

GOVERNANCE AND COMPLIANCE DIGEST

POWERS OF SHAREHOLDERS

The Incorporation of a Company involves a person or persons coming together, creating new business ideas, analyzing its technical as well as economic feasibility, determining and raising the adequate capital needed for the survival of the business and upon foreseeing a favorable picture, the Company is registered under the relevant form. More often than not, the above persons are the Shareholders of the Company. They can be referred to as the founding brain and pocket of a business.

A Shareholder is any person, Company, or institution that owns at least one share of a company's stock or shareholding. Shareholders essentially own the Company, and their ownership comes with certain responsibilities, rights, and powers.

In the course of these incorporations, the Shareholders appoint Directors who have powers over the day-to-day running of the Company as well as instituting actions on behalf of the

Company. As a result of this factor, the powers of Shareholders, not being so popular, have been watered down.

The Companies and Allied Matter Act (CAMA) 2020, has made provisions for the rights and powers of Shareholders and some of these powers shall be discussed below.

Top on the list is the power of Shareholders to alter the Memorandum and Articles of Association (MEMART) of a Company. This is an important power of the Shareholders as the MEMART forms the bedrock of the operations of a Company. The MEMART is deemed to have the effect of a deed between the Company, it's members and officers, whereby they agree to observe and perform the provisions of the Memorandum and Articles¹.

In altering the Articles of Association, details pertaining to the management and regulations of the Company can be amended such that Shareholders can control the operations of the Company. For example, where the Articles of Association of a Company expressly vest the Board with certain powers like increasing share capital², it is not bound to obey the instructions of the Shareholders, especially when it acts in good faith and with diligence. In these situations, the Shareholders may amend the Articles of Association of the Company such that those powers are now exercisable by only the Shareholders in a general meeting and not by the Board of Directors.

The name³, objects or business⁴, share capital⁵, reregistration from private to public or vice versa, private limited to unlimited, unlimited to limited, public limited to unlimited⁶ of a Company which are contained in the memorandum of a Company can also be altered by the Shareholders in accordance with the provisions of CAMA.

Furthermore, the Shareholders have the power to appoint or remove Directors by a resolution passed by a simple majority of votes cast in person or by proxy. Though the Board of Directors of a Company is empowered to appoint new Directors to fill casual vacancies created by death, resignation, retirement or removal, these appointments are, however, subject to ratification by the Shareholders in a general meeting.

¹S46 CAMA

²S127 CAMA

³S50 CAMA

⁴S51 CAMA

⁵S127 CAMA

⁶S55 CAMA

It should be noted strictly by Shareholders that although the duty to call general meetings of Shareholders is one held by the Board of Directors, a Shareholder or Shareholders representing at least 10 per cent (10%) of the shareholding (or voting rights in a Company without share capital) of the Company may however, requisition a general meeting at any time⁷. Where the Board refuses to convene the requisitioned meeting within twenty-one (21) days, the requisitionists are authorized to convene the meeting (within three months of the requisition) after issuing the required notices, and any reasonable expenses incurred in relation to the meeting shall be repaid by the company. In addition to the foregoing, members holding five per cent (5%) of the total voting rights in the Company may circulate a resolution to be voted upon at a general meeting, indicating a course of action that should be adopted by the Directors of the Company⁸.

Moreover, all Shareholders are entitled to Notice of general meetings⁹, attend a meeting¹⁰ and equally entitled to vote at such meetings. Since public and private Companies can now have virtual meetings, Shareholders of a private Company can act by way of written resolution signed by all the Shareholders entitled to attend and vote at the general meeting of the company where the resolution would have been passed¹¹.

In addition to the foregoing, a Shareholder can institute a court action to restrain the Directors from entering into an illegal or ultra vires transaction or perpetuating a fraud¹². Similarly, where the Board fails to institute or defend an action on behalf of the Company when it ought to do so then the Shareholders may institute legal proceedings in the name and on behalf of the Company¹³. Also, where the Board of Directors is unable to act in any matter either because the Directors are disqualified or unable to act because there is a deadlock on the Board, the Shareholders may act in such matters¹⁴.

In conclusion, Shareholders are generally not liable for the acts or omissions or debts of the Company as the liability of a Shareholders is limited to the amounts yet to be paid on their shares. The Company is a separate legal personality from its Shareholders. However, the courts may 'lift the corporate veil' where a Company is a mere sham or is being used as a tool to perpetuate illegality, where it does this, more often than not, the officers of the Company rather than the Shareholders are liable.

⁷ S239(2) CAMA

⁸ S260(1) & S260(2)(a) CAMA

⁹ S243(1)(a) CAMA

¹⁰ S251(1) CAMA

¹¹ S259 CAMA

¹² S343(a) CAMA

¹³ S87(b) CAMA

¹⁴ S87(a) CAMA

Key Contacts



Oyeyemi Oke
oyeyemi.oke@firstfiduciary.ng



Frances Nwakobi-Onuigbo
frances.nwakobi@firstfiduciary.ng



Elizabeth Adedayo
elizabeth.adedayo@firstfiduciary.ng

What we do



LAGOS
3A Kayode Otitoju Street,
Off Admiralty Road, Lekki Phase 1
Lagos, Nigeria.

+234 906 768 6317
contact@firstfiduciary.ng

ABUJA

47B, Kumasi Crescent,
Wuse II, Abuja. iCentra



www.firstfiduciary.ng