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DOES MY BUSINESS NEED A COMPANY SECRETARY?



Section 293 of the *Companies and Allied Matters Act, 1990*¹ mandates all companies in Nigeria to have a Company Secretary. In a bid to boost the ease of doing business in Nigeria, the *Companies and Allied Matters Act (Repeal and Re-enactment) Bill, 2018* (the “**CAM Bill**”), which was recently passed by the National Assembly and currently awaits the President’s assent, appears to have taken away the mandatory requirement for the Company Secretary for all classes of companies. The CAM Bill provides that it is no longer mandatory for small companies² to have a Company Secretary,³ as it is reasoned that hiring a Company Secretary invariably increases the financial burden on small companies.

While that may be the case, the spirit and the intent of the CAM Bill must not be misunderstood as it still requires the filing of annual return by private companies (including small companies) as well as a

¹ Cap. C20, Laws of the Federation of Nigeria, 2004

² Section 395(3) of the CAM Bill defines a small company as a private company with a turnover of N120,000,000 and below, net assets value of not more than N60,000,000, with no alien or government membership, and in the case of a company having share capital, the directors between themselves hold not less than 51 per cent of its equity share capital. Section 395(3) CAM Bill

³ Section 331(1) CAM Bill 2018

certificate making certain disclosures duly executed by a Director **and the secretary**.⁴ The CAM Bill further provides that a small company shall send to the CAC with the annual return, a certificate signed by both a Director **and the Secretary** confirming compliance with certain requirements⁵. **In essence, although the CAM Bill does not mandate small companies to have a Company Secretary, it definitely acknowledges the value-add and the need for one.** One may then ask, does my business need a Company Secretary?

The responsibilities of Company Secretaries have evolved over the years, from merely statutory duties to governance advisory, as they now perform the role of trusted advisors to the Board. In fact, the contemporary company secretary requires a high level of expertise, versatility, industry knowledge, business acumen and technical understanding to give independent, professional and impartial advice to the Board whilst meandering realms that transcend law into taxation, finance, human capital, administration, management etc.

With the increased focus on Corporate Governance, the role of the Company Secretary as a governance professional has indeed become very strategic and indispensable as the efficacy of a Board is dependent on the skill and competence of its Company Secretary.

The Company Secretary is in many ways, perceived as the conscience of organizations given that the role is the primary source of advice on the ethical conduct of businesses. Over time, Company Secretaries have shown sufficient capacity and competence to justify a reliance for guidance on issues ranging from conflict of interest and disclosure obligations, financial reporting, development of board processes, control measures and corporate strategy.

Notably, the Financial Reporting Council of Nigeria recently launched the Nigerian Code of Corporate Governance 2019 (“**NCCG**”)⁶ with the primary objective of institutionalizing the highest standards of corporate governance consistent with best practices in all companies. The NCCG also presents a higher standard of corporate accountability and governance for companies in the public and private sectors of the Nigerian economy, and emphasizes the need for highly skilled and experienced company secretaries in ensuring compliance with same. In particular, Principle 8 of the NCCG recognizes that the Company

⁴ Section 424(1) CAM Bill 2018

⁵ Section 424(2) CAM Bill 2018 provides that “A small company shall in addition to the certificate required under subsection (1) of this section, send with the annual return a certificate signed by a director and the secretary that—

(a) it is a private company limited by shares; (b) the amount of its turn-over for that year is not more than N10 million or such amount as may be fixed by the Commission; (c) its net assets value is not more than N5 million or such amount as may be fixed by the Commission;

(d) none of its members is an alien;

(e) none of its members is a Government, a Government agent or nominee; and

(f) the directors among them hold not less than 51 per cent of the equity share capital of the company.”

⁶ The NCCG was passed pursuant to Sections 11 (c) and 51 (c) of the Federal Reporting Council of Nigerian Act which empowers the Council to issue codes of corporate governance and guidelines.



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Secretary plays an important role in ensuring the effectiveness of the Board by supporting the Board to develop good corporate governance practices and culture within the company. Accordingly, Principle 8.1 of the NCCG recommends that the Company Secretary possesses relevant qualifications and competence necessary to effectively discharge the duties of the office.

The purpose of the CAM Bill is undoubtedly to reduce cost and boost the ease of doing business in Nigeria. Having identified this objective, the big question for businesses is, “**how do I resolve my need for a Company Secretary without overstretching my current cost structure?**”.

Outsourcing is the answer, as it offers the advantage of securing the services of expert company secretarial firms whilst still ensuring cost reduction amongst several other benefits which include:

- Access to skilled expertise;
- Access to bespoke solutions;
- Access to the versatility and experience inherent in the service provider;
- Increased efficiency;
- Flexible staffing (deployment of manpower on a need basis);
- Access to external resources; etc.

Finally, it is important to strategically select a reputable firm for the provision of company secretarial services as this is pivotal to the overall success of every business.

For further advice, please feel free to contact B&I Nominees Limited (“**B&I Nominees**”) via email at binominees@banwo-ighodalo.com or the following phone numbers: 234-9060003561-2; 80323063838.

B&I Nominees Limited is the company secretarial service provider of Banwo & Ighodalo. View our profile on www.banwo-ighodalo.com from the 1st of March, 2019.

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