



**CORPORATE GOVERNANCE IN NIGERIA: PUTTING THE ROLE OF COMPANY  
SECRETARY IN PERSPECTIVE**

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**Abstract**

*The article is a qualitative study that seeks to gain a better understanding of the underlying justification for appointing a company secretary who in contemporary times is expected by law to be the normative and compliance officer of the company in addition to his customary secretariat role. Towards providing deeper insights into the evolving roles of the company secretary in Nigeria, the article uses simple descriptive and analytical approaches. It examines the salient provisions of the Companies and Allied Matters Act 2020 (CAMA) along with some relevant soft laws in the area. The article suggests that there are instances where the appointment of a company secretary who is professionally qualified to perform the role is statutorily made optional and in other instances dispensed with. The piece queries the rationale for allowing such practices. The article recommends among others, a review of CAMA and the insertion of more robust provisions strengthening the obligation to appoint a professionally qualified person as company secretary in all instances.*

**Key Words:** Company Secretary; Normative Custodians; Compliance Officers; Company Officer.

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## Introduction

There is no statutory definition of the term “secretary” ipso facto company secretary. The term secretary is defined by Webster’s Dictionary as (a) a person “... employed to handle correspondence and manage routine and detail work for a superior” (e.g. secretary/typist or secretary/receptionist) or (b) “an officer of a business concern who may keep records of directors' and stockholders' meetings and of stock ownership and transfer and help supervise the company's legal interests”.<sup>1</sup> Which of these types of secretaries is CAMA concerned with? The best way to ascertain the type of secretary is to apply *thenoscitur a sociis* rule, also known as the *eiusdem generis* rule of construction of statute (a doubtful word may be ascertained by reference to the words associated with it).<sup>2</sup> Generally, the rule in effect helps to confine the construction of general words within the genus of special words which they follow in a statutory provision or a document.<sup>3</sup> CAMA 2020 copiously referred to the company secretary and its functions. An appraisal of the various references to the company secretary and his functions in CAMA reveals that CAMA is not concerned with the type of secretary defined in (a) who is a mere secretary typist, but with a company officer who fits the description of a secretary defined in (b). For the avoidance of doubt, CAMA in its interpretation section, while listing the principal officers of the company (the director, manager and others) included the secretary as one of them.<sup>4</sup>

A careful perusal of the cases reveals that the company secretary position gradually evolved over the years from a position of a mere clerk with no ostensible authority and metamorphosed to that of a principal or chief administrative officer of the company. This enviable status was achieved with the active aid of the court and statute.<sup>5</sup> Before this change in status was achieved a company secretary was considered a mere servant. In *Barnett, Hoares & Co v South London Tramway Co*<sup>6</sup> a late 19<sup>th</sup> century case, Lord Esher in an unequivocal term asserted that “the secretary is a mere servant. His position is to do what he is told and no person can assume that he

<sup>1</sup>Merriam-Webster Dictionary<<https://www.merriam-webster.com/dictionary/secretary>> accessed 7 April 2023.

<sup>2</sup>*Bronik Motors Ltd & Ors v Wema Bank Ltd* (1983) 1 SCNLR 296; (1983) ANLR 272

<sup>3</sup>*Federal Republic of Nigeria v. Lord Chief Udensilfegwu* [2003] 15 NWLR (842) 113, 195-196; *Fawehinmi v. Inspector-General of Police* [2002] 7 NWLR (Pt. 767) 606 at 683.

<sup>4</sup>Section 868 CAMA

<sup>5</sup>Ibid

<sup>6</sup>(1887) 18 QBD 815.



has any authority to represent anything at all.”<sup>7</sup> Over the years his status gradually changed. Commenting on the enhanced status of the company secretary, Lord Denning in *Panorama Developments (Guilford) Ltd v Fidelis Furnishing Fabrics Ltd*,<sup>8</sup> observed that “Times have changed. A company secretary is a much more important person nowadays than he was in 1887. He is an officer of the company with extensive duties and responsibilities.” The executive position of the company secretary has been acknowledged in a plethora of Nigerian cases. In *Wimpey (Nig) Ltd v Balogun*,<sup>9</sup> his lordship Ogundare JCA emphasising the distinction between the two types of secretary declared “I hope a company secretary is not being confused with a secretary/typist. They are two different things. A company secretary is indeed a high ranking officer in the company set up and is indeed part of the management of the company.”<sup>10</sup> In *Kraus Thompson Organisation Limited v University of Calabar*<sup>11</sup> the Supreme Court listed the company secretary as one of the principal officers of a company. Within the scope of this paper, a company secretary is an independent principal officer of a company appointed to superintend the secretariat, charged with ensuring effective administration of the company and statutorily empowered to act as normative custodians and compliance officers of the company.

### Appointment

In Nigeria, the company secretary is the only employee of a company whose employment is coated with statutory flavour. In other words, though an employee of the company, unlike other employees, his office is created by statute and protected by statute.<sup>12</sup> Consequently, except for a small company, every company is under an obligation to engage the services of a company secretary. The Company and Allied Matters Act 2020 (CAMA) vests the power to appoint the company secretary in the board of directors of the company.<sup>13</sup> As mentioned earlier, the Act makes it mandatory for every company (private or public) with the exception of a small private

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<sup>7</sup> Supra at 827

<sup>8</sup> 1971) 2 QB 711 at 716-717.

<sup>9</sup> [1986] 2 NWLR (Pt. 28) 324 at 338,

<sup>10</sup> Supra at 338.

<sup>11</sup> [2004] 9 NWLR (Pt 879) 631, 656

<sup>12</sup> *Ezekwekre v Golden Guinea Breweries Ltd* [2000] 8 NWLR (P670) 684.

<sup>13</sup> See section 333.



company to have a company secretary.<sup>14</sup> Statutorily, a company is considered a small company if it's a private company whose turnover is not more than ₦120, 000, 000 (One Hundred and Twenty Million naira) or such amount as may be subsequently fixed by the Corporate Affairs Commission (CAC) and its net assets value is not more than ₦60, 000, 000 (Sixty Million naira) or an amount fixed also by CAC. In addition, none of the company's shareholders is a foreigner or a government or government agency and the directors of the company must hold at least 51% shares in the company.<sup>15</sup> It follows that under the regime of the relatively new CAMA, it is optional for a small company to appoint a company secretary and obligatory for all other registered companies not classified as a small company to appoint a company secretary.

CAMA is emphatic and loud about the indispensability of the office of a company secretary at every given time in all other types of companies save for small ones. For instance, CAMA criminalises the failure of a public company to appoint one.<sup>16</sup> Failure to appoint a company secretary exposes the company and its directors to a fine. Similarly, whenever there is a change of the secretary of a company, the Company concerned is obliged to notify the CAC within 14 days of the appointment or removal of the secretary. Where there is a default, the company and each officer of the company may be held liable to a fine as may be determined by CAC from time to time.<sup>17</sup> Similarly, to ensure compliance, every public company is obliged to maintain a register of secretaries. A company's register of secretaries is expected to contain the following particulars: first, where the secretary is an individual secretary, his (a) full name and any former name or names. The requirement of providing particulars of a former name is dispensed with, where the former name (i) was changed or disused before the person attained the age of 18 years; or (i) has been changed or disused for 20 years or more; (b) address (this should be an address for service). For this purpose, the company's registered office would suffice; and (c) email address. On the other hand, where the secretary is a body corporate or a firm the required particulars are (a) the corporate or firm name; (b) its registered or principal office; and (c) its email address.

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<sup>14</sup>CAMA s 330(1).

<sup>15</sup>CAMA, s 394.

<sup>16</sup>CAMA, s 330(4).

<sup>17</sup> See section 339 (3); see also *Marina Nominees Limited v Federal Board of Inland Revenue* [1986] 2 NWLR (Pt. 20) 48



### Qualifications of the Secretary

Against the backdrop of being an officer of the company coupled with the enormous responsibilities vested in the company secretary, it is not surprising but appropriate that CAMA requires that competent hands be employed as company secretaries and proceeded to expressly stipulate minimum qualifications. In this wise, CAMA makes it incumbent on the directors to ensure that persons appointed as company secretaries are persons who appear to have the requisite knowledge and experience to discharge the functions of a secretary of a company.<sup>18</sup>

Consider the average gross worth of most public companies vis-à-vis the potential to gravitate systemic failure of the economy in the event insolvency arising from mismanagement, in the case of a public company, CAMA requires that the company secretary must be either (a) a member of the Institute of Chartered Secretaries and Administrators; (b) a legal practitioner; or (c) a member of any professional body of accountants; or (d) any person who has held the office of the secretary of a public company for at least three years of the five years immediately preceding his appointment in a public company; or (e) a body corporate or firm consisting of members each of whom is a qualified professional under the professions earlier mentioned.<sup>19</sup>

Obviously, the rationale behind the requirements to employ professionals, particularly in the case of a public company is to enthrone good corporate governance practices, promote competence and professionalism in administering company affairs. Though a similar obligation of picking company secretary from the professions mentioned is not expressly imposed on a private company, such companies however are required to appoint persons who appear to have the requisite knowledge and experience to discharge the functions of the office.<sup>20</sup> To this end, best corporate practice dictates that choosing from any of the professionals mentioned will better serve the purpose for which a company secretary is required; being trained experts on company management and operations.

However, in recent times, CAC's operational policy that promotes and encourages the use of information and communication technology (ICT) in the filing of returns by companies is a

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<sup>18</sup>CAMA, s 332.

<sup>19</sup>Ibid.

<sup>20</sup>CAMA, s 332.

development which is inauspiciously militating against the engagement of professionals as secretaries by private companies in Nigeria. This policy is being abused by most private companies to engage non-professionals as secretaries; more so that private companies are not obligated by CAMA to employ the professionals. Such practices negates the recommendations of the Nigeria Code of Corporate Governance which expressly stipulates that

Without prejudice to the provisions of extant laws, the Company Secretary should be a person with relevant qualifications and competence necessary to effectively discharge the duties of his office. The Board should ensure that the person appointed has the gravitas and objectivity to provide independent guidance and support at the highest level of decision-making in the Company.<sup>21</sup>

Practice shows that it will benefit the company more to employ the services of a professional company secretary. This is a better option because the training of such professionals equips them with the dexterity required to navigate safely the rough terrain of regulatory minefield and the proclivity of modern corporate governance.

The paper is not oblivious of the fact that criteria (d) above seems to validate a situation where a non-professional may be appointed as company secretary in a public company, so long as the person to be appointed has “held the office of the secretary of a public company for at least three years of the five years immediately preceding his appointment in a public company.” Where such is the case, it is hoped that the recommendations of the Nigerian Code of Corporate Governance 2018 that “Where the Company Secretary is an employee of the Company, he should be a member of senior management and should be appointed through a rigorous selection process similar to that of new Directors”,<sup>22</sup> should be adhered to.

## Removal

Despite the enhanced status of a company secretary, his office in the hierarchy of the company’s officers remains subordinate to that of the directors. Confirming the subordinate position of a company secretary, the court in *TaiwoOkeowo&Orsv Migliore&Ors*<sup>23</sup> held that the company

<sup>21</sup> S 8.1 Code of Corporate Governance 2018

<sup>22</sup> S 8.2 Code of Corporate Governance 2018

<sup>23</sup>[1979] 11 S.C. (Reprint) 87.

secretary has no authority to refuse to convene a meeting when the majority of directors had requested that the meeting be convened. Thus, in the discharge of his responsibilities, the company is expected to take instructions from the directors and the general meeting. Though the office of the company secretary is subordinate to that of the managing director or a director, acting alone a director cannot remove the company secretary.<sup>24</sup> Towards empowering and strengthening the independence of the company secretary, CAMA, subject to other relevant provisions, vests in the board of directors the power to remove the company secretary.<sup>25</sup> The power granted can only be exercised collectively as a board; it is equally so even if the company secretary holds a dual position as a company secretary coupled with any other office or offices such as legal adviser, administrative manager, etc. The fact that he occupies a dual position does not derogate from the statutory protection accorded him by CAMA.<sup>26</sup> Thus, a company secretary cannot be removed “under the subterfuge that he is being removed in the other capacity and not as company secretary. Nomenclature of his dual capacity is of minimum moment;”<sup>27</sup> because in equity, substance supersedes form. In *Daily Times (Nig) Plc v AdebisiAkindiji*<sup>28</sup> Opene JCA explaining that position under section 296 of the repealed Company and Allied Matters Act 1990,<sup>29</sup> which provisions is in pari-material with section 333 CAMA, said that where

“... a company secretary holds a dual position in the company as the company secretary/legal adviser, the mere fact of this duality does not remove the position of company secretary from being protected by section 296 of the Companies and Allied Matters Act. Also, the other role as legal adviser becomes protected by the armour that shields the company secretary status.”<sup>30</sup>

It is worthy of note that in a situation where the board of directors is properly constituted by one director (in the case of a small company with only a director), a removal of the company secretary by that director is valid. Again, though the court has no inherent powers to appoint or

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<sup>24</sup> See *Ashibogun v Afprint Nigeria Ltd* (1985) HCNLR 400.

<sup>25</sup> CAMA, s 333; *Daily Times (Nig) Plc v AdebisiAkindiji* [1998] 13 NWLR (Pt. 580) 22.

<sup>26</sup> CAMA, s 333.

<sup>27</sup> EmakaChianu, *Company Law*, 2012, LawLords, 532

<sup>28</sup> [1998] 13 NWLR (Pt. 580) 22.

<sup>29</sup> (2004) LFN Cap C 20.

<sup>30</sup> *Daily Times (Nig) Plc v AdebisiAkindiji* [1998] 13 NWLR (Pt. 580) 22.



remove a secretary, it can validly restrain a secretary from performing the duties of his office and may direct the board of directors to do the needful.<sup>31</sup>

Towards strengthening the independence of the company secretary, CAMA technically grants the company secretary a measure of job security through the imposition of stringent and transparent procedural requirements for the exercise of the power to remove him from office by the board, particularly in the case of the secretary of a public company. The Act provides for procedural fairness in the process leading to the removal of a public company secretary, but it is however silent on that of a private company. Though a secretary of a private company is not a recipient of such statutory protection, however, where the articles of association stipulate any procedure for his removal, the procedure must be strictly adhered to. In *Ashibogun v Afprint Nigeria Ltd*<sup>32</sup> (a case that was decided before the enactment of CAMA 1990), contrary to the articles of association, which stipulated that the board of directors' resolution was required for the appointment and removal of the company secretary, the managing director of the company purportedly terminated the appointment of the Plaintiff as the company secretary. The managing Director subsequently obtained the board's ratification. Though the defendant's contention that the plaintiff not being a shareholder (outsider) cannot take the protection offered by the articles of association was upheld, the court however relied on the principle that only the body or person who employs should have the authority to terminate such employment to give judgement in favour of the Plaintiff. Under the regime of CAMA 1990 and the extant CAMA 2020, that position has changed. Section 46(1) provides

Subject to the provisions of this Act, the memorandum and articles, when registered, shall have the effect of a deed between the company and its members and officers and between the members and officers themselves whereby they agree to observe and perform the provisions of the memorandum and articles, as altered in so far as they relate to the company, its members, or officers

The subsection explicitly makes officers of the company parties to the contract contained in the article of association. As mentioned earlier, the company secretary by virtue of the provisions of

<sup>31</sup>*Taiwo Okeowo & Ors v Migliore & Ors*. (n 20)

<sup>32</sup>[1985] HCNLR 400.





CAMA is one of the officers of the company. Thus, where the security of tenure of a private company's secretary is protected by the company's articles of association, the provisions must be implied into the contract of employment of the company secretary and the power to remove him must be exercised strictly in compliance with the conditions precedent as stipulated in the articles.<sup>33</sup>

In the case of a public company, where the company intends to remove its secretary, there is a statutory obligation on the board of directors to give him notice of the proposal.<sup>34</sup> Among other items, the notice must state the proposal to remove him, give the grounds on which the proposal is premised, give the company secretary at least seven working days within which to make his defence if he has any and provide him with an option to resign his office within seven working days.<sup>35</sup> After receiving the notice, if the secretary does not within the given period resign his office or make a defence or the defence is unsatisfactory, the board may only proceed to remove him from office where the ground on which it intends to remove him is founded on fraud or serious misconduct and subsequently, reports to the next general meeting. But where the ground of removal is other than fraud or serious misconduct, though the company secretary was appointed by the board, it cannot exercise its power of removal without the approval of the general meeting. In that case, the board may in the interim suspend the company secretary and report the matter to the next general meeting.<sup>36</sup> The general meeting may approve or reject the removal. If the removal of the company secretary is approved by the general meeting, the removal may take effect from such time as the general meeting may determine.<sup>37</sup> One major gap in the provisions is that the term "serious misconduct" is not defined and neither is the scope delimited by CAMA. This gap is prone to be abused and may be abused by an unscrupulous board of directors.

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<sup>33</sup>Uchechukwu W. Nwosu, *Business Law in Nigeria: Contemporary Issues and Concepts*, 267 <[www.researchgate.net/profile/UchechukwuNwosu/publication/333220012\\_BUSINESS\\_LAW\\_IN\\_NIGERIA\\_CONTEMPORARY\\_ISSUES\\_AND\\_CONCEPTS/links/5ce2a4c0458515712eb6f50f/BUSINESS-LAW-IN-NIGERIA-CONTEMPORARY-ISSUES-AND-CONCEPTS.pdf](http://www.researchgate.net/profile/UchechukwuNwosu/publication/333220012_BUSINESS_LAW_IN_NIGERIA_CONTEMPORARY_ISSUES_AND_CONCEPTS/links/5ce2a4c0458515712eb6f50f/BUSINESS-LAW-IN-NIGERIA-CONTEMPORARY-ISSUES-AND-CONCEPTS.pdf)> accessed 24 January 2023.

<sup>34</sup> CAMA, s 333 (2)-(4).

<sup>35</sup>CAMA, s 333(2).

<sup>36</sup> CAMA, s 333(3)(b).

<sup>37</sup>CAMA, 333(4).



## The Role of the Company Secretary

The enhanced status of the company secretary is an indication and a reflection of the onerous responsibilities placed on the office holder by statute. CAMA contains a long though not exhaustive list of some of the functions and duties placed on the office of the company secretary.

The list includes:

- (a) arranging and attending the meeting of the company, the board of directors and its committees, taking minutes and rendering all other necessary secretarial services in respect of the meeting, and advising on best corporate governance, including compliance, by the meetings, with the applicable rules and regulations;
- (b) maintaining the registers and other records required to be kept by the company under CAMA or other relevant statutes;
- (c) rendering proper returns and giving notification to regulators; and
- (d) carrying out such other administrative and secretarial duties as directed by the director or the company.<sup>38</sup>

These are enormous powers and responsibilities and for the purposes of efficacy require special skills, power and independence on the part of the company secretary. Interpreting section 298(1) CAMA 1990, which is in *parimateria* with section 335(1), the Court of Appeal in *Obiegue v AG of the Federation*<sup>39</sup> held that “A company secretary, by his legal functions, is in a position to make executive decision which will result in a breach of contract, having regard to the duties of a company secretary as spelt out in section 298(1) of Companies and Allied Matters Act.”

Beyond rendering secretariat services, key among other roles is the responsibility of advising on best corporate governance, including compliance, by the meetings, with the applicable rules and regulations. In other words, CAMA places on the company secretary the onerous responsibility of serving as normative custodians of the managerial team to ensure that due process requirements are adhered to and curb managerial risk-taking.<sup>40</sup> An excursion into reasons for corporate failures, for instance, the banking crisis of the late 2000s (which almost resulted in a

<sup>38</sup>CAMA s 335(1).

<sup>39</sup>[2014] 5 NWLR (Pt. 1399) 171 at 213.

<sup>40</sup>KayodeEso, ‘Ethics in Business and Profession: Yesterday, Today and Tomorrow’ in KayodeEso and AdemolaYakubu (eds). (2003) *Further Thought on Law and Jurisprudence*. (Spectrum law publishing, 2003), 3.



systemic failure), was the failures of corporate governance in the banking sector.<sup>41</sup> Thus, towards institutionalising the culture of good corporate governance, the company secretary within the regime of CAMA has a very important role to play. The company secretary is required to guide and counsel the management team on the ethos of corporate governance practices<sup>42</sup> and ensure that their actions and decisions are in harmony with the extant laws as well as the memorandum and articles of association. In this wise, it is appropriate that the company secretary heads the corporate department of the company. This department includes the corporate governance unit, regulatory compliance unit and administrative unit, where the secretary is a lawyer it should also include the legal unit.

The question is to what extent can a company secretary be a restraint on managerial risk-taking? In other words, to what extent can a company secretary use his gatekeeping position to check unethical managerial risk-taking proclivity, without being adjudged insubordinate? In practice, the saying that ‘he who pays the piper calls the tune,’<sup>43</sup> is the underlying principle regulating the relationship between the company secretary and his *de facto* employer (the board of directors). More often than not, due to personal economic considerations and the need to avoid unpalatable consequences, the company secretaries are usually inclined to assist the management team find a way of getting around the rules rather than obeying in situations where the management position undermines the law. This is a serious setback for the pursuit of professionalism in company secretariat management. Professionalism as it were, requires the company secretary to be committed to statutory obligations imposed on him, rather than to the interests of his employer or his private interest.

The Nigerian Code of Corporate Governance 2018 which seeks to institutionalise best corporate practices in Nigerian recognises the important role of the company secretary in entrenching the culture of good corporate practices, hence Principle 8 of the Code like CAMA affirms that “The

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<sup>41</sup>Sanusi L Sanusi, “The Nigerian banking industry: what went wrong and the way forward” (Paper delivered at the Annual Convocation Ceremony of Bayero University, Kano, 26 February 2010).<[www.cenbank.org/out/speeches/2010/the%20nigerian%20banking%20industry%20what%20went%20wrong%20and%20the%20way%20forward\\_final\\_260210](http://www.cenbank.org/out/speeches/2010/the%20nigerian%20banking%20industry%20what%20went%20wrong%20and%20the%20way%20forward_final_260210)> accessed 30 January, 2023]

<sup>42</sup> Ibid.

<sup>43</sup>*Merriam-Webster.com Dictionary*, Merriam-Webster, <[www.merriam-webster.com/dictionary/he%20who%20pays%20the%20piper%20calls%20the%20tune](http://www.merriam-webster.com/dictionary/he%20who%20pays%20the%20piper%20calls%20the%20tune)>accessed 3 January, 2023.



Company Secretary plays an important role in supporting the effectiveness of the Board by assisting the Board and management to develop good corporate governance practices and culture within the Company.” Towards effective performance of these onerous responsibilities and to embolden every company secretary, the Code recommends that “The Company Secretary should be properly empowered by the Board to discharge his duties and responsibilities,”<sup>44</sup> In the event of a vacancy or for any reason the secretary is incapable of performing his functions, the duties of the office may be performed by any assistant or deputy secretary or, if there is no assistant or deputy secretary capable of acting, by any officer of the company authorised generally or specially by the directors.<sup>45</sup> Similarly, for the purposes of anything required to be done by a company secretary, a small company (within the context of CAMA) without a secretary is also allowed act in line with the provisions section 330(3). In other words, any officer of the company authorised generally or specially by the directors may act as secretary. Generally, where CAMA specifies that a thing be done by a director and the secretary, the requirement is not satisfied, if the thing is done by the same person acting both as director and as, or in place of the secretary.<sup>46</sup> In the discharge of the aforementioned duties, a company secretary does not owe fiduciary duties to the company, but where he is acting as the company’s agent, he owes fiduciary duties to the company. Where he is adjudged to owe a fiduciary duty, he is liable to the company where he makes secret profit or lets his duties conflict with his personal interests, or he uses confidential information obtained from the company for his own benefit. While it is expedient in contemporary Nigeria to integrate the company secretary into the management team of the company, professionalism requires that the occupant of the office must be competent and possess a deep understanding of the legal system as it affects the business climate in Nigeria, good communication and interpersonal skills, knowledge of corporate, securities and business laws, knowledge of regulatory and compliance issues, management and organisational skills, analytical and problem solving skills, knowledge of using Information Technology, knowledge of basic accounting principles, ability to read early warning signs of likely problems which may

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<sup>44</sup> See s 8 of the Code, devoted to company secretary and recommended practices of the office.

<sup>45</sup> See CAMA, s 330(3)

<sup>46</sup> CAMA, s 331.

affect company's growth and operations and ability to mediate in company meetings to achieve a consensus between the directors and shareholders.<sup>47</sup>

## Conclusion

The office of the company secretary in contemporary Nigeria occupies a very important position in corporate management. Considering the enormous responsibilities of the office, exigencies demand that the company secretary must possess the relevant professional qualifications and competence necessary to effectively discharge the duties of his office. The preceding paragraphs x-rayed statutory regulation of this very important office and highlighted the enormous responsibilities of the office; identifying the strength and pitfalls of some of the salient provisions. Against the backdrop of the pitfalls this paper makes the following suggestions

- i. First, while certain prevailing circumstances might justify the exemption of a particular class of private company from appointing a company secretary, however statutorily entrenched selective application of the obligation to appoint a professionally qualified company secretary is a disservice and disincentive for the pursuit of a sustainable culture of good corporate governance. Generally, the law and its implementation should be tailored towards achieving universal application. A self-imposed random or selective application of its provisions by CAMA may result in a systemic violation as it may obfuscate compliance. It is therefore imperative to encourage a universal application of the prescribed qualification of a company secretary by deleting the phrase “and in the case of a public company, he shall be ...” in section 332 of CAMA and insert in its place the phrase “and in all cases where it is incumbent to appoint a company secretary, he shall be ...”
- ii. One of the findings and conclusions from the foregoing is that provisions of CAMA are extremely inadequate to regulate the ethical and professional conduct of the present-day company secretary, particularly, with regard to his role as the compliance officer of the company. While CAMA gives some measure of guidance to the company secretary in the

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<sup>47</sup> Emmanuel Ekpenyong and Okoi Nkanu (2020) Nigeria: Why Does A Nigerian Company Need A Company Secretary? <[www.mondaq.com/nigeria/shareholders/952670/why-does-a-nigerian-company-need-a-company-secretary](http://www.mondaq.com/nigeria/shareholders/952670/why-does-a-nigerian-company-need-a-company-secretary)> accessed 30 January, 2023]



discharge of his key role as the normative custodian and compliance officer, the Act failed to create legal duties that could create a course of action against an erring company secretary in the event that he fails or neglects to advise the relevant meeting on due compliance with the applicable rules and regulations. On the contrary, section 334 expressly excused the company secretary from fiduciary duties in the discharge of his responsibilities, unless where he is acting as an agent of the company. The absence of provisions (express or implied) designed to regulate or hold a company secretary accountable in situations where he fails or neglects to diligently guide meetings is a major flaw. Juxtaposed with the proclivity of modern-day best corporate governance practices, the provisions dedicated to the company secretary's role as normative custodian and compliance officer are too terse and weak to promote professionalism. It is recommended that this inexplicable absence be addressed by the insertion of specialized provisions targeted at regulating the company secretary in the discharge of his role as normative custodian and compliance officer. Amongst others, the provisions must spell out the liability of the company secretary for neglecting or failing to advise or ensure compliance with rules or regulations by meetings.

- iii. Assuming a company secretary diligently performed his statutory responsibilities of acting as a normative custodian and compliance officer, but management acted in violation of his counsel, in the circumstances, as check against surreptitious compromise, there is a need to further impose on the secretary an affirmative duty of reporting a material organisational violation of the law or breach of fiduciary duties to relevant regulatory bodies. Failure to report under the circumstances should attract sanctions against the erring company secretary; ranging from imposition of fine, reprimand, temporary or permanent denial from acting as company secretary and or prosecution that may result in imprisonment where the failure is found to be fraudulent or deliberate.