



Understanding the Role of Company Secretary in Ensuring Good Corporate Governance in Nigerian Public Company

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ABSTRACT

The role of a Company Secretary in the implementation of sound corporate governance first came to the fore with the enactment of the 1968 Act. The Act made a requirement for registered Company to have a Secretary, with a bar on a Sole Director assuming the role of a Secretary². The role of a Company Secretary was further given recognition in the companies and Allied Matters Act 1990. The Director, the Company in General Meetings and the Courts are however left to determine the Secretary's position under the COMPANY AND ALLIED MATTERS ACT.

This paper is divided into 6 sections, and it is by analyzing them that the paper could be understood in the light of its combining effect.

- ⇒ The Meaning of Company Secretary
- ⇒ Appointment of Company Secretary
- ⇒ The Changing Role of Company Secretary
- ⇒ The Role/Function of Company Secretary in Corporate Governance
- ⇒ Removal of Company Secretary
- ⇒ Conclusion/Recommendations.

Keywords: company secretary, corporate governance, public company

INTRODUCTION

1.0 THE MEANING OF COMPANY SECRETARY

The question that is often asked is “who is a Company Secretary?”

Various meaning has been ascribed to a Company Secretary. H. Black in the Black's Law Dictionary defines:

A Company Secretary, in references to a corporation or association as an officer charged with the direction and management of the part of the business of the company which is concerned with the keeping of records, the official correspondence, with giving and receiving notices, countersigning documents etc.³

Also Professor Gower, whilst recognizing the importance of the Company Secretary, said thus: “speaking generally, the Secretary functions are purely ministerial and administrative and he is not as Secretary, charged with the exercise of any managerial powers.

1. Section 169(1) of the Companies Act 1968.

2. Ibid

3. H.C. Black, Black's Law Dictionary, 6th ed. St. Paul Minn: West Group Publishing Co. 1990 P. 1352

It is worthy of note that the definition of a Company Secretary is shrouded in the role or functions of a Company Secretary, also in ADEBESIN V MAY \$BAKER NIG LTD. KARIBI WHYTE J(as he then was)stated that-

...the secretary is an officer of the company with important duties and responsibilities .the secretary merely acts in a ministerial and administrative capacity .He has no managerial functions and managerial powers are prima facia vested in the directors and any managing director.

1.1 APPOINTMENT OF A COMPANY SECRETARY

Section 296 (1) of the (C.A.M.A) 1990 states that the Company Secretary shall be appointed by the Directors by the General Meeting for such term, at such remuneration and upon such conditions, as they may think fit. Thus, Section 295 of the (C.A.M.A) 1990 provides that “it shall be the duty of a director of a company to take all reasonable steps to ensure that the Secretary of the Company is a person who appears to him to have the requisite knowledge and experience to discharge the functions of a secretary of a company and who in addition, fulfills requirements regarding previous experience or membership of specific profession or professional bodies.

1.2 QUALIFICATION OF A COMPANY SECRETARY

It could therefore be seen that section 296(1) of C.A.M.A., 1990 place an obligation on the Directors or general meeting of a company to appoint a secretary in both Private and Public Companies. In a Private Company, however, anyone who appears to the Director to have requisite knowledge and experience to discharge the functions of a secretary of a company can be appointed as a company secretary. In order to safeguard the interest of the investing public, it is however, provided, that the Secretary of a public Company must have one of the specified qualifications under the Act.⁵

- a) A Member of the Institute of Chartered Secretaries and Administration, or
- b) A legal Practitioner within the meaning of the legal practitioner’s Act 1975, or
- c) A Member of the Institute of Chartered Accountant of Nigeria or of such other Bodies of Chartered Accountant as approved from time to time by an Act or Decree, or
- d) Any person who has held the Office of a Secretary of a Public Company for at least 3 years of the years immediately preceding his appointment.
- e) Or a Body Corporate or Firm consisting of qualified persons under paragraphs (a, b, and d).

Again, it has been recognized that those dealing with the Company will be concerned to know who the Secretary is, and hence the register of directors has been expanded into a register of directors and secretaries. Copies of particulars of secretaries must be field at Companies House and are available for inspection by the public both there and at the Company’s Office.⁶

2.0 THE CHANGING ROLE OF COMPANY SECRETARY

Thus far, it could be seen that the Company Secretary is the Chief Administrative Officer of the Company are unessential ingredient in the implementation of sound corporate Governance Procedures. Yet, this enviable position of a Company Secretary has not been accorded the position it deserves in corporate governance.⁷ In fact. “there is perhaps no other functioning in the corporate set up who has suffered such a high degree of non-recognition by the common law as the Secretary even when his influence is felt in the Boardroom.⁸”

4. L.C.B. Gower Principles of Modern Company Law. London Sweet and Maxwell Ltd. 2005.

5. Section 295 CAMA 1990

6. Ibid

7. N. Danjuma, The role of the Company Secretary Incorporate Management (Ibadan: Heinemann Educational books 1991 p. 53.

8. Edun, Company Secretaries in Public Companies 1989. GRD Pt (No. 2) 12 P17.

The veracity of this position is extended to the day-to-day functions of the Company's affairs as: "Not too long ago, the attitude of Director to Company Secretary was contemptible, many Company Secretaries have experienced situations where the Board met in their absence and all they were asked to do was to prepare minutes handed out to them with no question asked. After all, they are supposed to act by order of the Board."⁹

However, the case of **PANORAMA DEVELOPMENT GUILDFILED LTD VS FIDELIS FURNISHING FABRICS**¹⁰ could be considered to be a major shift from this misconceived perception of a company secretary's role in corporate governance as just a subordinate or a minor clerk without any ostensible authority to make representations on the Company's behalf. The Court held in this Case¹¹ that signing or entering into certain contracts are inherent in or incidental to the administrative nature of his Office.

In the same vein, Chief N. Edun stated thus "we are now in an era in which Company Secretary are usually among the most respected and take most highly paid officers of their Companies and their appointment to such high office pre-supposes the possession of certain basic qualification and experience. Conception of a Secretary's role as that of a more clerk or servant now clearly borders on heresy."¹²

It is in order to give statutory recognition to this incontrovertible fact that the new Companies and Allied Matters Act 2004 provides that the roles of Secretary shall include the carrying out of such administrative and other secretarial role as directed by the Director or the Company.¹³

2.1 STATUTORY DUTIES OF A COMPANY SECRETARY

However, in recent times, the (C.A.M.A) has given statutory recognition to the changing role of a Company Secretary which includes the carrying out of such administrative and other secretarial role as directed by the Directors of the Company. Specifically, section 298(1) of the (C.A.M.A) provides:

- a) Attending the meeting of the Company, the Board of Directors and rendering all necessary secretarial services in respect of the meeting and advising on compliance by the meeting with the applicable Rules and Regulations.
- b) Maintaining the registers and other records required to be maintained by the Company under the Decree/Act, and
- c) Rendering proper returns and giving notification to the commission required under this Decree/Act, and
- d) Carrying out such administrative duties as directed by the Director of the Company, Subsection (2) of the same section states that "the Secretary shall not without authority of the Board exercises any powers vested in the Directors.

2.2 POWERS, AUTHORITY AND LIMITATION OF A COMPANY SECRETARY

The Power of a Secretary to bind the Company will depended on his express and ostensible authority. The express authority may be given by status or by directors as seen above. With regard to ostensible authority, since the Secretary is the Chief Administrative Office of the Company, he will have powers to perform those functions relating to such administrative matters. Such function have been held to include signing contracts connected with the Company's affairs, such as employing staff and hiring cars for the Company.¹⁴ Section 298(2) however, provides that the Secretary cannot, without the authority of the Board, exercise any powers vested in the Directors. Thus a Secretary cannot call a general meeting unless so authorized by the Director,¹⁵

9. Ibid.

10. Ibid.

11. Liability of the Company Secretary see Panorama Development (Guildford) Ltd. V. Fedelis Furnishing Fabrics Ltd. Ante

12. Re State of W joining syndicate (1901) 2 CH. 431

13. Chida Mines Ltd. V. Anderson (1905) 22 FR 27.

14. Liability of the Company Secretary see Panorama Development (Guildford) Ltd. V. Fedelis Furnishing Fabrics Ltd. Ante

15. Re State of W joining syndicate (1901) 2 CH. 431

register a share transfer before the approval of the Board given,¹⁶ affix the Company's seal to an instrument without the approval the Board.¹⁷ alter the Company's share register without the authority of

the Board.¹⁸ borrow money on behalf of the Company without the approval of the Directors.¹⁹ issue a writ in the name of the Company without the approval of the Board,²⁰ or file a defense in the name of the Company without such approval.²¹ It is submitted that since an unauthorized act is expressly prohibited by Section 298(2), such act cannot be later rectified by the Board since it is void into.²² The Secretary is an Officer of the Company (Section 650(1) and may be liable as such and is entitled to relief under Section 641, because he is charged with certain statutory duties e.g. filing returns. Even where he is not specifically charged with the statutory duty, if the duty is one with which he is necessarily involved by virtue of his Office as Secretary he must be liable for a fine in an appropriate case as an Officer in default which means “any Officer who knowingly and willfully authorizes or permits or connives at this default. Refusal or contravention...” (Section 650(3)” e.g. failure to deliver a return of allotment, (Section 129) publish company’s name outside its place of business, (Section 631) or keep register of Directors and Secretaries or permit inspection (Section 87 and 194). He is however, not personally liable for trust or misfeasance by Directors where he has merely acted in his ministerial or administrative capacity. Section 297 of CAMA 1990 further states that the Secretary shall not owe fiduciary duties to the Company as such but will do so Where he acts as an agent in which case, he will be liable to account where he makes a secret or let his duties conflict with the personal interests or uses confidential information obtained from the Company for his own benefit.

3.0 THE ROLE OR FUNCTIONS OF COMPANY SECRETARY IN CORPORATE GOVERNANCE

Corporate Governance is a system of managing the affairs of Corporations with a view of increasing shareholders value and meeting the expectation of the other stakeholders. This objective cannot be achieved without component Company Secretary.

According to H.A.J Ford, Corporate Governance is about the management of business enterprises organized in corporate form, and the mechanisms by which managers are supervise. Corporate Managers have a measure of power to deal with other people’s money. The funds provided by shareholders in the Company, Managers owe duties to their Companies, duties which put legal constrains on their activities yet there is no one-size fit-all job description for Company Secretaries. On the contrary, role responsibilities and positions differ significantly from company to company, depending on the Organization of the firm its corporate governance design. This is as a result of a new phenomenon of corporate governance arising from the growing complexity of corporate practice; the role of the Company Secretary includes specific responsibility for the sound governance of the Company and for the guidance of the Board in the execution of its tasks.

This salient role of a Company Secretary could be segmented to include: Ensuring the smooth running of the Board’s and Board Committee’s activities by:

16. Chida Mines Ltd. V. Anderson (1905) 22 FR 27.
17. South London Greyhound Race Course Ltd. V. Ware (1931) Ch. 496.
18. Re Indo Chime Stream Navigation Co. (1917)2 Q.B. 711.
19. Re Cleadon Trust (1939) CH 286 CA.
20. Dainiler Co. Ltd. V. Continental Tyre etc. (1961) A.C. 307.
21. Education V. Dunber Stream Laundry Co. (1903) 11 S.L.T. 117 (O.H).
22. Adebessin V. May & Baker Nigerian Ltd. Decided before the Act.
23. Ford, H.A.J. Ford’s Principle of Corporation Law. Butter Worths Vol. 1 at 6005.

Helping the Chairman to set agendas, preparing and presenting papers to the Board and Board Committees, advising on Board procedures and ensuring that the Board follows them:

- ⇒ Acting as primary point of contact and source of advice guidance for;
- ⇒ Particularly, non-executive Directors as regards the Company and its activities in order to support the decision making process;
- ⇒ Facilitating induction of new Directors into the business and their roles and responsibilities, and assisting in the ongoing training and development of directors;
- ⇒ Keeping under close review all legislative, regularly and corporate governance developments that might affect the company's operations, and ensuring the Board is fully briefed on these and that it has regard to them when taking decisions;
- ⇒ Ensuring compliance with all legal and regulatory requirements including the continuing obligations of the listing Rules and all statutory filing requirements;
- ⇒ Together with Human resources Director, keeping in touch with the debate on Corporate Social Responsibility and stakeholders, and monitoring all developments in this area and advising the Board in relation to its policy and practice with regard to Corporate Social Responsibility and its reporting on that matter;
- ⇒ Managing relations with investors, particularly institutional investors, with regard to corporate governance issues and the Board's practices in relation to corporate governance' and making arrangements for and managing the whole process of the of the Annual General meeting and establishing , with Board's agreement, the items to be considered at the AGM, including resolution s dealing with governance matters.

Company secretaries should have high level responsibilities including advising on governance structure and mechanism, corporate conduct within a company's regulatory Environment, board, shareholder and committee meetings, compliance with legal, regulatory and listing requirements, the training and induction of non-executive, contacts with regulatory and external bodies, report and circulars to shareholders/trustees, involvement in issues of employee benefits such as pensions and employees share ownership schemes²⁴.

3.0 REMOVAL OF A COMPANY SECRETARY

However secretaries, been officers of companies are generally removable in accordance with terms of their contract. But section 296 (2) of (C.A.M.A.) 1990 states the procedure of remove to secretary in public Company while subsection (3) of the same section states the different grounds of removal i.e. fraud or serious misconduct. In removing a secretary of a public company, the board of Directors must follow this procedure:

1. Notice will be given to him stating that it is intended remove him.
2. Ground on which they intended to remove him will be set out in the notice.
3. At least 7 working days will be given to him within which to make his defense.
4. Give him an option to resign his Office within a period of 7 working days.

Where he makes a defense, without resigning from office and the Board feels it is insufficient the ground for his removal is that of fraud or serious misconduct, the board may remove from office and shall report to the next general meeting. Where the removal is for any other cause other than fraud or serious misconduct, approval of the general meeting is needed before the board can remove him.

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4.0 CONCLUSION/RECOMMENDATIONS

Thus far, the gradual progression of a Company Secretary in corporate governance is easily discernible. In addition to being an office of the company with substantial authority in the administrative sphere, he is also imbued with powers and duties derive directly from the Article and the C.A.M.A. This position has been given full consideration by the Supreme Court in *Okeowo V. Migiore*²⁵ where Idigbe J.S.C. observed that in Nigerian Law, a company secretary is “a principal office of the Company”. To the same effect was *Wimpey Ltd. Balogun’s case*²⁶.

However, the new phenomenon of corporate governance, due in part to the growing complexity of corporate practice, clearly places additional responsibilities on a Company Secretary, not least in cases of reconstructions, mergers and takeover of companies. The managerial and administrative machinery of a company is such that requires protection of shareholders and outsiders against directors who may want to use their position as insiders to benefit themselves at the expense of the former. It is therefore, suggested that a company secretary would need to carry out diligent checks, with a view to protecting the shareholders and not leaving them at the mercy of the board.

Section 295 of the CAMA has fleshed out the qualification of a Company secretary, it is however, suggested that the qualification of a company secretary especially of a public company would need to be strengthened. There are clearly very sound reasons for a Company of knowledge required in company administration certainly administration certainly cannot be achieved without professional training.

It is therefore necessary, to restrict the professional qualification to those areas important to company administration if sound corporate governance, procedures are to be implemented.

In addition, corporate governance, as thus far analyzed above, is the set of processes, customs, policies, laws and institutions affecting the way a company is directed, administered or controlled. This situation clearly makes the role of the Company secretary an important, especially in ensuring that the company establishes and maintains good corporate governance rules and that these rules are respected throughout the organization. Thus, given this increasingly challenging legal and regulatory requirements, the role of a company secretary will most certainly develop into that of corporate governance professional. It is therefore, suggested that in addition to a sound professional qualification of a company secretary, the job description should include a broad knowledge about corporate standard and rules, international developments in this field and the ability to Judge where change in the company are necessary and where they would not add value.

Finally, it is necessary for every company to have a secretary, for financial institutions in the group structure, the parent and the subsidiary should each have their separate company secretaries .there is always a danger that the company secretary of the parent company would attempt to get involved in the company secretarial affairs of the subsidiary. This should not be encouraged. While it is necessary that the policy direction of the two companies are aligned and that officers of the parent company offer help where necessary, it should not degenerated excessive interference by the parent in the affairs of the subsidiary .similarly, the loyalty of the subsidiary company’s has to lie with subsidiary’s board and not with the parent company or its board.²⁷

25. (1979.) 11 S.C. 138 (1979) NSC C. 210.

26. (19....) 2 NWLR 322.

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