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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 text box is overlaid on the image.

# GOVERNANCE AND COMPLIANCE DIGEST

## APPOINTMENT OF COMPANY DIRECTORS IN NIGERIA: A COMPREHENSIVE OVERVIEW

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The role of directors in a company is one that cannot be undermined. The fiduciary duty of directors invariably makes them trustees of their companies to the end that they exercise due care, skill and diligence in the discharge of these duties. In Nigeria the position of a company's director is regulated by the Company and Allied Matters Act 2020 (CAMA), a legal framework that specifically addresses their appointment, functions, powers, and duties. In this article, peculiar attention will be paid to the appointment of company directors, focusing on the directives outlined in CAMA.

### **Appointment of First Directors**

The first directors of a company are appointed during incorporation. This is a straightforward process which is done by naming the appointed persons in the online application on the Corporate Affairs Commission (CAC) e-registration portal form and the listed persons are deemed to be approved by the subscribers of the company's memorandum of association<sup>1</sup>. Apart from the general details of the directors, including his means of identification and electronic signature, the appointment of a director at incorporation is seamless and requires no written consent of the appointed persons or written resolution of the members. The submission of the foregoing information and documents is deemed as implied consent to be so appointed.

### **Subsequent Appointments of Directors:**

A small company must have at least one (1) director while any other company limited by shares (other than a small company) must have at least two (2) directors<sup>2</sup>. Where the number of directors goes below the minimum, then the company must appoint new director(s) not later than one (1) month or stop business operation<sup>3</sup>. However, there are some regulated businesses which require different numbers of directors, for example, companies seeking to operate in the financial sector with a license of the Central Bank of Nigeria (CBN) is required to have not less than five (5) directors whilst a money lender company seeking to operate in Lagos must have at least two (2) directors.

Where subsequent appointments arise in cases where the other directors of a company are dead or the office of a director is vacated or where there is a need for additional directors, members at the annual general meeting (AGM) may re-elect or reject directors and appoint new ones. The directive of CAMA is that all the directors (where there is no life director) of a company shall retire at the first AGM of the company. At the AGM in every subsequent year, one-third of the directors (or if their number is not 3 or multiple of 3, then the number nearest to one-third) shall retire from office.

<sup>1</sup> S272 CAMA

<sup>2</sup> S271(1) CAMA

<sup>3</sup> S271(2) CAMA

In considering the order of retirement, the longest serving directors are to retire first but as between those people who are appointed on the same date, those to retire are to be determined by lot unless they otherwise agree amongst themselves. Flowing from this, a retiring director is deemed to be re-elected unless another person is elected or appointed in his stead, or the members expressly resolved not to fill a vacancy created by the automatic retirement of directors or where a resolution for such re-election of a director has been put to the meeting and lost<sup>4</sup>.

However, in some regulated businesses such as financial services companies licensed by the CBN, different considerations apply. A CBN-regulated company seeking to appoint new directors must first obtain prior approval of the CBN on the nominees before finalizing such appointment or filing any notice of appointment at the CAC.



<sup>4</sup> S285(3) CAMA





### **Post-Appointment Filings and Formalization:**

In addition to the above, it should be noted that all kinds of post-incorporation filings, including appointment of additional directors, can be done from 48 hours after the date of registration of a company. The notice of appointment of director shall be filed with the CAC within fifteen (15) days of the appointment<sup>5</sup> although Section 321 of the CAMA imposes a duty on a company to notify CAC within fourteen (14) days of the appointment or cessation of a person as a director. It is the post-appointment filing at the CAC that formalizes or completes the appointment process.

### **Restrictions on Director Appointments:**

Certain individuals or entities are ineligible for director appointments, these include:

- i. An infant, that is, a person under the age of 18 years;
- ii. A lunatic or person of unsound mind;
- iii. A person who has been disqualified under Sections 279 (insolvent persons acting as director), 280 (director that has been convicted of fraud) and 284 of CAMA
- iv. A person who has been suspended or removed from office of director under Section 288 of CAMA; and
- v. A corporation other than its representative appointed to the board for a given term<sup>6</sup>.
- vi. A person shall not be a director in more than five (5) public companies. Where this is so, he shall resign at the next AGM from all but five (5) of the companies<sup>7</sup>.

### **Conclusion:**

Understanding the appointment of company directors is crucial for ensuring efficient and effective corporate governance. Nigeria's corporate legislation, particularly the provisions outlined in CAMA, regulates the appointment process to uphold the responsibilities and obligations of directors. Adhering to the guidelines set forth in CAMA empowers businesses to assemble capable and qualified boards of directors, driving strategic decision-making and contributing to the overall growth and stability of the Nigerian business landscape.

<sup>5</sup> S262(1) CAMA

<sup>6</sup> S283 CAMA

<sup>7</sup> S307(2)CAMA.

*References*

- 1. KEY QUESTIONS ON APPOINTMENT & REMOVAL OF DIRECTORS, KORIAT LAW, February 21, 2022*
- 2. DUTIES , LIABILITIES & RIGHTS OF A DIRECTOR UNDER THE NIGERIAN LAW , Resolution Law Firm,*
- 3. THE COMPANIES AND ALLIED MATTERS ACT (CAMA)*

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