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A photograph of a modern conference room with a long white table, white chairs, and a large window with blinds. A white rounded rectangle is overlaid on the image, containing the title text.

GOVERNANCE AND COMPLIANCE DIGEST

LIABILITIES OF A DIRECTOR UNDER THE NIGERIAN LAW

Over the years, debates have arisen regarding the extent of liabilities of company directors under the Nigerian law. Persistent questions have revolved around where a director can be made personally liable for purported acts of a company as opposed to the company itself bearing the liability. Furthermore, there has been ongoing inquiry into the scope of criminal or civil liabilities of new directors concerning the actions of their predecessors. This article aims to specifically address the question of when a director can be made personally liable for purported acts of a company as against the company being held liable through the lenses of the Companies and Allied Matters Act¹ and decided Nigerian Cases.

WHO IS A DIRECTOR ?

Under the CAMA², directors are defined as persons duly appointed by a company to direct and manage its business. This definition encompasses individuals designated by the company as directors, whether they hold executive or non-executive positions

THE PRINCIPLE OF CORPORATE LEGAL PERSONALITY

As a prefatory remark, the principle of corporate legal personality is enshrined in Nigerian Company Law as reflected in Sections 42 CAMA, which codifies the common law position as established in the case of *Salomon v Salomon Ltd*³. Generally, the Principle of Corporate Legal Personality makes the company liable for the acts or omissions of its officers.

Strengthening the principle of corporate legal personality in Nigeria is the provision of Section 89 CAMA which specifically provides that “any act of the members in general meeting, the Board of Directors or of a Managing Director while carrying on in the usual way the business of the company shall be treated as the act of the Company itself and the company shall be criminally and civilly liable thereof to the same extent as if it were a natural person.”

A calm read of the foregoing provision makes it evident that the company is vicariously liable for any act of the members in general meeting, any act of the Board of Directors and any act of the Managing Director as long as these actions are carried out in the discharge of the ordinary business of the company.

However, it is worth noting that there are exceptions to the principle of corporate legal personality. These exceptions are borne out of the recognition that the corporate legal entity and limited liability doctrines can be susceptible to abuse and therefore, the benefits of such abuse should not be enjoyed by the abusers.

¹ Companies and Allied Matters Act, Cap. C20, Laws of the Federation of Nigeria (LFN) 2020 (“CAMA”)

² Section 269(1) CAMA Section 269(1) CAMA

³ *Salomon V Salomon & Co Ltd* [1896] UKHL 1; *Salomon V A Salomon and Co Ltd* [1897] AC 22

In certain cases, the veil of incorporation of a company may be lifted or pierced and personal liabilities of directors as against corporate liabilities will inure. For instance, Section 316 of CAMA provides a pathway to lifting the veil where directors having received money by way of loan, fail to use such money for the purposes for which it was received. In such a circumstance, the directors will be personally liable provided there is the intent to defraud.

It is important to emphasize that the above-mentioned s89 of CAMA excludes the company from civil liability in cases involving the Board of Directors or Managing Director. This exclusion applies where such person had actual knowledge at the time of the transaction in question, that such Board of Directors or Managing Director lacked the authority to act in the manner they did or that the Board of Director or Managing Director had acted in an irregular manner or if, having regard to their position with or relationship with the company, they ought to have known of the absence of such authority or of the irregularity.

Worth noting also is the provision of Section 90 CAMA which clearly provides that acts of any officer or agent of a company shall not be deemed to be acts of the company, unless the company, acting through its members in general meeting, Board of Director, or Managing Director, shall have expressly or impliedly authorized such officer or agent to act in the matter.

THE DISPOSITION OF COURTS TO LIABILITY OF A COMPANY AS AGAINST THE LIABILITY OF A DIRECTOR

The Supreme Court had the occasion to consider the liability of a corporation in the case of **Yesufu v Kupper International N.V**⁴. In that case, the Supreme Court held that where a director enters into a contract in the name of or purporting to bind the company, it is the company, as the principal, that is liable for it, not the director. Their lordships further held that the director is not personally liable unless it is evident that he undertook personal liability.

Similarly, in **Kurubo v. Zach-Motison(Nigeria) Ltd**⁵, his lordship, Tobi, JCA (as he then was) opined on the liability of a company as follows: "In view of the fact that an artificial person or company vested with legal or juristic personality lacks the natural or physical capacity to function as a human being, those who work in it do all things for and on behalf of it...It is therefore the law and the tradition for the human beings authorized to negotiate agreement for and on behalf of the company. Where an agreement is so executed by a person in authority, the company is liable or deemed to be liable for the act or acts of the person".

⁴ Yesufu V. Kupper International N.V (1996) 5 Nwlr (Pt.446)17

⁵ Kurubo & Anor V. Zach -Motison (Nig) Ltd (1992) 5 Nwlr (Pt. 239) 102



CONCLUSION

While Section 89 CAMA recognizes that the criminal liability and civil liability of company for any acts of its Board of Director or the Managing Director, in the ordinary course of business, Section 90 CAMA also realizes that not all acts of an officer or agent (including a director) of a company can be said to be acts of a company. In summary, whether a director will be personally liable or whether the company will bear the brunt, or both will depend on the facts of each case, as well as the relevant provisions of the applicable laws.

References

1. *Companies and Allied Matters Act, Cap. C20, Laws of the Federation of Nigeria (LFN) 2020 ("CAMA");*
2. *Adeyemi V Lan & Baker (Nig) Ltd (2000) 7. NWLR (Pt.663) 33 at 48.*
3. *Longe v. FBN. Plc (2010) 6 NWLR (Pt. 1189) 1 S.C where the Supreme Court, Per Oguntade, JSC held inter alia that "directors are those appointed by the company "to direct and manage the business of the company."*
4. *Pinto and Evans, Corporate Criminal Liability, Sweet & Maxwell, London, Second Edition (2008), p. 71;*
5. *Onele, Joseph and Odaro, Ame, Directors' Liability: The Legal Position in Nigeria (January 13, 2016). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2715073*

NEWS UPDATES

CBN, FG agency to review new regulation on bank customers

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