ALTERNATE DIRECTORS - THE LAW, THE PRACTICE

Section 244 of the Companies and Allied Matters Act[1] ("CAMA") defines directors of a company as persons duly appointed by the company to direct and manage the business of the company. A director owes extensive duties and statutory obligations to the company as she/he is regarded as being in a fiduciary relationship with the company. Consequently, a director is required to always act in utmost good faith and in the best interest of the company.

Notwithstanding the importance of a director's position in a company, it is the norm for directors to appoint persons to act and speak on their behalf during periods of absence or incapacity. These persons are referred to as "Alternate Directors." Alternate Directors are appointed by notice in writing, signed by the appointing director and the notice usually contains a statement signed by the proposed alternate that she/he is willing to act as an alternate (this is usually in the form of a letter addressed to a company's Board of directors (the "Board") and signed by the proposed alternate).

Principles guiding the appointment of an Alternate Director ("Alternate")

An Alternate may either be an existing director on the Board of the company or a non-member of the Board and his appointment must be approved by the Board. An Alternate is regarded as a de facto member of the Board and his responsibilities to the company are no different from those of the appointing director.

Although the Alternate has similar rights with his appointor with respect to Board meetings (right to speak, right to sitting allowance, right to move a motion), he is not entitled to remuneration by the company. With regard to loans and other transactions with the company, an Alternate is subject to the same rules as directors, but ceases to be an Alternate if her/his appointor ceases to be a director of the company (whether by death, retirement or removal). The appointor may also revoke the Alternate's appointment at any time, by notice in writing to the company.

It is instructive to note that neither CAMA nor the Model Articles[2] for companies specifically provide for the office/position of an Alternate and the requisite qualifications of persons who may be so appointed. Thus, the appointment of an Alternate does not emanate from statute.

[1] Cap C20, Laws of the Federation of Nigeria 2004
[2] First Schedule, Table A, Part I-IV of CAMA

This is not peculiar to Nigeria as the United Kingdom (UK) Companies Act 2006 as well as the Model Articles for private companies in the UK, do not contain provisions for Alternates. Unlike Nigeria, however, the Model Articles for public companies in the UK make provisions for the appointment of Alternates[3]. Private companies in the UK wishing to appoint Alternates are required to establish appropriate provisions in their Articles of Association.

Therefore, the power to appoint an Alternate in Nigeria is one that is conferred by the Articles of Association of a company. It is important to note in this respect, that where the power to specifically do so is not provided for in the Articles of Association of a company, then a company will be acting ultra vires its powers by permitting the appointment of an Alternate. In light of this, it is crucial that a company's Articles of Association specifically grant this right to its directors.

Conclusion

The practice of appointing Alternates proves to be an invaluable one and seems to have arisen to accommodate business exigencies as directors may not always be physically present to dispatch their duties. From the foregoing, it is imperative that the Articles of Association of a company make adequate provision for its directors to be empowered to appoint Alternates.

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[3] Articles 15, 25, 26 and 27