journals.unizik.edu.ng/jcpl/index ISSN: 2736-0342
NNAMDI AZIKIWE UNIVERSITY, AWKA
JOURNAL OF COMMERCIAL AND PROPERTY LAW

Disqualification Criteria for Directors under the Companies and Allied Matters Act 2020: An Absurd Addendum

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Abstract
Regulating company directors is important towards achieving good corporate governance indices. The Companies and Allied Matters Act 2020 (CAMA) was enacted in part to improve accountability in the management of companies. Although a significant portion of the earlier 1990 law of the same name was retained, the new legislation nonetheless made notable changes with respect to many aspects of company law, including those relating to the qualification of directors, with which this paper is concerned. The Business Facilitation (Miscellaneous Provisions) Act 2022 (BFA) coming after it, further made significant amendments to the new CAMA. While both laws have not been in force long enough for any significant judicial analysis of their provisions, a superficial reading of section 283(c) CAMA, which introduced an addendum to the previously known list of disqualifying criteria for directors, so that directors removed by the company under section 288 CAMA, are now also disqualified, suggests absurd conclusions and thus, raises certain questions which warrant careful study. While employing the medium of doctrinal analysis, involving primary and secondary literature, this paper examined this new addendum relating to the disqualification of directors, with the aim of determining its limits and potential, and further providing insights that could inform future improvements to the law. The paper found that the said section 283(c), in spite of its amendment by the BFA, leaves the law open to absurd interpretations and, on that note, must be amended to limit the disqualification on reasonable terms, and further provide for a register of disqualification for directors.

Keywords: company directors, directors' disqualification, company law, CAMA, corporate governance

1. Introduction

The corporation is reputed to be an ingenious institution for the creation of wealth.[1] The fact that its sphere of influence over mankind is quite extensive, covering all facets of modern life, can certainly not be denied. Consequently, corporate law over the years has sought to tame the corporation in order to reconnect it with the society in which it operates, so that society may reap its benefits while avoiding its detriments. This informs the imperative for corporate regulation.

While the corporation is still largely governed by private ordering[2] owing to its liberal foundations, public regulation is still very much required in some important instances. Thus, granted, companies and those who manage and direct them are fundamentally private arrangements, nevertheless, due to the reach of their influence and operations in modern time, there appears to be a markedly public interest in the efficient operation of privately controlled companies. It is thus assumed that company law should promote that public interest.[3]

However, there can be no proper regulation of companies without the proper regulation of persons who run them, i.e. their directors. Consequently, an important aspect of corporate governance still subject to public regulation, is with respect to the company director—in terms of who occupies the office—as well as directing, that is, in relation to what the occupant is charged to do. The Nigerian Company Law, the Companies and Allied Matters Act[4], like many of its counterparts, makes provisions regarding directors

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[1] J Arden Dbe, 'Regulating the Conduct of Directors' [2010] 10 (1) *Journal of Corporate Law Studies*, 1-15, 14.

[2] This simply means allowing companies decide how they wish to be governed. As opposed to public regulation, it refers to allowing private actors, rather than the state, to establish the regulation and policing of their own activity and behavior. J L Contreras, 'From Private Ordering to Public Law: The Legal Frameworks Governing Standards-essential Patents' [2017] 30 (1) *Harvard Journal of Law and Technology*, 211-231, 213.

[3] P Davies, *Introduction to Company Law* (Oxford University Press, 2020), 332-3.

[4] No. 3, 2020 (CAMA). Unless otherwise stated, all sections cited refer to this law.

in respect of these matters. Probably in a bid to improve on the previous 1990 law of the same name, the relatively new law made notable changes with respect to many aspects of the law, including that relating to qualification of directors. In particular, section 283(c) CAMA, amended by the Business Facilitation (Miscellaneous Provisions) Act 2022 (BFA) coming after it, introduced an addendum to the previously known list of disqualifying criteria for directors, so that directors removed by the company under section 288 CAMA, are now also disqualified.

Proper codification of the law with respect to directors is crucial to achieving good corporate governance values, as the law then becomes clear and more accessible to directors and their advisers, for compliance.[5] While the law in question has not been in force long enough for any significant chance of judicial scrutiny, a superficial reading of the section identified above, raises certain fundamental queries which pertain to the efficacy of the said provision and its potential for absurd interpretations. This paper, adopting a doctrinal methodology, thus embarks on a theoretical analysis of the provision identified, with the aim of determining its limits and potential, and further providing insights that could inform future improvements to the law. This is especially important because, unlike other Commonwealth countries with substantial case law on directors, such as the United Kingdom, Canada and Australia, Nigeria has so far been grossly deficient in that area,[6] so that the bulk of the guidance, when one seeks to know the law at all, might often have to be the primary legislation. The country must thus get it right on legislation in this respect.

2. The Place of Company Directors

Obviously, those who govern companies are bestowed with the power to control the resources of those companies, and should, accordingly, be held accountable for their actions/inactions, as well as decisions/indecisions.[7] It is thus generally agreed that company directors are fiduciaries,[8] in the same category as trustees, agents, and other professionals like lawyers, doctors, money managers and advisers,[9] a fiduciary being "a person who is required to act for the benefit of another person on all matters within the scope of their relationship; one who owes to another the duties of good faith, trust, confidence and candour."[10] From the onset, section 269 considers that what the director does is "direct and manage the business of the company." In essence, he/she acts for and on behalf of the company. In simple terms, therefore, he/she is a representative.[11]

Additionally, a director is also an officer in the company,[12] like any other official occupying an administrative position within the corporation. He/she may also be a mere employee, if employed by the company under some contract of service,[13] simply. This would most often be the case with the executive director, also known as a service director. However, as observed by the Nigerian Supreme Court in *Longe v First Bank of Nig. Plc*.,[14] this still does not derogate from the fact of his directorship, as long as he is seen to be directing and managing the business of the company. He is subject to the same rules as any other director. Furthermore, the director is also a trustee in many respects. Thus, section 309(1) acknowledges that:

> *Directors are trustees of the company's moneys, properties and their powers and as such, must account for all the moneys over which they exercise control and shall refund*

[5] Arden (n1) 4.

[6] H Adamu, 'A Comparative Analysis of Directors' Duties of Care and Skill and Fiduciary Duties of Loyalty and Good Faith under the Companies' Acts of Nigeria and the United Kingdom' [2015] LL.M. dissertation, *Ahmadu Bello University Zaria*, 84-86 and 125 <http://kubanni.abu.edu.ng> accessed 1 January 2025; H Adamu, 'An Examination of Directors' Obligation to Consider the Interests of Employees under the Companies and Allied Matters Act 2020' [2023] Unpublished PhD thesis, *Ahmadu Bello University Zaria*, 161.

[7] A Young, 'Frameworks in Regulating Company Directors: Rethinking the Philosophical Foundations to Enhance Accountability' [2009] 30 (12) *Company Lawyer*, 355-361, 355.

[8] CAMA s305 (1). See also B Pettet, *Company Law* (Pearson Education Ltd., 2005) 149.

[9] Tamar Frankel, *Fiduciary Law* (Oxford University Press, 2011) 42.

[10] B A. Garner, (ed.) *Black's Law Dictionary,* (8th edn, West Publishing Co., 2004), 658. A similar definition was used in *Bristol and West Building Society v Mothew* (1998) Ch. 1.

[11] Adamu (2015) (n6) 61.

[12] CAMA s868.

[13] Ibid, s317.

[14] (2010) All FWLR 258.

> *any moneys improperly paid away, and shall exercise their power honestly, in the interest of the company and all the shareholders, and not in their own or sectional interests.*[15]

In fact, Judges have for a long time likened the director's office to that of a trustee.[16] Recall that once incorporated, the company thereby acquires all the powers of a natural person of full capacity, enjoying the ability to own property in its name,[17] including monies in bank accounts. Owing to the enormous powers available to a director in managing the company therefore, the law easily attributes to him this role of trustee with regard to the monies and properties of the company. Even so, the director is not a trustee in the usual sense.[18] This is because, unlike the regular trustee, the company's properties would not be in his name and the typical trustee is generally expected to observe a higher standard of caution in protecting the interests of his or her beneficiary than would be reasonable to expect of a person in charge of a commercial venture,[19] such as a company. After all, a director is entitled to take risks with the company's monies, if he considers it likely to be in the best interests of the company. However, he must aim to preserve its assets, and further its business. [20] Under no circumstances is he allowed to use his position to enrich himself, make secret profits or achieve other unnecessary benefits as a result of the office he occupies.[21]

Also, section 309(2) regards the director as an agent, when acting within his authority and the powers of the company. This was especially emphasised by the court in *Trenco. Nig. Ltd. v African Real Estate and Investment Co. Ltd.*,[22] wherein it was stated that a company, although having a corporate personality, is deemed to have human personality through its officers and agents, the directors being such.[23] Presumably, therefore, the corporate abstraction is reified in the director, who lends it some semblance of existence. In fact, in the relationship between the company and other persons, and with respect to the functions he performs and any legitimate powers he may wield, a director is an agent in the general sense of the word.[24] Directors as a matter of fact represent and act for the company, and possess the ability to enter into legal relationships with third parties on its behalf, so there is an obvious reason for the imposition of an agent's duties on the director. Thus, as earlier observed, a fiduciary duty is contemplated by the law on the part of the director, towards the company.[25] In fact, section 305(1) clearly states that a director stands in a fiduciary relationship towards the company. The director, as agent, therefore becomes a fiduciary, and thus accountable to his principal, the company, in respect of their relationship.

Although, the job description of the director becomes clearer when imagined in terms of the ancient relationship of agency, they are not exactly alike. In the typical agency, the principal usually has a complete set of detailed instructions for his agent as to what the principal requires of him. Also, the agent can get feedback from the principal regarding any eventuality that may be encountered and how the principal may want the agent to go about handling it. Further, the agent cannot venture into uncertainties by taking risks. But this cannot be the case with the director of a corporation. He makes the policies, strategises how to put them in action and goes ahead and actualises them. In doing so, he takes risks. In fact, it has been said that risk is the essence of a director's work.[26] To be sure, a director is a more powerful agent than most. The modern view is that his position within the corporation is

[15] CAMA, s 309(1).
[16] *Great Eastern Rly Co v Turner* (1872) LR 8 CH APP 149.
[17] CAMA ss42 and 43.
[18] *Re Faure Electric Accumulator Co* (1888) 40 Ch D 141; *Adebayo v Johnson* (1969) All NLR, 171.
[19] J Davies, 'A Guide to Directors' Responsibilities under the Companies Act' [2007] *Certified Accountants Educational Trust* <http://www.accaglobal.com/content/dam/acca/global/PDF-technical/business-law/tech-tp-cdd.pdf> accessed 27 December 2024.
[20] CAMA s 305(3).
[21] Ibid, ss 306 and 313.
[22] (1978) All NLR, 124; (1978) NSCC 220.
[23] Per Aniagolu J.S.C.
[24] CAMA s309 (2). Consider also the Supreme Court decision in *Yusufu v Kupper International* (1996) 5 NWLR (pt. 446) 17.
[25] See *Aberdeen Rly Co v Blaikie Bros* (1854) 1 Macq 461, particularly at 471; *Okeowo v Migliore* (1979) 11 SC, p. 113
[26] G A Olawoyin, *Status and Duties of Company Directors* (University of Ife Press, 1977), 7.

essentially *sui generis*.[27] In other words, the director's role, though familiar in certain respects, is nevertheless unique. Still, all the duties often owed by directors, or functions required of them by law, can somehow be subsumed under the roles of trustee, agent or even employee.[28] It is often in one or more of these roles that the law seeks to hold them accountable. However, since the director's position cannot be properly squared with the agent, trustee, or employee, the rules governing his office must be uniquely developed and change with the times and expectations of his office. In the same vein, the law must understandably be interested in the qualifications of the occupant of that office.

3. Directors' Disqualification under the CAMA

Apart from regulating directors' activities, i.e. with respect to the functions and duties they must perform, another obvious regulation of directors that manifests in corporate law, relates to the qualifications of the occupiers of that office. The principles developed with respect to the qualifications and expectations of the office of company director, are due to the roles played by the person, in accordance with the nature of the office, as considered above. In a bid to raise the standards of honesty and diligence in corporate management, section 283(c) CAMA introduced a new rule with respect to who qualifies for the office of company director.

From the late nineteenth and early twentieth century, corporate law regarded the relations between the membership of a company and its directors as essentially a private matter, so that any misbehaviour or failure to act were generally regarded by the law as internal problems for the corporation's members, whom it was presumed, should bear the consequences of their poor choices in directors.[29] This is very much still the case. However, the law nonetheless plays a central role in setting minimum standards.

Appointment to the office of director has statutory underpinnings.[30] The law is thus interested in the person or occupier of that office. Interestingly, however, the law does not say exactly who is qualified, nor does it specifically require some particular qualification to attain appointment, unlike the company secretary[31] or auditor,[32] for example. Back in 1911, Neville, J. famously observed, in the case of *Re Brazilian Rubber Plantation and Estates*,[33] that a director may undertake the management of a rubber company in complete ignorance of everything connected with rubber, without incurring responsibility for the mistakes which may result from such ignorance, for 'he is not bound to bring any special qualifications to his office.'[34] Even now, a director is hardly required to know his statutory duties.[35] In spite of this, he is still held strictly to his obligations of discharging his duties within a reasonable standard of care, skill and diligence.

Neville's statement above was made more than a century ago and statute has since improved company law principles. For instance, statute allows companies to require share qualification in order to qualify for directorial positions,[36] so that the directors, as well as being officers may well be shareholders involuntarily, to induce them to act diligently and prudently for the company's success, since their

[27] J Birds and others, *Boyle and Birds' Company Law* (Jordan Publishing Limited, 2011), 627; Christian Campbell, *International Liability of Corporate Directors* (Yorkhill Law Publishing, 2007) 97; Philip Sutherland, 'Companies and Other Business Entities' in Cornelius G Van der Merwe and Jacques E. du Plessis (eds), *Introduction to the Law of South Africa* (Kluwer Law International, 2004), 384; R B Dyson, 'The Director's Liability for Negligence' [1965] 40 (3) *Indiana Law Journal*, 341-376, 346.

[28] Adamu, (n6) 65.

[29] A Corbett and S Bottomley, 'Regulating Corporate Governance' in C Parker and others (eds), *Regulating Law* (Oxford University Press, 2003) 66.

[30] See the cases of *Longe v FBN Plc.* (2010) All FWLR 258; *Central Bank of Nigeria (CBN) v Jidda* (2001) 7 WRN 24 at 27 CA; and *Shell Pet. Dev. Co. (Nig.) Ltd. v Lawson-Jack* (1998) 4 NWLR (Pt.545) 249 CA.

[31] CAMA, s332.

[32] Ibid, s403.

[33] (1911) 1 Ch. 425.

[34] Above.

[35] Adamu (n6) 47.

[36] CAMA s277. Interestingly though, share qualification was required as far back as 1698, by the then Charter of the famed East India Company, where a minimum of £2,000 in shares was set as qualification for directorship. Ron Harris, 'Trading with Strangers: The Corporate Form in the Move from Municipal Governance to Overseas Trade' in H Wells (ed), *Research Handbook on the History of Corporate and Company Law* (Edward Elgar Publishing Limited, 2018), 99.

investment is now also at risk. Furthermore, corporate codes also generally encourage directors to be knowledgeable in business and financial matters.[37] Principle 13 of the Financial Reporting Council of Nigeria Code of Corporate Governance 2018 (FRCN Code), recommends for directors to participate in periodic, relevant, continuing education programmes to update their knowledge and skills, so as to keep informed of new developments in the company's business and operating environment.

Also, although the law may not have specified exactly the qualifications of a company director, it nevertheless disqualifies certain categories of persons, effectively describing who can occupy such an office, and therefore, his/her qualification. Accordingly, section 283 provides that the following persons are disqualified from being directors:

a) An infant, that is, a person under the age of eighteen years;
b) A lunatic or person of unsound mind;
c) A person suspended or removed under section 288;[38]
d) A person disqualified under sections279,[39] 280[40] and 284;[41]
e) A corporation other than its representative appointed to the board for a given term.[42]

In fact, much of the list above can substantially be justified by the general principles of law. Under Nigerian law, 18 is the age of maturity for many things.[43] An infant qualified for director under early common law.[44] But today, an infant, legally incapacitated for most transactions under the law, is clearly unsuited for the position of director which requires the holder of the office to 'direct the mind and will' of an entity which itself has 'all the powers of a natural person of full capacity'.[45] Even for himself, the only contract binding upon an infant is that for necessaries.[46] The same reason could likewise apply to the case of a lunatic.[47] Directing the mind and will of the corporation would require sound judgement and a sufficient degree of mental health and wellbeing. In the interests of investors and the public, a person of unsound mind would hardly be ideal for such a position, considering he himself would require a guardian to take charge of his affairs, pending the termination of his lunacy.

The Bankruptcy Act 1979[48] is replete with provisions disqualifying a bankrupt from engaging in certain transactions or occupying certain offices.[49] For instance, a bankrupt may not contest elections into some political offices,[50] or practise a regulated profession,[51] such as law. Likewise, section 279 criminalises the fact of an insolvent acting as director in any company pending his discharge, with grave consequences in the event of violation. Until he is discharged, a trustee in bankruptcy is appointed by the court to take charge of his financial affairs.[52] An insolvent person is certainly one of the least qualified to manage and direct the affairs of a business entity, having failed in his own affairs.

[37] For example, Principle 5.3.2 of the Central Bank of Nigeria Code of Corporate Governance Post Consolidation, 2006.
[38] That is, a director removed by ordinary resolution. This is a new addendum whose analysis follow later in this paper. It is not yet clear, in the absence of judicial interpretation, whether this is a life-ban for the particular company from which the director was removed or every other company as well.
[39] An insolvent person.
[40] Upon conviction by a court, of an offence, such as fraud, or relating to the promotion, formation or management of a company.
[41] A person required to vacate his office of director due to any of the circumstances listed under that section.
[42] However, as impractical as it may sound, in some jurisdictions such as the UK, the director need not even be a natural person. Refer to UK Companies Act 2006 (CA), ss155, 164 and 251(3). See for instance *Re Paycheck Services* 3 Ltd (2010) UKSC 51, (2011) 1 BCLC 141, which illustrates this phenomenon beautifully.
[43] For instance, CFRN, ss29(4)(a), 35(1)(d), 36(4)(a), 77(2), 117(2); Kaduna State Child Welfare and Protection Law 2018, s3.
[44] Consider *Re Cardiff Savings Bank (Marquis of Bute's Case*), (1892), Ch. 100, where the Marquis was appointed director at only six months old! In fact, present English law still accommodates a person younger than 16 years subject to some conditions. See CA, s 157(2).
[45] CAMA, s 43(1).
[46] Child's Right Act 2003, s18; Kaduna State Child Welfare and Protection Law 2018, s21.
[47] Sale of Goods Act 1893, s2.
[48] Cap B2, LFN, 2004.
[49] See generally Bankruptcy Act ss126, 131, and 132.
[50] Bankruptcy Act. Ss 126 and 128.
[51] Ibid, s 126(1)(e).
[52] Ibid, ss76-77.

The prohibition of a corporation from occupying the office of company director comes as no surprise for it would perhaps be considered absurd to even imagine that a "person" which itself has no mind and will of its own could be able to direct and manage the affairs of another such "person." "Directing and managing" are clearly physical acts which cannot be carried out by an abstract entity, which is what the corporation essentially is. However, the law allows a company's representative to be appointed to the board. Nevertheless, in the particulars of directors filed with the CAC, it is the representative's name that appears and not the company he/she is representing. Interestingly, the UK now allows corporate directorship,[53] whereby a company can sit at the board of another company qua director,[54] although every company must still have at least one director who is a natural person.[55]

Considering the circumstances of the enactment of early company law, such as the Bubble Act of 1720 in England, company law in fact originated partly to curtail fraud in business dealings. Many of the principles regarding the running of the corporation aim at reducing the incidence of trickery and encouraging fair dealings. It is thus clear from section 280 that a person who already has a record involving fraud cannot have the backing of law for investors to entrust him with the running of a corporate entity. The section generally accommodates cases of conviction by a High Court, for any offences relating to the promotion, formation or management of a company, including those discovered at winding up. Against such persons shall lie an order of court precluding them from being involved in the management of a company in any way, whether directly or indirectly. A community reading of section 280(1)(b)(ii) along with section 20(1)(d) compels the conclusion that, apart from directorships, such persons may be disqualified from the promotion or formation of companies, as well. However, this disqualification is not indefinite, having been limited to 10 years, commencing from the date after the sentence for the offence in question has been served.[56] In other words, grave as these offences appear to be, in the contemplation of the law, they are not so grave as to merit a life ban for directorships.

It is interesting to note that in some jurisdictions, such as the UK, this disqualification is further supported by the maintenance of a register of such disqualified persons who were convicted for any offence relating to the formation or management of a company, for the information of the public.[57] Indeed, if companies are obligated by law to observe the disqualifications during appointments, it would make sense for the law to provide them with a repository of information to consult regarding persons who have been so disqualified. This is not the case in Nigeria. The country's market for corporate directors could certainly use that. Furthermore, although the director in question could be further liable should he act in contravention of a disqualification order,[58] there appears to be no sanction in respect of a company which appoints a director so disqualified. Perhaps this is just as well, since a register of disqualification is not available for companies' use.

In addition, there is the Banks and Other Financial Institutions Act No.5 2020 (BOFIA), an industry-specific legislation, which requires directors to be free of any criminal records regarding offences relating to fraud or dishonesty.[59] In fact, section 47 BOFIA provides that a senior manager, director or chief executive may not be appointed without the written approval of the Central Bank of Nigeria (CBN). This is so that the regulatory bank can scrutinise the proposed director's records in the industry. Actually, some industries are so regulated that professionals are required to be appointed to the board of companies running their type of business. This is true of the airline industry, for instance, regarding which regulation requires that at least one member of the board be an aviation professional.[60]

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[53] CA ss155, 164 and 251(3). See also *Re Paycheck Services 3 Ltd* (2010) UKSC 51, (2011) 1 BCLC 141.

[54] Arguably, this makes it easier for holding companies to consolidate their hold on subsidiaries.

[55] Refer to CA s155.

[56] CAMA, ss 280(1)(b)(ii) and 280(2).

[57] Company Directors Disqualification Act 1986, s18; <https://www.gov.uk/search-the-register-of-disqualified-company-directors> accessed 12 January 2025.

[58] CAMA s280(7).

[59] BOFIA s47(2)(d).

[60] Nigeria Civil Aviation Regulations 2015, paras 18.2.2.2(A), 18.2.3.(A) and 18.2.6.2.(A).

The disqualification criteria under section 283(d) also includes persons who, for reasons listed under section 284, have had to vacate the office of company director. Among the list are included persons who become insolvent, those with the type of convictions discussed above, as well as persons who become of unsound mind. Additionally, persons who lose their share qualification, where a company requires that as a precondition for appointment under section 277, as well as persons who resign their appointments in writing, must also vacate office.

While the disqualifying criteria so far discussed have been familiar features of Nigerian company law, the inclusion of section 283(c), 'a person suspended or removed under section 288', is a new rule in the CAMA 2020. A cursory reading of that addendum raises legal questions. In the first place, although the said section 288 clearly addresses removal of a director by the company by ordinary resolution, nothing indicates suspension of a director is also covered under that section or any other section under the law, for that matter, unlike the case with the secretary of a public company, for instance, under section 333(2). Perhaps, discovering this inadvertence, the law makers hastened to amend the said section 283(c) in a subsequent legislation, the Business Facilitation (Miscellaneous Provisions) Act No. 5 2022 (BFA), wherein para 15 of the Schedule to that law amends the provision to now read 'a person removed under section 288 of this Act, where such removal was on the grounds of fraud, dishonesty or unethical conduct.' Unhelpfully, this amendment still raises more questions than it answers and potentially invites rather absurd conclusions. Nonetheless, the law now clearly forms the view that a person against whom an ordinary resolution was carried to be removed from the office of company director, is not qualified to return to a similar office.

Certain issues arise from this novel provision of the law seeking to (dis)qualify directors. The disqualifications stated in section 283 constitute public regulation. This means that it is the state, through its institutions, that determines the situations giving rise to the disqualifications therein. However, the removal of a director by a company through ordinary resolution constitutes private ordering. It is the only disqualification, apart from losing share qualification that arises from private ordering. Effectively, therefore, the law has here relegated what ought to have been within the realm of public regulation to the background of private ordering, and one that concerns a fundamental right at that, that is, the right to form or join in forming companies.[61] The Constitution guarantees to one the freedom of association,[62] while section 18 CAMA affirms the right to form companies for everyone, except the persons listed under section 20(1), including a person so removed under section 288. Could it really have been the intention of the law to trust private businessmen to be impartial judges in this case, as to be qualified to impose fundamental rights restrictions on a person for life?[63] A fortiori, can shareholders be impartial judges in determining culpability for fraud, dishonesty or unethical conduct? The suggestion is absurd. It is submitted that they cannot, as they are not qualified to do so.

Besides, although the decisions of companies are democratically obtained,[64] it is not entirely impossible for the majority to agree on a decision which is wrong. Therefore, private ordering ought not to be allowed with respect to disqualification of directors generally, except perhaps for the companies involved in particular. That is, a company should not be allowed to be able to disqualify a person from directorships generally, except with respect to that particular company. Any permanent disqualification, if at all, should be left to the judiciary, which is appropriately presided over by impartial persons trained in objectivity and sworn to oath, to be able to so disqualify a person or deny them a fundamental right, as in this case.

Furthermore, fraud constitutes a criminal offence which must thus be proven beyond reasonable doubt. When the general meeting considers the director's case, it thereby negates a well-known principle of natural justice, *in propria causa nemo judex*,[65] which ensures decisions are free from bias. The company is both judge and victim in this case. How then could it decide impartially with respect to the culpability of the director in question? Besides, section 280 already disqualifies a person convicted for offences relating to the promotion,

[61] CAMA ss18 and 20.
[62] Constitution of the Federal Republic of Nigeria 1999 (CFRN), s40.
[63] There is nothing in the tone of s283(c) to suggest the disqualification is temporary.
[64] CAMA s258.
[65] Latin for 'No body is a judge in his own cause'. P Halkerston, *A Collection of Latin Maxims and Rules, in Law and Equity* (John Anderson and Co., 1823), 83.

formation, or management of a company, for which the offences of fraud and dishonesty may qualify, only this time, a court conviction is required. Section 280(c) will therefore seem repetitive or redundant in relation. The only function it seems to perform is granting shareholders a power previously exercised by the courts.

In addition, considering the said section 283(c) does not clearly restrict the disqualification to the particular company in question, what becomes of the director's other positions in other companies, if he happens to be a multiple director? This question is particularly apposite because the drafters have not considered the same disqualification for instances of vacation of office under section 284. This compels the conclusion that, where a director removed is having several other directorships, he does not also need to give up other similar positions. However, further juxtaposition of this with section 20(1), on incapacity to form a company, as well as section 212(1)(e), which also disqualifies such a person from appointment as trustee of a debenture trust deed, will further put this conclusion to doubt.

It is also quite concerning, that while most of the other disqualifying criteria are potentially temporary-even for fraud conviction under section 280(1)(b(ii), for which the limit of disqualification is 10 years-the one for a director removed under section 288 is not thus limited, applying indefinitely. There is, hence, a clear disproportionality between offence and penalty, in this case. Thus, the mere removal of a person from the office of director by ordinary resolution of the company could effectively cost him (1) present and future directorships, (2) the right to join or form a company and even (3) disqualify him from appointment as trustee of debenture trust deed. Legal standards must be attuned to the realities of corporate practice. The general meeting, made up of investors, who may change from time to time, and whose main concern is profit, rather than justice, is ill-equipped to decide the culpability of a director, to the extent of branding him for life. There could be several reasons why a director is removed from office. Particularly in small companies, a director might be removed for selfish or fraudulent reasons best known to the majority of the members or other directors who use their power of numbers to remove him. It could be the case that a director was justifiably against a decision of the majority who now remove him by ordinary resolution under section 288. This should not then disqualify him from ever holding a similar position in that or another company. Clearly, this could not have been the intention of the drafters of the law, but might have escaped their contemplation, leading to these absurd conclusions. The law, on this note, therefore, certainly needs to change.

And although complying with section 283 is clearly mandatory, there are no clear sanctions for when the company or the director, knowing of his disqualification, accepts office. Here, the CAMA compares unfavorably with its Ghanaian counterpart.[66] Thus, while companies are presumably obliged to ensure that directors they appoint are not caught up by the disqualifications, the law does not provide for penalties for when they flout that rule. This underscores the need for a register of disqualification to aid companies in compliance, particularly with respect to convicted persons.

4. Conclusion

Companies are important, and perhaps, those empowered to control them, even more so. The legal principles regarding the office of company director were developed early on with the invention of the corporation. But these have seen changes over time, commensurate with the expectation of modern society and business sophistication. The new rules on directors under the CAMA have so far not been subject to much academic scrutiny, the legislation being relatively new. While the attempt at reviewing and improving a thirty-year law must be commended, the discussions in this paper nonetheless compel the conclusion that, at least, with respect to the disqualification of the director on the basis of his removal by a company, the law invites absurd interpretations and must therefore be subjected to further review, on reasonable terms.

5. Recommendations

In view of the discussions above, the disqualification under section 283(c) should be amended by clarifying that it is restricted to the particular company which removed the director. Furthermore, the disqualification must be limited to 10 years, as is the case with convicted persons, and the same limit applied with respect to disqualification from joining or forming a company under section 20(1). The law must also provide for the maintenance of a register of disqualification of directors, to aid companies in compliance, and further provide for sanctions in the case of companies which appoint directors in contravention of the disqualifying criteria.

[66] The Ghanaian Companies Act 2019 at s173(4), sanctions companies and their directors, for appointing persons in breach of the disqualification criteria there listed.