferred upon them by the company's constitution (Memorandum and Articles of Association) and the law. Acting beyond these powers constitutes ultra vires conduct. CAMA requires that directors not only act within the authority given by the constitution but also for the purposes for which the authority was conferred.

Duty Not to Misuse Position or Information

Directors must not use their position, or property or information acquired by virtue of their position, to make personal gains or to cause detriment to the company. Insider dealing and misuse of confidential corporate information fall squarely within this prohibition. Nigerian law, through both CAMA and SEC Rules, criminalizes insider trading and imposes penalties for disclosure breaches.

Duty of Accountability and Transparency

Directors are custodians of corporate records and financial reporting. They are obligated to ensure the integrity of financial statements, timely disclosures, and accurate reporting to shareholders and regulators. The Code of Corporate Governance underscores the importance of transparency, requiring that boards maintain effective internal controls, audit functions, and risk management processes.

RISKS AND LIABILITIES FOR BREACH

The legal consequences for breach of fiduciary duties can be severe:

Civil Liability

A director who breaches fiduciary duty may be held liable to the company for losses. Remedies include damages, restitution of profits obtained through breach, and injunctions to prevent ongoing misconduct. Shareholders may initiate derivative actions where wrongs are committed against the company and the board fails to act.

Criminal Sanctions

Certain breaches such as false accounting, failure to disclose conflicts of interest, and insider trading attract criminal penalties under CAMA, SEC Rules, and industry-specific regulations. Conviction can result in fines, disqualification from directorships, and imprisonment.

Regulatory Sanctions

Regulators, particularly the SEC, may impose sanctions on directors of public companies for governance breaches, including levies, bans on serving as officers of public companies, and public censure.

Reputational Risk

Beyond legal consequences, directors face significant reputational damage, which can impair future professional opportunities.

PRACTICAL COMPLIANCE MECHANISMS

Ensuring compliance with fiduciary obligations requires more than theoretical knowledge; it demands robust governance infrastructure.

Board Charters and Policies

Boards should adopt clear charters that articulate roles, responsibilities, and standards of conduct. Written conflict of interest policies, codes of ethics, and whistle-blowing protocols reinforce expectations and provide procedural clarity.

Director Induction and Training

Regular training on statutory duties, evolving regulatory expectations, and industry best practices promotes board effectiveness and reduces inadvertent breaches.

Comprehensive Disclosure Practices

Directors should proactively disclose interests in transactions and update disclosures as circumstances change. Such disclosures should be recorded in board minutes and, where required, registered with regulatory authorities.

Independent Oversight

Establishing independent directors and committees e.g., audit, risk, and nomination committees enhances oversight, reduces the likelihood of self-dealing, and strengthens accountability.

External Professional Support

Engagement of external auditors, legal counsel, and governance consultants adds layers of review and assists boards in navigating complex transactions and compliance challenges.

Internal Controls and Risk Management

A sound internal control environment, supported by risk assessments and audits, helps detect and mitigate governance failures before they escalate.

CONCLUSION

Directors' fiduciary duties under Nigerian law are foundational to corporate integrity, accountability, and sustainability. These duties impose high standards of conduct, reflective of the trust placed in directors by stakeholders and the public. Non-compliance exposes directors to multifaceted liabilities, both legal and reputational. Practical compliance, therefore, is not optional but essential. It requires disciplined governance practices, transparent decision-making, and an unwavering commitment to ethical conduct.

For directors and boards, understanding these duties is the first step; embedding them into everyday governance is the enduring challenge.

THANK YOU

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