

AN EXAMINATION OF THE LIABILITIES OF THE SECRETARY OF A PUBLIC
COMPANY UNDER THE COMPANIES AND ALLIED MATTERS ACT (CAMA)
2020

Bamidele Olasehinde Adebayo*

Abstract

This study examines the liabilities of the secretary of a public company under the Companies and Allied Matters Act (CAMA) 2020. Using a doctrinal research approach, this research analyses the statutory provisions and judicial interpretations governing the role and responsibilities of secretaries of public companies in Nigeria. The study highlights the secretary's duties, including ensuring compliance with regulatory requirements, maintaining company records, and facilitating communication between the company and its stakeholders. The paper reveals that the secretary's liabilities can arise from various sources, including statutory obligations, contractual duties, and fiduciary responsibilities. The paper also examines notable cases and statutory provisions, such as sections 330-334 of CAMA 2020, which outline the secretary's role and potential liabilities. This paper contributes to a deeper understanding of the legal framework governing company secretaries in Nigeria and provides insights into the implications of non-compliance. Ultimately, this study aims to inform best practices and promote effective corporate governance in public companies.

Keywords: Company Secretary, Duties, Liabilities, Corporate Affairs Commission (CAC), Companies and Allied Matters Act (CAMA) 2020.

1.0 Introduction

A secretary is included in the definition of an officer of a company under Section 868(1) of CAMA 2020. In particular, the clause specifies that a director, manager, or secretary is considered an "officer" with respect to a corporate body. It is important to state right from the onset that most of the provisions of CAMA 2020 regarding penalties or liabilities may not expressly mention 'company secretary' as the defaulting officer. However, where the Act states '...and every officer of the Company,' it can be deduced that the company secretary is included since he is one of the major officers of a company according to section 868 (1) of the Act, the others being director or manager. He is the chief administrative officer and the

*Bamidele Adebayo, B.sc; LL. B; LL.M; B.L; FCIS. Adebayo is a lecturer at Redeemer's University in Ede, Osun State, Nigeria, and a fellow of the Institute of Chartered Secretaries and Administrators of Nigeria (ICSAN). His contacts: E-mail: bamisehinde@gmail.com Mobile Numbers: 08109256441; 08023845649.

corporate conscience of the Company. He is the custodian of records and the promoter of good corporate governance in the Company.

Thus, a company secretary may be liable as an officer of the Company. Similarly, because he is charged with certain statutory duties,¹ he may equally be liable for default in performing those duties. Liability is the legal duty of being obligated by law or equity to perform, compensate, or make amends. In CAMA 2020, the term "liability" is not defined. It denotes, however, "the quality of being legally accountable; legal responsibility to another or society, enforceable by civil remedy or criminal punishment," according to the Black Law Dictionary..² It was explained further that

A liability has two meanings, at the very least. It is the opposite of privilege or liberty in this sense and is synonymous with responsibility, the correlate of right. It is a responsibility that each participant has, and breaking it will result in consequences. Additionally, it is the antithesis of immunity and the correlate of power.³

From the above explanation and analysis of the term 'liability', the first sense of analysing it is relevant to this discourse. All the liabilities a secretary can incur result from default in performing his duty one way or the other. In other words, without a duty imposed to be performed, there can't be liability emanating from failure to perform the duty.

One other novel provision in CAMA 2020, which was not in the repealed CAMA 2004, is the category of companies that are legally mandated to have a secretary. In the repealed CAMA, every Company is required to have a secretary.⁴ However, under CAMA 2020, small companies are not mandated to have a secretary.⁵

The CAMA 2020 extensively defines companies that are qualified or classified as small companies,⁶ and such companies include private companies.⁷ Section 394 of CAMA 2020 should not be interpreted to mean that small or private companies are prohibited from having a secretary. What the section intends is that it is not mandatory for such companies to have a secretary, but they will not be breaching any law if they choose to have one. The operative word in the section is 'shall', which makes it mandatory only for public companies but not mandatory for small companies since they have been exempted from that obligation.

¹ See Companies and Allied Matters Act (CAMA) 2020, section 335.

² Bryan A. Garner (ed.) *Black's Law Dictionary*, 8th edition, 2004, USA Thomson West Publishing Co, p.932.

³ *Ibid.*

⁴ See CAMA 2004, section 293.

⁵ See CAMA 2020, section 330 (1).

⁶ See CAMA 2020, section 394 generally.

⁷ See CAMA 2020, section 394 (3) (a).

2.0 Specific Matters for Compliance by the Company Secretary and Penalties for Default

Some of the specific liabilities for which a company secretary may be culpable, as stipulated in various sections of CAMA 2020, are our concerns in this paper. Such liabilities include but are not limited to the following:

2.1 Fiduciary Interest of a Secretary

Although a secretary does not owe fiduciary responsibilities to the Company, he does owe fiduciary duties to it when acting as its agent.⁸ Additionally, if he permits his obligations to clash with his personal interests, generates covert profits, or utilizes proprietary information that he receives from the Company for his own gain, he will be held accountable to the Company for breach of these obligations. When juxtaposed with the fiduciary duties of a director, the position is different. This is because directors shall always owe fiduciary duties to the Company and not only when he is acting as an agent.⁹ According to CAMA 2020, a director has a fiduciary (trust) connection with the Company and is therefore required to act in the Company's best interests when conducting business with it or on its behalf.¹⁰

2.2 Personal Liability in *ultra vires* Acts

As an officer of the Company, the Secretary must act within his ostensible power as conferred on him by the Company. As a result, an officer or agent of the Company may be given power prior to acting or when such action is subsequently ratified.¹¹ It follows, therefore, that when such action is not expressly authorised or if the said action is not ratified after the Secretary has taken it, then the Secretary will be personally liable since he has exercised power he didn't have or acted beyond or outside the power he has. However, if such action, though not expressly authorised, is known to the directors, managing director, or all members of the Company at the time the action was taken, it will be considered approved by the members in a general meeting, the board of directors, or the managing director, as applicable.¹² It is important to keep in mind, though, that when the Secretary acts in the course of his employment as an officer of the Company, the Company will be held vicariously liable for any consequences or outcomes of his activities.¹³ For instance, in issuing the notice of a general meeting, a secretary must ensure that the phrase 'by order of the board' is indicated underneath his nomenclature as the Secretary. Failure to do this

⁸CAMA 2020, section 334.

⁹CAMA 2020, section 305 (2) (b).

¹⁰CAMA 2020, section 305 (1).

¹¹CAMA 2020, section 90 (2).

¹²*Ibid.*

¹³CAMA 2020, section 90 (3).

either deliberately or negligently will render him personally liable if the validity of the notice is challenged.

2.3 Alteration of the Object Clause

If the Secretary fails to provide notice to the Commission on the alteration of the object clause as required by the Act,¹⁴ he will be subject to any fine that the Commission may impose by rule in his capacity as a Company officer. Furthermore, there is a punishment for each day that the default continues.¹⁵ This notice is necessary to ensure that the object clause in the company's records are the same with those it filed with the Commission.

2.4 Default in sending Copies of Memorandum to Members

Upon payment of the stipulated fee by the Company or the Commission, a copy of the memorandum and articles, as well as a copy of the document with any modifications made to it, must be delivered to a member upon request.¹⁶ If a company disobeys this directive, the Company and each of its officers (including the Secretary)¹⁷ who defaults is liable to the penalty prescribed by the Commission's Regulation.¹⁸

2.5 Liability for Default in Keeping Accounting Records.

According to the requirements of the Act, all companies must keep accounting records up to date.¹⁹ The Company's registered office or any other location the directors think appropriate shall be the permanent location of the accounting records.²⁰ The officers of the Company shall have unrestricted access to the records. Every officer of the Company, including the Secretary, who is in default if a company violates any of the provisions of section 374 or 375 (1) of CAMA 2020 has committed an offence unless he can demonstrate that he acted honestly in the Company's best interests.²¹ If an officer of a company fails to ensure that the Company complies with section 375 of the Act, or if the officer has purposefully induced any default by the Company under it, the officer will be held criminally

¹⁴CAMA 2020, section 51 (7).

¹⁵CAMA 2020, section 51 (10).

¹⁶CAMA 2020, section 47 (1).

¹⁷ Bracket mine.

¹⁸CAMA 2020, section 47 (2).

¹⁹See generally, section 374 of CAMA 2020.

²⁰CAMA 2020, section 375.

²¹CAMA 2020, section 376 (1).

responsible.²² An officer shall be liable to pay the fine set forth in the Commission's regulations if they violate this section.²³

2.6 Shareholders' Entitlement to Copies of Financial Statements.

All shareholders, regardless of their eligibility, and all holders of the Company's debentures, regardless of their eligibility, are required to obtain a complimentary copy of the Company's most recent financial statements.²⁴The Company and each of its officers will be liable for the penalty outlined in the Commission's regulations if someone requests a document that they are legally entitled to receive under this Act and the request is not fulfilled within seven days of the request. This is true even if it can be shown that the person has already requested and received a copy of the requested documents.²⁵

2.7 Default in Publishing Financial Statements

A company is required to disclose the necessary auditors' reports alongside its individual financial statements, whether or not they are changed if it releases them for a full year.²⁶A company must publish its group financial statements together with its individual financial statements if it is required to prepare group financial statements for a given year and publish those statements separately.²⁷A company must publish the relevant auditors' reports alongside its group financial statements, whether or not they have been updated.²⁸In the event that these conditions are not met, the Company and all of its officers—including the Secretary as an officer—will be subject to the fine specified in the Commission's rules.²⁹

2.8 Default in Giving Financial Statements.

Every Company must send a copy of its annual financial statements to those entitled to receive them at least 21 days before the meeting where the financial statements are to be laid under section 388 of CAMA 2020.³⁰If a firm does not have a share capital, it is not required to distribute copies of its financial statements to any debenture holder or member who is not entitled to receive notices of its general meetings.³¹The Company and each of its officers are

²²CAMA 2020, section 376 (2).

²³CAMA 2020, section 376 (3).

²⁴CAMA 2020, section 392 (1).

²⁵CAMA 2020, section 392 (2).

²⁶CAMA 2020, section 398 (2).

²⁷CAMA 2020, section 398 (3).The financial statements may be amended version but only if the individual financial statements are modified

²⁸CAMA 2020, section 398 (4).

²⁹CAMA 2020, section 398 (6).

³⁰CAMA 2020, section 387 (1).

³¹CAMA 2020, section 387 (2).

responsible for paying the prescribed penalty as outlined in the Commission's regulations in the event that these requirements are not met.

3.0 Register of Members

Every company that has members is required to maintain a register with their names and addresses, and, if the company has equity, a breakdown of the shares and types of shares that each member owns.³² The Register must also include the date a person was registered as a member,³³ and the date he ceased to be a member.³⁴ Where a person ceases to be a member, entries to that effect must be made within 28 days of ceasing to be a member.³⁵ If a company disregards these guidelines, it and all of its officers—including the Secretary—are subject to the relevant fines outlined in the Commission's Regulation;³⁶ and an additional fine specified by the Commission's Regulation for each day the default continues.³⁷

3.1 Location of Register of Members

All Companies must notify the Commission of any changes to the location of the Register of Members, except for those in which the Register has always been maintained at the Company's registered office.³⁸ The Secretary will, therefore, be liable if he (and every officer of the Company) defaults in providing notice of where the Register is located.³⁹ Along with a daily default fine, the default penalty will be as stipulated in the Commission's Regulation.

3.2 Default in Keeping an Index of Names of Members

If a company has more than fifty members, it must maintain an index of those names; nonetheless, the Register is an index in and of itself.⁴⁰ The Secretary is the one who is directly responsible for this task. Therefore, in the event that he does not comply, the Company and all of its officers—including the Secretary—will be held accountable for the fines outlined by the Commission in its Regulation.⁴¹

3.3 Default In Giving the Register or Index of Members to a Member.

During business hours, the Register of members and the index of members' names index must be kept open, except when the Register is required to be

³²CAMA 2020, section 109 (1) (a).

³³CAMA 2020, section 109 (1) (b).

³⁴CAMA 2020, section 109 (1) (c).

³⁵CAMA 2020, section 109 (3).

³⁶CAMA 2020, section 109 (4) (a).

³⁷CAMA 2020, section 109 (4) (b).

³⁸CAMA 2020, section 110 (2).

³⁹CAMA 2020, section 110 (3).

⁴⁰CAMA 2020, section 111 (1).

⁴¹CAMA 2020, section 111 (5).

closed under the Act.⁴² The Company, in general meetings, may impose reasonable restrictions regarding closure but must allow a minimum of two hours daily for members to inspect the Register without payment of any fee.⁴³ Accordingly, the Secretary, as an officer of the Company, shall be accountable for each default and be subject to the fines listed in the Commission's Regulation if any request for inspection is denied or if any copy that is needed is not supplied within the allotted time.⁴⁴

3.4 Default in Keeping or Inspecting Register of Interests in Shares and Register of Index

All public listed companies must maintain a register of interest in shares.⁴⁵ The Register is subject to the same right of examination as the Register of Members and needs to be kept in the same location.⁴⁶ The company secretary will be accountable for each default to any penalty that the Commission may establish in its Regulation if any necessary copy is not sent within the allotted time or if any inspection required by the Act is refused.⁴⁷

3.5 Default In Giving Notice of Consolidation of Shares.

A company with share capital is required to notify the Commission if it consolidates and divides its shares into shares that are greater than its current shares or if it subdivides any of its shares within a month of doing so. The Company must specify which shares are consolidated, divided, or subdivided in the notice.⁴⁸ A company, its Secretary, and all other officers will be subject to the fine specified by the Commission's Regulation for each day that the non-compliance persists if the Company neglects to provide the necessary notice regarding the aforementioned consolidation, division, or subdivision of shares.⁴⁹

3.6 Default in Giving Notice of Increase in Share Capital.

A company with share capital may, at its general meeting and only at that meeting, raise the amount of issued share capital by allocating additional shares in any amount the Company deems appropriate.⁵⁰ As soon as the resolution authorizing the increase is issued, a company that intends to increase its share capital must notify the Commission of the increase within 15 days. After that, the

⁴²CAMA 2020, section 112 (1).

⁴³ CAMA 2020, section 112 (1).

⁴⁴CAMA 2020, section 112 (3).

⁴⁵CAMA 2020, section 122 (1).

⁴⁶CAMA 2020, section 122 (2).

⁴⁷CAMA 2020, section 122 (3).

⁴⁸See generally, CAMA 2020, section 126 (1) (a) and (b).

⁴⁹CAMA 2020, section 126 (2).

⁵⁰CAMA 2020, section 127 (1).

Commission will document the increase.⁵¹ Where the Company defaults in obtaining the required approval, there will be no more validity to the resolution to increase the issued capital of the Company's shares.⁵²The required information about the affected share classes must be included in the notice of the increase in share capital. The notice must also be accompanied by a written copy of the resolution authorising the increase.⁵³ Failure to give the notice of share increase shall render the Secretary and the Company to such fine prescribed by the Commission's Regulation for each day the default continues.⁵⁴Once an increase has been effectively implemented, the Company needs to change its memorandum and articles of association to reflect the newly issued capital through an ordinary resolution.⁵⁵

3. 7 Default in Delivering Documents Regarding Payment of Commission for Shares to the CAC.

If the payment is approved by the Company's articles, a firm may pay a commission to anyone in exchange for them agreeing to subscribe for any shares in the Company.⁵⁶Ten percent of the issued share price or the amount or rate authorised under the articles, whichever is lower, should be the maximum amount paid or agreed to be paid by the Commission.⁵⁷Any default by the Company, the Secretary, or any officer will result in a penalty determined by the Commission's Regulation if any document necessary to be provided to the Commission about payment of the prescribed Commission is not delivered on time.⁵⁸

3. 8 Default in Issuance of Share Certificates.

Within two months of allotting any of its shares and within three months of registering a transfer of any such shares with the Company, each Company shall complete and have the certificates of all the allotted or transferred shares available for delivery; provided, however, that the issuance of the shares is contingent upon conditions other than those stipulated under the Act.⁵⁹Each individual whose name appears in the Register of Members is eligible to a free certificate for all of their shares. In addition, upon payment of the necessary fee, as decided by the directors, he will be eligible to get multiple certificates for one or more of his shares each.⁶⁰ Such issued certificate or certificates must be under

⁵¹CAMA 2020, section 127 (2).

⁵²CAMA 2020, section 127 (5).

⁵³CAMA 2020, section 127 (6).

⁵⁴CAMA 2020, section 127 (7).

⁵⁵CAMA 2020, section 127 (8).

⁵⁶CAMA 2020, section 156 (1) (a).

⁵⁷CAMA 2020, section 156 (1) (b).

⁵⁸CAMA 2020, section 156 (2).

⁵⁹CAMA 2020, section 171 (1).

⁶⁰CAMA 2020, section 171 (2).

the Company's seal if the Company has one,⁶¹ or otherwise signed by the Company as a deed.⁶² However, the Company is not required to issue several certificates in cases when many subscribers jointly own shares. Additionally, it will be necessary to deliver one share certificate to one shareholder in order to notify the remaining shareholders.⁶³ In practice, the certificate is usually delivered to the shareholder whose names appear first among the joint shareholders.

On the application of the person denied the issuance, the Court may issue an order directing the Company and any officer of the Company (especially the Secretary) to, within the specified time, comply with any requirements regarding the issue of share certificate(s) herein explained, if the Company fails to do so within ten days of serving the notice. The possibility exists that the court order stipulates that the Company or any of its officers accountable for the default will pay all application fees, including incidental charges.⁶⁴

Since the Secretary is usually required to issue notices, he is more likely to bear the brunt of whatever penalty the Court might impose, except where it can be proved, or it is so apparent that he is not responsible for the default. Generally, any default in complying with any of the provisions of section 171 of the Act shall render the Company and each officer of the Company ⁶⁵ liable to the penalty the Commission prescribed in its Regulation for each day the default continues.⁶⁶

3.9 Default in Sending Notice of Refusal to Register Transfer of Shares.

It is possible for a company to have reasons to refuse to register the transfer of any share. Such a situation might be due, for instance, to a lien placed on such shares. If a company has reason or reasons to refuse the transfer of any share, such a company must send notice of the refusal to the person that intends to transfer the shares, and such notice must be sent within two months of the transfer had been lodged with the Company.⁶⁷

When a company defaults in sending such notice of refusal as required under the Act, the Company and each of its officers, which must, of course, include the company secretary, is liable to the penalty specified by the Commission's Regulation⁶⁸ in this regard.

⁶¹ CAMA 2020 no longer mandates companies to have a common seal, having it is now optional. See section 98.

⁶² CAMA 2020, section 171 (3).

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ CAMA 2020, section 171.

⁶⁶ CAMA 2020, section 171 (6).

⁶⁷ CAMA 2020, section 177 (1).

⁶⁸ CAMA 2020, section 177 (2).

4.0 Default in Keeping Register of Charges

The CAMA 2020 requires every Company to keep, at its registered office, a register of charges. All charges that impact the Company's property and all floating charges on the undertaking or any of the Company's property must be included in the Register. A concise description of the charged property, the charge amount, and the names of the parties entitled to it must also be included in each case. The sole exemption pertains to securities to bearer.⁶⁹ It follows, therefore, that if any officer of the Company's officers,⁷⁰ with full knowledge and intentionally authorises or allows the omission of any entry that ought to be made, such officer will be liable to such fines as specified in the Commission's Regulation ⁷¹ in this regard.

4.1 Refusal of Inspection of Register of Charges or Instrument Creating Same.

Copies of instruments creating any charge that must be registered under the Act must be kept under section 216 of the Act. They must be open for inspection during business hours by any creditor or shareholder of the Company without fee.⁷² This inspection clause, however, is subject to any reasonable limitations that the Company may set forth in general meetings, with the requirement that inspection be conducted for at least two hours per day. In addition, anybody other than creditors may view the Register by paying the Commission's authorised charge or any smaller sum that the Company may designate for each inspection.

However, the Commission may seek permission and obtain such copy without any restriction or charge. Where there is a refusal of the inspection, each officer⁷³ of the Company who refused the inspection is liable to such fines as specified by the Commission in its Regulation for each day the refusal continues.⁷⁴ Aside from the fines, the Court may compel, by order, an immediate inspection of the copies of instruments or register.⁷⁵

4. 2 Refusal of Inspection of Register of Debenture Holders, etc.

Every Register of holders of debentures of a company must be open to the inspection of the registered debenture holder or any holder of shares in the

⁶⁹ See generally, CAMA 2020, section 216 (1).

⁷⁰ The secretary is the relevant officer regarding this.

⁷¹ CAMA 2020, section 216 (2).

⁷² CAMA 2020, section 217 (1).

⁷³ The secretary is included here as an officer of the company, see section 868 (1) of CAMA 2020.

⁷⁴ CAMA 2020, section 217 (2).

⁷⁵ CAMA 2020, section 217 (3).

Company without fee.⁷⁶ The only exception to such requirement of openness is when the Register is duly closed. The Company may, however, impose such reasonable restrictions in general meetings so that at least two hours daily shall be allowed for inspection. Any other person may, upon payment of the prescribed fee by the Commission or a lesser amount as the Company may prescribe, provided that the Commission may, at any time during working hours, request and obtain such copy without any restriction or charge.⁷⁷

An official of the Company must properly endorse a copy of any trust deed used to secure any issuance of debentures.⁷⁸ After that, each holder of such debentures must receive a copy of it upon request. Such a holder shall pay the prescribed fee set by the Commission or a lower sum set by the Company in the event that the trust deed has been printed. In the event that it hasn't been printed, he must pay the Commission's mandated fee—or a lower price established by the Company—for each page that needs to be copied.⁷⁹ Where there is refusal of inspection or a copy of the deed, the Company and its officers⁸⁰ responsible for the refusal will be liable to the stipulated fine in the Commission's Regulation for each day the refusal continues.⁸¹

4.3 Default in Giving Notice of Refusal to Register Transfer of Debentures

Within two months of the transfer being filed with the Company, the transferee must get notification from the Company if the Company decides, for any reason, not to register or transfer any debentures.⁸² The Company, the Secretary, and every other officer of the Company shall be liable for the penalties stipulated in the Commission's Regulation in the event that such notice is not sent.⁸³

4.4 Default in sending Registration Particulars of Charges or Debentures

A company must provide the Commission the details of each charge it creates in order to be registered, as well as any debenture issued in a series that must be registered in accordance with the Act.⁸⁴ The company secretary and every other officer of the Company who is in default commit an offence and are each subject to a penalty that the Commission may specify if the Company fails to provide the

⁷⁶CAMA 2020, section 219 (1).

⁷⁷ Ibid.

⁷⁸ Preferably the company secretary.

⁷⁹ See generally, CAMA 2020, section 219 (3).

⁸⁰ The Company Secretary is one of the officers, see section 868 (1) of CAMA 2020.

⁸¹ CAMA 2020, section 219 (4).

⁸² CAMA 2020, section 221 (1).

⁸³ CAMA 2020, section 221 (2).

⁸⁴ CAMA 2020, section 222. See also section 224 (1).

Commission with the information required by the Act, unless the registration has been completed on the request of another individual.⁸⁵

4. 5 Default in Registering Subsisting Charges on Acquired Property

If a company purchases any property that is subject to a charge of any kind, it is required to make sure that the prescribed details of the charge, as well as a copy of the instrument, if any, that created or is evidence of the charge, are delivered to the Commission for registration within ninety days of the acquisition being completed.⁸⁶If this condition is not complied with, the Company and all of its officers, including the Secretary, are liable for paying the fine set down by the Commission for each day the default persists.⁸⁷

4.6 Refusal of Inspection of Register of Charges.

Each Company must maintain a register of charges at its registered office, where all charges that directly affect the Company's property must be listed.⁸⁸The Commission's Regulation stipulates that the Secretary of the Company or any other officer who willfully causes the omission of any entry that must be made in the Register would be subject to the appropriate penalty.⁸⁹

4.7 Default in Giving Notice in respect of Receiver or Manager

When an individual designated as a receiver or manager of a company's assets stops acting in that capacity, he must notify the Commission immediately, and the Commission is then required to record the notice in the Register of Charges.⁹⁰ Since any notice to be given to the Commission must be done through the Secretary, if he fails to give notice of such cessation of a receiver or manager, he will be liable to the penalty prescribed by the Commission's Regulation ⁹¹ in this regard.

4. 8 Carrying on of Business by Companies Limited by Guarantee

A company limited by guarantee is formed to fulfill some societal objectives and not to carry on business to distribute the profits generated to members. If coincidentally, profits are made in the course of fulfilling the particular objective or which the Company was formed, such profits must be brought back

⁸⁵CAMA 2020, section 224 (3).

⁸⁶CAMA 2020, section 225 (1).

⁸⁷CAMA 2020, section 225 (2).

⁸⁸CAMA 2020, section 216 (1).

⁸⁹CAMA 2020, section 216 (2).

⁹⁰CAMA 2020, section 231 (2).

⁹¹CAMA 2020, section 27 (3).

to further fulfill the objective.⁹² In case a company limited by guarantee is wound up, whatever assets or profits (if any) the Company has must be given to similar Company or companies limited by guarantee to fulfill their specific objectives.

Therefore, if such a company operates with the intention of giving its members profits, all of its officers, including its Secretary, if applicable, and any member who is aware that the Company is operating, will be held jointly and severally liable for all obligations and liabilities the Company incurs as a result of operating such a business.

The Company and each of its officers and members shall also be liable to the prescribed penalty in the Commission's regulations for each day the business is carried on.⁹³ It should be emphasized that a member of a company limited by guarantee has a minimum liability of N100,000 to contribute to the Company's assets in the event that the Company must be wound up.⁹⁴

It should equally be noted that since companies limited by guarantees are not registered with shares, their members are simply called members and not shareholders because there are no shares to hold, unlike companies limited by shares where members are called shareholders.

5.0 Default in sending Copies of Altered Memorandum and Articles to Members on Request

Every Company must send to any member requesting it, a copy of its memorandum and articles, together with a copy of any alteration thereon, upon the payment of a prescribed fee.⁹⁵ The cost of producing the said documents should not be more than N500 or any other amount prescribed by the Commission.⁹⁶ If a company violates these guidelines, all its officers—including the Secretary, will be subject to the fine specified by the Commission's rules.

5.1 Default in holding Statutory Meeting.

Statutory meetings are only mandatory and applicable to public companies.⁹⁷ It is a meeting required to be held within six months of incorporating the Company. It is a general meeting of members of the Company but it is not an annual general meeting. CAMA 2020 refers to it as a statutory meeting and should, therefore, not be confused with an AGM. Statutory meetings are usually preceded by statutory reports,⁹⁸ the contents of which generally form the agenda of the statutory meeting. Thus, a copy of the statutory report must be forwarded to each member

⁹²CAMA 2020, section 27 (4).

⁹³CAMA 2020, section 26 (11).

⁹⁴CAMA 2020, section 26 (12).

⁹⁵CAMA 2020, section 47 (1).

⁹⁶Ibid. The payment may also be a lesser amount prescribed by the company.

⁹⁷CAMA 2020, section 235 (1).

⁹⁸CAMA 2020, section 235 (2).

of the Company by the directors, and this must be done at least 21 days before the statutory meeting is held.

The contents of the statutory report are stated in section 235(3) of CAMA 2020.⁹⁹ Members present at the statutory meeting may address any topic pertaining to the formation of the Company, the start of its operations, or any other issue covered in the statutory report.¹⁰⁰ Statutory meeting is held once in the lifetime of a company. However, if the business in the agenda of the meeting is not concluded, the meeting can be adjourned, and the remaining items on the agenda will be finalised at such adjourned meeting. Where this happens, it should not be regarded as another statutory meeting, but a continuation of the first meeting and the two meetings shall be regarded as one since statutory meeting is statutorily held one in a company's lifetime.¹⁰¹

If a company fails to hold the statutory meeting, the Company and any of its officers, of which the Secretary is a major player, have violated the law and are liable to a fine for each day the default continues in accordance with the specifications of the Commission's regulations. However, this does not negate the provisions of section 567 of CAMA 2020.¹⁰²

5. 2 Default in holding Annual General Meeting (AGM).

It is essential to state that CAMA 2020 did not mandate small companies, which include private companies by virtue of the definition of small companies in section 394, to hold an AGM.¹⁰³ Companies with a single shareholder are equally exempted from holding an AGM. Such exempted companies may, however, elect to hold an AGM if they so wish, and they will not be violating any law by so doing. The Act provides that the AGM must be held by the concerned companies in addition to any other meeting in the year in which the AGM was held and specify the meeting as such in the notices calling it.¹⁰⁴ If a public company defaults in holding an AGM as required, or in compliance with any of the Commission's directives under the Act, the Company and each of its officers of which the

⁹⁹ See generally, section 235 (3) (a) to (g) of CAMA 2020 for the contents of the statutory report.

¹⁰⁰ CAMA 2020, section 235 (8).

¹⁰¹ When the business on the agenda of a meeting is not exhausted at a particular meeting, the meeting will be adjourned to a later time or day to complete the uncompleted business on the agenda. The adjourned meeting is treated as a continuation of the earlier meeting and not a separate meeting. It is when all the business on the agenda of a meeting have been fully exhausted that the meeting can be brought to a close. Any other meeting thereafter will then be regarded as a fresh or another meeting.

¹⁰² CAMA 2020, section 236.

¹⁰³ CAMA 2020, section 237 (1).

¹⁰⁴ Ibid.

Secretary is a major player as far as holding an AGM is concerned, are liable to a penalty specified in the Commission's regulations.¹⁰⁵

5. 3 Default in Giving Notice of Members' Right to Appoint Proxies

An annual general meeting's notice must provide the meeting's location, date, and time as well as the general type of business that will be discussed.¹⁰⁶The notice's contents must be sufficiently specific to let members elect whether or not to attend.¹⁰⁷If a member is permitted by section 254 of the Act to designate a proxy in his place, notice of this power must be given, along with the possibility that the proxy need not be a shareholder in the Company. Each officer of the Company will be subject to a fine as specified in the Commission's regulations if this requirement is not met.¹⁰⁸

5. 4 Default in Keeping Minutes of Proceedings at Meetings

A major statutory duty of company secretaries is to keep minutes of company meetings, chief of which is the minutes of the Company's general meeting. All other companies, with the exception of those with a single shareholder, are required to maintain minutes of all of their board of directors' meetings, general meetings, and management meetings in their minute book.¹⁰⁹Until proved otherwise, every general meeting, board meeting, or management meeting of a company that has been held and the minutes recorded in accordance with the Act's requirements will be presumed to have been lawfully called and held.¹¹⁰ All the decisions at such meetings will be considered valid as well. If, however, a company fails to comply with these requirements, each of its officers, especially the Secretary, whose duty it is to take and keep minutes of meetings, shall be liable to the penalty specified in the Commission's regulations for each day the default continues.¹¹¹

5. 5 Default in Keeping Register of Directors' Shareholding, etc.

All companies must maintain a register listing the number, kind, and value of shares held in trust for each director, or of which he may be entitled to become a holder.¹¹²The Company and each of its officers, including the Secretary, are subject to the applicable amount specified as a penalty by the Commission's regulations if they fail to comply with this obligation to maintain the Register,

¹⁰⁵CAMA 2020, section 237 (5).

¹⁰⁶CAMA 2020, section 242 (1).

¹⁰⁷ Ibid.

¹⁰⁸CAMA 2020, section 242 (4).

¹⁰⁹CAMA 2020, section 266 (1) (a) (b) and (c).

¹¹⁰CAMA 2020, section 266 (3).

¹¹¹CAMA 2020, section 266 (5).

¹¹²CAMA 2020, section 301 (1).

or if there is a refusal to allow the inspection of the Register as required under the Act, or if any copy that is required is not sent within a reasonable time.¹¹³ What is reasonable time in this context will depend on the situation and circumstances.

5. 6 Refusing Inspection of Register of Directors

All companies are obligated to keep their directors' Register,¹¹⁴ which must contain detailed information about each of the directors,¹¹⁵ and it must be made available at the registered office of the Company.¹¹⁶ The Register must be made available for (a) free inspection by Company members,¹¹⁷ and any other person upon the payment of a prescribed fee.¹¹⁸

Failure to keep the Register or refusal to make it available for inspection either free of charge or upon the payment of a prescribed fee as provided under the Act will render the Company and each of its officers, which include the Secretary, to a prescribed penalty specified in the Commission's regulations.¹¹⁹

If the person requesting the inspection of the Register is denied, he may petition the Court for an order compelling instant inspection of the Register, and the Court, if it deems it proper in the circumstance, may grant such order.¹²⁰

5. 7 Defaulting in Guarding Against Falsification of the Company's Register, Records, Minutes, Etc.

One of the major duties of the Secretary, as the custodian of the Company's documents, is to guard against any act of criminality perpetrated in the form of falsification of those documents. In his legal, moral, and ethical duties as the chief promoter of good corporate governance of the Company, the Secretary owes the Company and its various stakeholders, including the regulatory bodies, to ensure the accuracy and correctness of any document submitted to them for whatever reasons.

This is because the accuracy of these documents is what the potential customers and investors of the Company rely on to make their investment decisions. Such accuracy is also what the regulatory bodies rely on to discharge their statutory and oversight functions. As such, it will be a great disservice to the Company and its stakeholders if the Secretary is lethargic, negligent, or incompetent in

¹¹³CAMA 2020, section 301 (9).

¹¹⁴CAMA 2020, section 318 (1).

¹¹⁵CAMA 2020, section 318 (2).

¹¹⁶CAMA 2020, section 318 (3).

¹¹⁷CAMA 2020, section 318 (5) (a).

¹¹⁸CAMA 2020, section 318 (5) (b).

¹¹⁹CAMA 2020, section 318 (6).

¹²⁰CAMA 2020, section 318 (7).

preventing anything from happening that can compromise the integrity of the documents.

Considering this, CAMA 2020 stipulates that in addition to having the power to issue documents or certified copies of such documents on the Company's behalf, the Secretary and any other officer or agent of the Company also have the power to guarantee the validity and correctness of the copies thus issued.¹²¹ Additionally, the CAMA 2020 stipulates that any register, record, minute book, or other document that a company is required to maintain may be created or maintained in loose leaves, bound books, or photographic film form, or it may be recorded by any information storage device that can quickly produce the necessary information in legible written form.¹²²

Where any of such document is not kept as provided herein but kept through some other means, such as electronic means, there must be adequate precautions for guarding against falsification and for facilitating its discovery.¹²³ In case there is failure or omission to comply with these requirements, the Company and each of its officers (especially the Secretary whose primary duty it is to keep and safeguard these documents), shall be liable to a penalty prescribed in the Commission's regulations.¹²⁴ Where the non-compliance is continuous and not just once, the parties responsible, as identified herein, will also be liable to a fine prescribed by the Commission's regulations for each day the default continues.¹²⁵

5. 8 Default In Giving Notice of Registered Office

All correspondence and notices to the Company should be sent to the address that the registered or head office of the firm provides to the Commission under section 36(2)(b) of CAMA 2020, or to any new address that is formed in accordance with the Act's provisions.¹²⁶ Any modification to the Company's registered or head office address must be notified to the Commission within 14 days of the change, and it is the Commission's responsibility to document the modification.¹²⁷

The Commission shall not, however, accept a postal box address or a private mail bag address as the registered or head office.¹²⁸ The implication of this is that the registered or head office must have a physical address that can be traced, located, or visited. So, if there is any legal requirement to carry out any duty or task at the

¹²¹CAMA 2020, section 93 (c).

¹²²CAMA 2020, section 731 (1).

¹²³CAMA 2020, section 731 (2).

¹²⁴Ibid.

¹²⁵Ibid.

¹²⁶CAMA 2020, section 728 (1).

¹²⁷CAMA 2020, section 728 (2).

¹²⁸Ibid.

Company's registered or head office, it will be easy to know precisely where such duties or tasks are to be done.

If a company violates this rule, the prescribed penalty outlined in the Commission's regulations will apply to the Company and each of its officers, including the Secretary, for each day the violation continues.¹²⁹The fact that a company has published a change in its address in its annual return does not replace the requirement of notifying the Commission of such a change.¹³⁰

5. 9 Default in Keeping Register of Directors' Residential Addresses

A register of the residential addresses of its directors must be maintained by each Company.¹³¹Every director of the Company must have his regular residence address listed in the Register.¹³²As long as the service address is distinct from the Company's registered office, the Register of Directors' Residential Addresses should only have a record indicating that a director's regular residential address is the same as their service address.¹³³ Any violation of with these requirements shall render the Company and each of its officers (especially the Secretary whose duty it is to keep registers), liable to pay the sum stipulated as penalty in the Commission's regulations.¹³⁴

5. 10 Putting the Residential Address of Directors on Public Records

After the Commission has decided that a director's usual residential address should be put on the public record, subsequent actions of the Company in this regard shall be done as if notice to this effect has been. Such notice must state the address as the service address of the director. Additionally, it must specify that the director's service address and regular residence address are the same.¹³⁵The director and the Company will get notice from the Commission that this has been done.¹³⁶Following receipt of the notice, the Company shall update the director's service address in its Register of Directors to reflect the director's regular residence address.¹³⁷

If the director concerned has notified the Company of a new address as his regular residential address, the Company must enter the address in its directors' Register as the service address of the director in question. If the

¹²⁹CAMA 2020, section 728 (3).

¹³⁰CAMA 2020, section 728 (4).

¹³¹CAMA 2020, section 320 (1).

¹³²CAMA 2020, section 320 (2).

¹³³CAMA 2020, section 320 (3).

¹³⁴CAMA 2020, section 320 (4).

¹³⁵CAMA 2020, section 329 (1) (a) (b).

¹³⁶CAMA 2020, section 329 (2) (a) (b).

¹³⁷CAMA 2020, section 329 (3) (a) (b).

Company's registered details change, it must also notify the registrar.¹³⁸A company that fails to comply with these standards will be penalised by the Commission's regulations for each day the default persists. This penalty will be imposed on the Company and each of its officers, including the Secretary, whose responsibility it is to state those details in the address.¹³⁹

6.0 Liability for Company Debts where Membership falls short of the Legal Minimum

Every director and officer of the Company, including the Secretary as an officer, during the period that it so carries on business with only one or even no member, is jointly and severally liable with the Company for the Company's debts contracted during that period. This applies to public companies and companies limited by a guarantee that they operate without having at least two members for more than six months.¹⁴⁰ Needless to say, however, is the fact that a company with only one member can legally transact business without violating any law.

6. 1 Circulation of Resolutions

The business for transaction at an annual general meeting includes any resolution, the notice of which is given under the Act, regardless of what is stated in the Company's articles. For this purpose, notice is deemed to have been given, irrespective of the unintentional omission to give it to one or more members.¹⁴¹ Non-compliance with this requirement will render each of the Company's officers, especially the Secretary, whose duty is to send such notice, to the penalty of the amount prescribed by the Commission's regulations.¹⁴²

6. 2 Failure to state that Directors' Liabilities in a Limited Company are Unlimited.

In a limited company with unlimited liability for directors and managers, and the member who put them forward for election must specify in their proposal that the individual holding that position is subject to unlimited liability. The Company's promoters, directors, managers, and Secretary must all give the individual written notice before the individual accepts the position or takes any action.

The Company's promoters, directors, managers, and Secretary must all give the individual written notice before the individual accepts the position or takes any

¹³⁸CAMA 2020, section 329 (4) (a) (b).

¹³⁹CAMA 2020, section 329 (5).

¹⁴⁰CAMA 2020, section 118.

¹⁴¹CAMA 2020, section 260 (6).

¹⁴²CAMA 2020, section 260 (7).

action in it ¹⁴³ that his liability is unlimited. If any director, manager, or promoter fails to add such a statement, or if any promoter, director, manager, or **Secretary** fails to give such a notice, he shall be liable to an amount specified in the Commission's regulations as penalty, and will also be liable for any damage sustained by the person so elected or appointed due to failure to give such a statement.¹⁴⁴

6. 3 Notice of Resolution to Wind Up Voluntarily

A company must notify the Commission and publish an advertisement in the Federal Government Gazette or two daily newspapers of any resolution it passes for voluntary winding-up within 14 days of making the resolution.¹⁴⁵If the Company fails to comply with these requirements, the Company and each of its officers who default are liable to the sum prescribed as a penalty in the Commission's regulations.¹⁴⁶ The Company's liquidator shall be deemed an officer of the Company for this purpose.¹⁴⁷

6. 4 Liability Where Proper Accounts Are Not Kept.

When a company is wound up, every officer who defaults in keeping proper books of account commits an offence and, if found guilty, is liable to pay the fine specified by the Commission's Regulation for this purpose. In other words, if it can be shown that the Company's proper books of account were not kept during the two years that immediately preceded the commencement of the winding-up or the period between the Company's incorporation and commencement of the winding-up, whichever is the shorter.¹⁴⁸ The only ground for excusing this liability is if such an officer has acted honestly in the circumstance.

6. 5 Failure To Notify The Commission That A Company Is In Liquidation.

Where a company is being wound up regardless of the type of winding up, every commercial document issued by, or on the Company's behalf, the Company's liquidator, receiver or manager of the Company's property, in which the Company's name appears, must indicate that the Company is being wound up.¹⁴⁹In the event that this requirement is not met, the Company, any officer of the Company including the company secretary, any liquidator of the Company,

¹⁴³CAMA 2020, section 314 (2). Bold mine for emphasis.

¹⁴⁴CAMA 2020, section 314 (3).

¹⁴⁵CAMA 2020, section 621 (1).

¹⁴⁶CAMA 2020, section 621 (2).

¹⁴⁷ Ibid.

¹⁴⁸CAMA 2020, section 671 (1).

¹⁴⁹CAMA 2020, section 679 (1).

and any receiver or manager are liable to the penalty prescribed by the Commission's regulations.¹⁵⁰

6. 6 Power of Court To Grant Relief in Cases Where an Officer Has Acted Honestly And Reasonably

Should a company's officer be the subject of a lawsuit alleging carelessness, default, or breach of duty or trust¹⁵¹ or someone working for a company as an auditor, it seems to the Court that the officer or person is or may be liable; however, if he performs his duties honestly and reasonably, the Court may release him, whole or in part, from liability on any terms it sees proper.¹⁵² In other words, the extent of the relief granted from liability will depend on the degree of honesty and reasonableness of the action in the circumstances. When any such officer or person has a reasonable fear that a claim may be filed against him for negligence, default, breach of duty or trust, or similar offences, he can approach the Court for relief. The Court will then have the authority to relieve the applicant based on the application.¹⁵³

7.0 International Best Practices and Comparative Analysis

Globally, the role of the company secretary is recognised as integral to corporate governance. In the United Kingdom, the UK Corporate Governance Code emphasises the importance of the company secretary in supporting the board's effectiveness, ensuring compliance with governance practices, and facilitating communication between the board and stakeholders. Similarly, the Nigerian Code of Corporate Governance (NCCG) 2018 highlights the company secretary's role in assisting the board and management in developing good corporate governance practices and culture within the company.

7. 1 Comparative Analysis: Nigeria vs. International Standards

Aspect	Nigeria (CAMA 2020)	International (UK Code)
Appointment	Mandated for public companies; qualifications specified	Encouraged; qualifications and independence emphasised
Role in Governance	Ensures compliance, maintains records, advises the board	Supports board effectiveness, ensures compliance, facilitates communication

¹⁵⁰CAMA 2020, section 679 (2) (a) (b) (c).

¹⁵¹ The word 'officer' as used here includes the company secretary.

¹⁵²CAMA 2020, section 738 (1).

¹⁵³CAMA 2020, section 738 (2).

Aspect	Nigeria (CAMA 2020)	International (UK Code)
Independence	Expected, but dual roles (e.g., legal adviser) may affect	Strongly emphasised; separation of roles recommended
Training & Development	Not explicitly mandated	Regular induction and training for directors and secretaries
Accountability	Liable for non-appointment; duties outlined in CAMA	Accountable to the board; supports governance structures

7.2 Findings

This paper discovers that public companies are highly regulated because of the plethora of stakeholders involved. Compliance duties to navigate these regulations require the doggedness of a goal getter, a proactive, and multi-tasking individual to function as the secretary. On the surface, it appears that the liabilities of the secretary of a public company are limited only to those stated in the CAMA 2020. From this paper, however, it was found that this position is not so. It was discovered that in addition to the penalties and sanctions imposed by CAMA 2020, there are other penalties that such a secretary can incur, both individually and collectively as an officer of the company. These penalties are well spelt out in this paper. The paper also discovered that because of the enormous duties of the secretary of a public company, only a person with the requisite knowledge and experience can effectively mitigate or avoid the liabilities that are inherent in the duties of the secretary of a public company.

7.3 Summary, Conclusion and Contribution to Knowledge

This paper summarises the various liabilities that a company secretary (especially of a public company) can incur in the discharge of his statutory duties under the CAMA 2020 as well as his administrative duties. Most of the time, the liabilities are jointly incurred by the Company and its other officers. The liabilities are quite enormous. The implication of this is that anybody desirous of taking up the position of secretary in a public company must be well conversant with the provisions of the CAMA 2020 regarding those liabilities, the Regulations issued by the Corporate Affairs Commission from time to time as well as the Memorandum and Articles of Association of the Company. Such a person must be meticulous, attentive, assertive, proactive, and versatile. He must also be well abreast of the Nigerian Code of Corporate Governance provisions and other relevant rules, such as those of the Securities and Exchange Commission and the Nigerian Exchange Group (NGX). This will require attention to detail and being organised to ensure necessary documents are filed with the Corporate Affairs Commission or any other regulatory body as appropriate.

This paper contributes to a deeper understanding of the legal framework governing company secretaries in Nigeria and provides insights into the implications of non-compliance. Ultimately, this study aims to inform best practices and promote effective corporate governance in public companies.

7. 4 Recommendations

Whosoever is desirous of becoming the secretary of a public company in Nigeria should be conversant with the applicable statutory provisions and company law as it affects its duties. The provisions of CAMA 2020 regarding the appointment of secretaries of a public company should be strictly adhered to. In addition, the secretary should understand the sector in which the company where he functions as the secretary falls into. He should understand the roles of the regulatory agencies as they affect his company. He should also have a deep and practical understanding of the business in which his company belongs to be able to adequately advise the board. The secretary should also interact with other more experienced company secretaries for guidance, mentoring and advice. Undertaking a professional training relevant to his duties is also sacrosanct to understand the nature of his duties so as to avoid the impending liabilities that may arise from default in performing those duties.

As a corporate governance professional, the Secretary cannot afford to expose himself or his Company to these liabilities, the penalties of which are additional avoidable costs to the Company. It will also portray the Company as a bad corporate citizen, with the tendency to lose its potential customers and investors. Where the Secretary is not a lawyer, he should seek legal advice, especially as touching his duties. Also, where he is not an accountant, it will be a good idea to direct accounting issues that are not clear to him to an accounting professional.