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**Analysis of the Seeming Conflicts in the Division of Powers  
Between Directors and Members of the Company in General  
Meeting**

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**Chimezule Obinuchi\***

**Abstract**

*A company is a legal personality distinct and separate from its owner. It can sue and be sued in its name. The extant law, Companies and Allied Matters Act described it as having all the powers of a natural person of full capacity. This paper critically examines the conflicts which are bound to arise in company operation and administration. The directors of companies on one hand see themselves as the engine room and life wire of the company, on the other hand the members who are shareholders see themselves as the 'owners' and watchdog of the company. It is obvious from the above scenario that conflicts are bound to arise between the directors and members in general meeting of the company. This research work explains in details the law of meeting and types bringing out the new innovations introduced in the new Act as it relates to what constitutes ordinary business of Annual General Meeting of company. It is the finding of this research that serious conflict exist between the directors of companies and members especially where the directors exercises powers that are ultravires their powers but intravires the powers of the company. This research concludes that where such exercise of powers by directors are for the benefit of the company it should be ratified by members in general meeting for the good of the company. Cooperation between the members and directors for the growth of the company should be the utmost desire of all.*

**Keywords: Conflict, Meeting, Director, Company, Members.**

## 1. Introduction

An incorporated company has been described as a mere abstraction. If so the legal personality enjoyed by incorporated company is a mere legal fiction. This is because the company has neither body nor mind of its own. It can only exercise such powers as it possesses through the instrumentality of human beings who constitute the organs, officers, etc of the company. This research work will commence with conceptualizing some key concepts which will run through this paper. It will begin with the director, who he is, modes of appointment, duties among others before focusing on the main area of discourse relating to areas of conflict between directors and members of a company. Suffice it to inform that conflict is inevitable in any human organization and a company is no exception to such conflicts. This paper will in details treat areas of conflict between members of a company and its directors and proffer solution.

## 2. Theoretical Framework

This research work uses the agency theory. This is because the theory deals with the relationship between company owners (shareholders) on one hand and the directors also called managers on the other hand. The owners also called members or shareholders can be likened to the principal while the directors or managers are their agents. It is the desire of the members of a company that the agents in this case the directors will exhibit high level proficiency in management and administration of the company in order to achieve the aim and objectives of the company. Where this is not the case, conflicts between the principal and the agents are bound to arise which is the focal point of this research work.

The first scholars to propose the agency theory were Stephen Ross and Barry Mitnick.<sup>1</sup> They introduced the economic and institutional theory of agency in response to the imperfections of agency relationships. This theory can assist in

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<sup>1</sup>B M Mitnick, 'Origin of the Theory of Agency: An Account by One of the Theory Originators', (2013) *SSRN Electronic Journal*; available at

<<https://www.researchgate.net/publication/228124397-Origin-of-the-Theory-of-Agency-An-Account-By-One-of-the-Theory-Originators>> accessed on 15 April, 2022.

the administration of a company especially where conflict of interest between members of the company and its directors arises. The proponents of the theory see agency relationships as a form of contract between the company's members and its directors. Here, the owners as principals appoint directors as agents of the members. Another proponent of the agency theory is Michael Jensen,<sup>2</sup> he discussed the concept of agency costs. Agency costs means costs associated with cooperative effort by human beings. It is the costs arising when one entity, the principal, hires the another, the agent, to act on his behalf.<sup>3</sup>

### **3. Methodology**

This research work adopts the doctrinal approach, notwithstanding it will also be analytical. The writer shall make use of both primary and secondary sources of information. The primary sources shall include Statutes especially Companies and Allied Matters Act 2020 among others. The secondary sources shall include text books, journals, online sources and legal opinions on issues relating to the subject matter of discourses

### **4. Who is a Director?**

The management of a company is usually entrusted to a body of persons called directors. The exact name by which a person occupying the position of director is called in a company is immaterial. Under Companies and Allied Matters Act 2020 (hereinafter CAMA, 2020), director includes a shadow director<sup>4</sup>, a person in accordance with whose instructions the directors are accustomed to act other than on purely professional advice.

It will be necessary to define who a director is in line with the extant law. A director of a company registered under this Act is a person duly appointed by the company to direct and manage the business of the company.<sup>5</sup> The Board of Directors (BoD) is made up of directors of the company. They run the day to day

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<sup>2</sup>M C Jensen, 'Agency Costs of Overvalued Equity' (2205)

<https://onlinelibrary.wiley.com/doi/epdf/10.1111/j.1755-053X.2005.tb00090.x> accessed on 16 April, 2022.

<sup>3</sup>*ibid*

<sup>4</sup> (CAMA 2020) s. 270(1)

<sup>5</sup> (CAMA 2020) s. 269 (1)

affairs of the company. Davies and Worthington<sup>6</sup> averred that the Board of Directors is the most important decision making body within the company. Ola<sup>7</sup> opined that the management of a company is usually entrusted to a body of persons called directors who run the affairs of the company effectively and efficiently. Morse<sup>8</sup> described BoD thus: “the management of a company is usually entrusted to a small body of persons called the ‘directors’ sometimes called governors.”<sup>9</sup>

The present writer see the BoD of a company as the engine room of the company. Its importance to a company cannot be overemphasised as they constitute the life wire of the company which ensures that the purpose for which a company is set up is achieved. It constitutes the fulcrum of the company activities and has to deliver on the mandate given to it by the members of the company by coordinating activities of the company to achieve the aforesaid purpose.

#### **4.1 Appointment of Directors**

The law is sacrosanct that the minimum number of directors of a company remains two.<sup>10</sup> But the number of directors and names of the first directors shall be determined in writing by the subscribers of the memorandum of association or a majority of them or the directors may be named in the articles.<sup>11</sup> Suffice to state here that unlike the repealed Act which states that a company must at every point in time have a minimum of two directors, the new CAMA 2020 allows for a single director in a company.<sup>12</sup>

#### **4.2 Duties of Director**

Broadly, the duties of directors may be classified into two headings;

a. Fiduciary Duties

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<sup>6</sup> P L Davies and S Worthington, ‘*Gower’s Principles of Modern Company Law*’ (Tenth edn, London: Sweet and Maxwell, 2016)

<sup>7</sup> C S Ola, ‘Company law in Nigeria’ (Ibadan, Heinemann Educational Book: 2002) 277

<sup>8</sup> G Morse, ‘Company Law’ (12th edn, London: Stevens & Sons Ltd 1983) 327

<sup>9</sup> Ibid

<sup>10</sup> (CAMA 2020) s. 271(1)

<sup>11</sup> (CAMA 2020) s. 272

<sup>12</sup> (CAMA 2020) s. 18(2)

b. Duty of Care & Skill

The relationship between the directors of a company and the company is of a fiduciary nature. They are bound to observe utmost good faith in all their transactions on behalf of the company. The fiduciary duty of the directors are generally strict in order to prevent the danger arising from the difficulty of disproving in particular cases that the duty has not been breached.

**4.3 Fiduciary Duties**

A fiduciary duty is a duty with the highest standard of care. It is an obligation of one party to act in the best interest of another. In the extant law,<sup>13</sup> a director of a company stands in fiduciary relationship towards the company and shall observe utmost good faith towards the company in any transaction with it or on its behalf.<sup>14</sup> It is stated that a director owes fiduciary duty to the company. Other sections dealing with fiduciary relationship of the director and the company are enumerated in *Section 305 of CAMA 2020*. The fiduciary duties of director to the company implies that he should exercise care at the extreme height while dealing with company matters. Decisions are not to be taken in a hurry. Carefulness at all times remains the goal.

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<sup>13</sup> (CAMA 2020) s. 305(2)

<sup>14</sup> (CAMA 2020) s. 305(1)

#### **4.3.1 Duties of Skill and Care**

The duties of skill and care emanates from the manner in which the director is expected to execute his obligations. Every director is expected to exercise a degree of diligence and skill which a reasonably prudent director would exercise in comparable circumstances. In determining the reasonableness of a director, the extant law presupposes the reasonable man's test. Due diligence at all times in matters pertaining the company that requires his decision. The best decision on every matter at all times should be taken.

#### **4.4 Meeting and Member's Participation**

The general meeting of a company is the primary organ through which the members of the company exercise their function of surveillance and direction of the company's administration placed upon them by CAMA 2020. Emiola<sup>15</sup> opined that role of meeting in a company is very important.

##### **4.4.1 The Law of Meetings**

The rules governing the relationship of members and guaranteeing the effective participation of members in the administration of the company are contained in CAMA 2020. Like all democratic institutions, the wishes of the majority of members present and voting prevail although the minority are conceded the right to express their views. Any conflict of opinion is settled by the vote of shareholders. Hence, once a decision is taken in accordance with the provisions of the Act the court will not interfere, nor will they allow themselves to be used as instrument for thwarting the will of the majority. This was illustrated in the case of *Foss v Harbottle*<sup>16</sup>, here, the principle was based on recognition of the implication of corporate sovereignty and management which includes the well laid down exceptions, the supremacy of the majority. The case in brief, F and T were shareholders in a company which was formed to buy land for use as a pleasure park. The defendants were other directors and shareholders of the company. F and T alleged that the defendants had defrauded the company in various ways and in particular that the defendants had sold the land belonging to them to the company at an exorbitant price. F and T now asked the court to order that they make good losses to the company. The court held that since the

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<sup>15</sup> A Emiola, 'Nigerian Company Law' [Abuja, Panaf Press 2012] 370

<sup>16</sup> (1843) 2 Harc 461, 67 ER 1 189

company's board was still in existence, and since it was still possible to call a general meeting of the company, there was nothing to prevent the company from obtaining the redress in its corporate character, and the action of F and T could not be sustained. The principle in *Foss v Harbottle* has become part of our law thus adequately covered in CAMA 2020.<sup>17</sup> Company meetings are conducted according to majority rule. It therefore means no more than that the majority must have their way subject only to the statute and articles through the appropriate organs and the adoption of proper procedure.

Udu<sup>18</sup> opined that members of a company takes resolutions on issues regarding the management of the company at general meetings. The company meeting is an essential aspect of company affairs. The meeting of any company remains where major decisions of the company are taken. Members who have opposing views are allowed to air their views then a consensus is finally arrived at which more often is usually the majority view on the subject matter.

Chianu<sup>19</sup> opined that meetings as *prima facie* the coming together of two or more persons by appointment and for purpose. It is the meeting that serious matters affecting the company are deliberated. Ogbuanya<sup>20</sup> on the other hand described company meetings as an essential aspect of Corporate Governance. The members in general meeting can take certain decisions to control the management of the company, and can also utilize the general meeting to ratify the acts of the directors which were *ultra vires* the board. It is important to add that none business organisations, such as Incorporated Trustees are not statutorily compelled to hold Annual General Meetings or Statutory Meetings. The constitution of such organisation usually provide for General Meetings in the form of Annual General meeting and Extra-ordinary General Meeting, in order to take advantage of the benefits of general meetings for effective corporate governance.

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<sup>17</sup> (CAMA 2020) s. 341

<sup>18</sup> E A Udu, 'Principles of Company Law Practice in Nigeria' (Lagos, Mbeyi & Associate Nig Ltd 2017) 111

<sup>19</sup> E Chianu, 'Company Law' (Abuja, Panaf Press; 2012) 571

<sup>20</sup> N C S Ogbuanya, 'Essentials of Corporate Law and Practice in Nigeria' (Lagos: Novenea Publishers Ltd 2012) 406

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Orojo<sup>21</sup> informed that the decisions of a public company are generally taken at the meeting of its members which constitutes primary organ. However, when it is a private company, if all the members agree, a decision may be taken even though no formal meeting is held. This is for a private company and not for a public company.

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<sup>21</sup> J O Orojo, 'Company Law & Practice in Nigeria' (Lagos, Interpad Books 2008) 229



#### **4.4.2 Types of Meeting**

- a. Statutory meeting
- b. General meeting
- c. Extra-ordinary meeting

##### **4.4..2.1 Statutory Meeting**

Statutory meeting is a meeting that every public company must hold within a period of six months from the date of its incorporation in pursuance of the provisions of the CAMA 2020<sup>22</sup>. The court in *GEB Plc v Odukwu*<sup>23</sup> held that if a company fails to hold its statutory meeting to comply with the requirement of the aforementioned section, the company and any officers in default shall be guilty of an offence and liable to fine for everyday during which the default continues in such amount as the commission shall specify in its regulation.<sup>24</sup>

The term statutory meeting emanates from the statute. That is, it is the law as stipulated in CAMA 2020. The Statutory report<sup>25</sup> which is an outcome of the statutory meeting shall be certified by not less than two directors or by a director and secretary of the company and shall state the following:

- a. The total number of shares allotted, distinguishing shares allotted as fully or partly paid up than in cash, and stating in the case of shares partly paid up, the extent to which they are paid up and the consideration for which they have been allotted.
- b. The total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid.
- c. The names, addresses and descriptions of the directors, auditors, managers, if any, and secretary of the company.
- d. The particulars of any pre-incorporation contract together with the particulars of any modification or proposed modification.
- e. Any underwriting contract that has not been carried out and the reason, therefore.
- f. The arrears, if any, due on calls from every director.

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<sup>22</sup> (CAMA 2020) s. 235(1)

<sup>23</sup> (2009) 14 NWLR (Pt. 1160) 43

<sup>24</sup> (CAMA 2020) s. 236

<sup>25</sup> (CAMA 2020) s. 235(3)

- g. The particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares or debentures to any director or to the manager.

The report shall contain an abstract of the receipts of the company and the payments made from them up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares, debentures and other sources, the payments made from such receipts and particulars concerning the balance remaining in hand and an account or estimate of the preliminary expenses of the company.

The statutory report, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and the receipts and payment of the company on capital account, certified as correct by the auditors. The members of the company present at statutory meeting are at liberty to discuss any matter relating to formation of the company, its commencement of business or arising out of the statutory report.

Any member who wishes a resolution to be passed on any matter arising out of the statutory report shall give further 21 days notice from the date on which the statutory report was received to the company of his intention to propose such a resolution, in which case the statutory meeting shall not be held until the expiration of the 21 days notice given to the company by the member.

#### **4.4.2.2 Annual General Meeting (AGM)**

The first annual general meeting must be held within the first 18 months after the incorporation of a company.<sup>26</sup> Accordingly, so long as a company holds its first annual general meeting within 18 months of its incorporation, it need not hold it in that year or the following year. Subsequent annual general meetings must be held within 15 months after the preceding one. However, except for the first annual general meeting, the commission shall have power to extend the time within which any annual general meeting shall be held, by a period not exceeding 3 months so that not more than 18 months shall elapse between the date of the last general meeting and the date of any meeting so extended.

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<sup>26</sup> (CAMA 2020) s. 237(1)(a)

If default is made in holding a meeting of a company in accordance with *subsection (1) of Section 237*, the commission (that is, Corporate Affairs Commission) may on its own or on the application of any member of the company call or direct the calling of a general meeting of the company and give such ancillary or consequential direction as the commission considers expedient, including directions modifying or supplementing in relation to the calling, holding, conducting of meeting, the operation of the company's articles and that the directions that may be given under this subsection shall include a direction that one of the members of the company present in person or by proxy may apply to the court for an order to take a decision which binds all the members.<sup>27</sup> The binding effect is sequel to the approval of the court otherwise such cannot be said to have binding effects on all the members of the company as described above.

There are two types of businesses<sup>28</sup> transacted at the annual general meeting of a company, to wit:

- a. Ordinary Business
- b. Special Business

All businesses transacted at annual general meeting shall be deemed special business except the following:

- i. Declaring a dividend.
- ii. Presentation of the financial statements and reports of directors and auditors.
- iii. Election of directors in the place of those retiring.
- iv. The appointment, fixing of remuneration of the auditors.
- v. Appointment of members of the audit committee.
- vi. Disclosure of remuneration of managers of a company, which are an ordinary business.

It is important to inform that in the repealed Act, the ordinary business of company meetings were five. They are the first five stated above. The new one is the sixth which is the disclosure of remuneration of managers of a company. The present writer is of the view that the secretive nature of managers and directors

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<sup>27</sup> (CAMA 2020) s. 237(2)

<sup>28</sup> (CAMA 2020) s. 238

remuneration would have influenced the legislators to include the 2020 legislation on company law and administration.

#### **4.4.2.3 Extraordinary General Meeting**

The extraordinary general meeting<sup>29</sup> is held at any time to transact business that cannot conveniently wait for the next annual general meeting. The Board of Directors [BoD] can convene extraordinary meeting whenever they deem fit. The extraordinary general meeting unlike the statutory and annual may or may not hold in Nigeria.<sup>30</sup> If they are to hold it outside the country, what is required is insufficient number of directors capable of forming a forum. It is important to add that any director may convene an extraordinary general meeting.

This paper is not exhaustive of meetings. Notice of meetings, contents of notice of meetings, persons entitled to notice, service of notice among others are not fully captured in this discourse.

#### **4.4.3 Conflict in Division of Powers of Directors and Members in General Meeting.**

Members in general meeting is the highest organ of the company. The members are the shareholders who are the real owners of the company, the directors on the other hand are appointed or elected to run the affairs of the company. The shareholders see themselves as the real owners of the company and from time to time conflicts are bound to arise between the members and directors when it comes to division of powers between them. The members of the company act as watchdog on the directors of the company.

It may be expedient to examine the rights of members in order to appreciate areas of possible conflict between members and directors in general meeting. The rights of members include but are not limited to:

- Attend and vote at general meeting.
- Receive dividends if declared.
- Circulate a written resolution and any supporting statements.
- Request a general meeting be held.
- Receive the statutory accounts of the company.

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<sup>29</sup> (CAMA 2020) s. 239(1)

<sup>30</sup> (CAMA 2020) s. 239(1)

#### **4.5 Areas of Conflict between directors and members of company**

The conflicts in division of powers of directors and members in general meeting are many. Among them are:

1. Where the director's actions are *ultra vires* the powers of directors but *intra vires* powers of the company. Thus where directors act beyond their powers, it breeds conflict with members of the company during general meeting. Thus except such acts are ratified by the members in general meeting, it goes to nothing.
2. Directors control vital information of the company, they have the expertise and skill to run the company while the members are seldom skilled. How company information is managed can be a source of conflict between directors and members in general meeting.
3. Another area is the possible need for directors to appear in good light before the members. Some of the ways this may happen include misrepresenting performance by doctoring audit reports and financial statements to make the company appear as if it has been making a profit whereas this may not necessarily be the case.
4. When a director's duty to the company is compromised. This can be seen to be done in several ways. Instances abound where some directors of companies are seen to have taken decision without exhibiting the highest level of expertise which is expected of a director. It has been stated in this paper that among the duties of a director is that of skill. Where a director of company fails to display such skill in course of company administration the members of the company are usually unhappy and it results in serious conflict between members of the company and the directors during general meeting.
5. When interest of stakeholders are not properly balanced and or harmonised. It can breed conflict between the directors and members of company.

It is important to add that resolving whatever conflict that will arise between the members of the company and the directors is important because such can lead to the downfall of the company. Examples abound where companies fold up due to conflicts between members of company and directors of company in general meetings. It is submitted that both directors and members of the company should see each other as partners whose utmost interest is to see that the company

flourishes. They should therefore see each other as working for the advancement and progress of the company. Whenever conflict arise, it should be given the desired attention and issues sorted out amicably between the directors and members.

This paper posit that boardroom politics is different from conflict between directors and members of a company. The latter relates to conflict or infighting between directors and members while the former includes butnot limited to question of compensation, conflict of interest, absence of transparency, ineptitude, and corruption among others within the board members in boardroom meetings (or conference as they are sometimes called). The boardroom politics does not involve members of the company who are not directors except in rare cases where external lobbying is involved. It is played by members of the board among themselves in board meeting. Boardroom politics therefore is between directors who are members of the board while conflict between members and directors as explained in this paper is that between members of the company sometimes called shareholders and the elected or appointed directors which constitutues the board of directors of a company.

#### **4.6 Conclusion**

Directors of companies are the engine room and life wire of companies. However, as shown in this paper there are times members of the company and directors have conflicts. This is against the backdrop that members see themselves as the owners of the company and watchdog on the directors. Directors on the other hand see themselves as the life wire of the company. The conflicts can be minimized by full disclosure by the directors. Members on the other hand should be willing to ratify the decisions of the direcors taken in the best interest of the company even though such decision were ultra vires the powers of directors once it is established that the decision was in the best interest of the company. When conflicts between directors and members are reduced in a company, it results positively in the growth and advancement of the company. Directors of companies are to exercise the highest level of expertise in the administration of company affairs. It is truism that when conflicts between the members and directors are reduced and the directors exhibit the highest level of diligence, expertise, care and skill the company will be better for it.