

NIGERIAN COMPANIES AND ALLIED MATTERS ACT 2020 - DOES THE REMOVAL OF A DIRECTOR RESULT IN HIS OR HER DISQUALIFICATION AS A DIRECTOR IN OTHER COMPANIES?

The Nigerian Companies and Allied Matters Act, 2020 (“CAMA 2020”), introduced various changes to the law governing companies in Nigeria, most of which are positive changes.¹

There is, however, a revision in CAMA 2020 to the grounds for the disqualification of directors (section 283), that has resulted in ambiguity with respect to the implication of the removal of a company director prior to the end of his or her term. In this article, we highlight this ambiguity.

What are the grounds for the disqualification of directors under CAMA 2020 vis-a-vis CAMA 1990?

Below we have compared the grounds for the disqualification of a person from being a director in the Companies and Allied Matters Act 1990 (“CAMA 1990”) vis-a-vis the grounds set out in CAMA 2020.

	Grounds for disqualification	Contained in	
		Section 257 CAMA 1990	Section 283 CAMA 2020
	The following persons shall be disqualified from being a director		
(a)	an infant, that is, a person under the age of 18 years	Yes	Yes
(b)	a lunatic or person of unsound mind;	Yes	Yes
(c)	a person suspended or removed under section 288 of the Act	No	Yes
(d)	a person disqualified under sections 279, 280, 284 of the Act (sections 253, 254 and 258 of CAMA 1990)	Yes	Yes
(e)	A corporation other than its representative appointed to the board for a given term.	Yes	Yes

How does this affect the provisions on the removal of a director?

Under section 262 of CAMA 1990, a company could by ordinary resolution, remove a director prior to the expiration of his or her term as a director, provided a special notice is issued and the director is given the opportunity to make representations to the shareholders on the removal.

Although CAMA 2020 has a similar provision for removal in section 288, by the inclusion of section 283(c) detailed in the table above, there is now an impression that where a director has been removed under section 288 (i.e. prior to the end of his term or prior to a rotation), regardless of the reason for the removal, he will be disqualified from being a director in any other company. This is because the prevalent view is that, a director who fits within any of the grounds in CAMA for disqualification is not permitted to be a director in other companies.

Analysis

In our view, the interpretation of section 283(c) of CAMA 2020 to mean that a director removed before his term in one company would be disqualified from being a director in another company in Nigeria, is illogical; particularly as a director may be removed by the company for any reason and such reason might not be as a result of a fault or misdeed by that director.

It is likely that the intention of the lawmakers by introducing 283(c) was to limit the disqualification of the director to the particular company removing the director and not all companies (i.e. if Mr. A is removed by the shareholders from being a director in company X, Mr. A is only disqualified from holding the position of a director in company X).

Conclusion

The foregoing ambiguity would need to be clarified to avoid differing interpretations of section 283(c) of CAMA 2020. In the meantime, directors may wish to consider resigning instead of being removed under section 288 to avoid being deemed as a disqualified director under CAMA.

¹ See our article on “The Nigerian Companies and Allied Matters Act” <https://pavestoneslegal.com/the-nigerian-companies-and-allied-matters-act-2020/>