THE COMPANY SECRETARY POSITION IN CORPORATE GOVERNANCE.

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INTRODUCTION

A secretary is an assistant to an executive. He is trained to type and perform many office duties. He possesses personal and business attributes. He guards his professional ethics of confidentiality, superb appearance and absolute loyalty. There are legal, medical and bi-lingual specialists in their own way. The personal attributes of a secretary include adaptability and self-confidence while his business attributes include secretarial skills and responsibility.

The employment of new technologies in the office threatens the secretary. The secretaries are jittery and apprehensive about their jobs. The executive thinks he can use the computer himself and thus not needing the secretary. This is so because the modern laptop does not require the executive to know keyboarding because he can talk to or write on the screen and everything would be typed. He can employ internet teleconferencing facilities for meetings. All these notwithstanding, the secretary is indispensable. This is because the executive needs an assistant who invariably must be the secretary who is trained in receiving visitors, answering and making telephone calls when the executive is busy on very important engagements.

The role of a Company Secretary in the implementation of sound corporate governance first came to the fore with the enactment of the 1968 Act. The Act made a requirement for registered Company to have a Secretary, with a bar on a Sole Director assuming the role of a Secretary[1]. The role of a Company Secretary was further given recognition in the companies and Allied Matters Act 1990. The Director, the Company in General Meetings and the Courts are however left to determine the Secretary's position under the COMPANY AND ALLIED MATTERS ACT.

However, the secretary's roles and personal attributes still make him somebody to reckon with in the office and in the organization. This paper will focus on who a secretary is, types of secretary, secretary's nomenclature, his personal and business attributes, professional code of ethics, and why a secretary is indispensable.

WHO IS A COMPANY SECRETARY?

The question that is often asked is "who is a Company Secretary? Various meaning has been ascribed to a Company Secretary. H. Black in the Black's Law Dictionary defines:

A Company Secretary, in references to a corporation or association as an officer charged with the direction and management of the part of the business of the company which is concerned with the keeping of records, the official correspondence, with giving and receiving notices, countersigning documents etc.[2]

Also Professor Gower, whilst recognizing the importance of the Company Secretary, said thus: "speaking generally, the Secretary functions are purely ministerial and administrative and he is not as Secretary, charged with the exercise of any managerial powers. Onifade (2004)[3] defined a Secretary as "An assistant to an executive, possessing mastery of office skills and ability, assumes responsibility without direct supervision, who displays initiative, exercises judgment, and makes decisions within the scope of her authority." A Secretary is the person who performs the myriad of daily chores that nibble away at an executive's time.

[1] Section 169(1) of the Companies Act 1968.
[2] H.C. Black, Black's Law Dictionary, 6th ed. St. Paul Minn: West Group Publishing Co. 1990 P. 1352
[3] Onifade Adewale 2004. *Management: Office Business Education*. Abeokuta: KAPPCO

"A Secretary as the principal administrative support position in an office increases the effectiveness of program staff by coordinating the paper flow of the office and carrying out the day-to-day administrative support activities required to accomplish the work of the organization." [4]Talking about Etymology, "A secretary's main purpose is to; bring food to meetings, especially ice cream and hot chocolate. The term is derived from the [Latin] word *secernere* "to distinguish" or "to set apart," the passive participle *(secretum)* meaning "have been set apart," with the eventual connotation of something private or confidential.

A *secretarius* was a person, therefore, overseeing business confidentially, usually for a powerful individual (a king, pope, etc.). [5] "A Secretary is either an administrative assistant in business office administration, or a certain type of mid or high level governmental position, such as a Secretary of State".

Having expressed a few shades of opinion about who a secretary is, the ingredients that must be contained in explaining who a secretary is should include – confidentiality (secrets), assistance or support or help, professional code of ethics, typing skill and communication skill. A Secretary should be able to keep secrets of the organization and that of his boss. His role is principally that of support, assistance or help. He carries out activities assigned to him by his executive or takes initiative which is within his authority and responsibility.

A secretary is a professional who has some code of ethics which he should guard jealously. He should be dynamic and versatile because he works in an environment that is not static. He should be ready to accept change and challenges of the office and the world of work. His title changes in conformity with his responsibilities. For example, a legal secretary has some professional responsibilities different from those of a medical secretary. The computer's functions now change. You can now talk or use pen to write on the computer and what you say or write is typed devoid the use of the keyboard.

[4] The Role of Secretary in Modern Offices. <http://www. cs. state.ny. ns/tsplan/tsp> (Retrieved October 1st, 2019)
[5] Secretary – Wikipedia, the free encyclopedia. <http:// en.wikipedia.org/wiki/secretary> (Retrieved October 1st, 2019)

What an amazing innovation in the world of modern office technology! Because the secretary interacts with people as the first contact of people visiting the organization and because of the operation of the telephone for the organization and his boss, his communication skill, human and public relations skill must be super. His appearance must be superb.

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It is worthy of note that the definition of a Company Secretary is shrouded in the role or functions of a Company Secretary, also in **ADEBESIN V MAY &BAKER NIG LTD. KARIBI WHYTE J** (as he then was) stated that- …. the secretary is an officer of the company with important duties and responsibilities. the secretary merely acts in a ministerial and administrative capacity. He has no managerial functions and managerial powers are prima facia vested in the directors and any managing director.

TYPES OF SECRETARY

There are two major categories of secretaries. We have the generalist and the specialist secretaries. The generalist secretaries are those who can work in any organization with some limitations when we talk of special or technical terminologies and skills. The specialist secretaries are the legal, medical, educational, bi-lingual, technological, and government secretaries.[7]

Legal Secretary

The following peculiar characteristics of a legal secretary:

. Must be an expert at time management, juggling many activities and roles at the same time

. Must possess psychological skills, dealing with many personalities.

· Must possess excellent judgment to make dozens of critical decisions, and

[6] L.C.B. Gower Principles of Modern Company Law. London Sweet and Maxwell Ltd. 2005.
[7] Harrison John 1979. *Secretarial Duties*. London: Pitman Publishing Limited

- Must have talents as a travel agent, personal chopper, living calendar, telephone directory, and mentor.[8]

Government Secretary

In the USA, they have Secretary of State, the Secretary of the Interior or the Secretary of Defense. In the United Kingdom they have Parliamentary Private Secretary who is the chief assistant of a Secretary of State or minister of the Crown. In Nigeria, we have Permanent Secretary who is the highest civil servant and there is Secretary to the Federal or State government.[9]

Medical Secretary

A medical secretary works with doctors or pharmacists in hospitals and helps to provide necessary support services.[10]

Bi-Lingual Secretary

A bi-lingual secretary works in foreign embassies and helps to translate correspondence accordingly. Many typewriters have German, French and English characters and only the trained secretary in foreign languages can use them.[11]

Educational and Technological Secretaries

These are secretaries who are very conversant with relevant terminologies and provide necessary support services to their chief executives.[12]

NOMENCLATURE

It has been said many times that a secretary is an assistant who plays a supportive role to his manager or boss or executive. Because of the new roles or responsibilities of the traditional

[8] Professionalism in secretarial ethics < http://www.secretarialsite. com/secretarialethics.htm> (Retrieved October 1st, 2019)
[9]Professionalism in secretarial ethics < http://www.secretarialsite. com/secretarialethics.htm> (Retrieved October 1st, 2019)
[10] Professionalism in secretarial ethics < http://www.secretarialsite. com/secretarialethics.htm> (Retrieved October 1st, 2019)
[11] ibid
[12] ibid

secretary, the modern secretary has such title or nomenclature as office coordinator, executive assistant, office manager and administrative professional.

Personal Attributes of a Secretary

Lauria (1972) [13] highlighted the personal attributes of a secretary as Adaptability, Level headedness, Good observer, Intuitiveness, Flexibility, Tact, Friendliness, Accuracy, Thoroughness, Fore-thoughtfulness, Initiative, Self-confidence, Good listener, a good telephone personality and a good appearance.

Business Attributes of a Secretary

Harrison (1979)[14] gave the business attributes of a secretary as Secretarial skills, Organizing skills, Efficiency, Reliability, Responsibility, Discretion, Initiative, Tact, Diplomacy, and Punctuality.

Professional Code of Ethics of a Secretary

Tied to the personal and business attribute of a secretary is the professional code of ethics. The ethics of a secretary and office professional are moral principles relating to the job that he will be bound by. These ethics include confidentiality, honesty, loyalty, reliability, responsibility, work unsupervised (meet deadlines, set priorities), cooperativeness, flexibility, multi-skilling (learn as much as possible about computer program and other positions in the firm), and bribery (do not be tempted to accept gifts or favours from internal or external clients just in case there is an underlying reason).[15]

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[13] Lauria Morrie 1972. *How to be a Good Secretary*. London: Pitman Publishing Limited.
[14] Harrison John 1979. *Secretarial Duties*. London: Pitman Publishing Limited.

[15] (http://www.secretarialsite.com/secretarialethics.htm).

much as possible about computer program and other positions in the firm), and bribery (do not be tempted to accept gifts or favours from internal or external clients just in case there is an underlying reason).[16]

APPOINTMENT OF A COMPANY SECRETARY

Section 296 (1) of the (C.A.M.A) 1990 states that the Company Secretary shall be appointed by the Directors by the General Meeting for such term, at such remuneration and upon such conditions, as they may think fit. Thus, Section 295 of the (C.A.M.A) 1990 provides that "it shall be the duty of a director of a company to take all reasonable steps to ensure that the Secretary of the Company is a person who appears to him to have the requisite knowledge and experience to discharge the functions of a secretary of a company and who in addition, fulfills requirements regarding previous experience or membership of specific profession or professional bodies.

QUALIFICATION OF A COMPANY SECRETARY

It could therefore be seen that section 296(1) of C.A.M.A., 1990 place an obligation on the Directors or general meeting of a company to appoint a secretary in both Private and Public Companies. In a Private Company, however, anyone who appears to the Director to have requisite knowledge and experience to discharge the functions of a secretary of a company can be appointed as a company secretary. In order to safeguard the interest of the investing public, it is however, provided, that the Secretary of a public Company must have one of the specified qualifications under the Act.[17]

(a) A Member of the Institute of Chartered Secretaries and Administration, or

(b) A legal Practitioner within the meaning of the legal practitioner's Act 1975, or

(c) A Member of the Institute of Chartered Accountant of Nigeria or of such other Bodies of Chartered Accountant as approved from time to time by an Act or Decree, or

[16] http://www.secretarialsite. com/secretarialethics.htm> (Retrieved October 1st, 2019)
[17] Section 295 CAMA 1990

(d) Any person who has held the Office of a Secretary of a Public Company for at least 3 years of the years immediately preceding his appointment.

(e) Or a Body Corporate or Firm consisting of qualified persons under paragraphs (a, b, and d).

Again, it has been recognized that those dealing with the Company will be concerned to know who the Secretary is, and hence the register of directors has been expanded into a register of directors and secretaries. Copies of particulars of secretaries must be field at Companies House and are available for inspection by the public both there and at the Company's Office.[18]

Section 235(1), (2) and (3) of Companies Act 2016 a Company must,

(1) A company shall have at least one secretary who shall be —

(a) a natural person;

(b) eighteen years of age and above; and

(c) a citizen or permanent resident of Malaysia,

who shall ordinarily reside in Malaysia by having a principal place of residence in Malaysia.

(2) A secretary shall be —

(a) a member of a body as set out in the **Fourth Schedule**; or

(b) a person licensed by the Commission under **section 20G of the Companies Commission of Malaysia Act 2001**.

(3) For the purposes of paragraph (2)(a), the Minister may prescribe any professional or any other body by notification in the *Gazette* and may impose any terms and conditions as he thinks fit.

Section 236(3) of Companies Act 2016

No person shall be appointed as a secretary unless –

(a) he has consented in writing to be appointed as a secretary;

[18] Ibid

(b) he is qualified under **subsection 235(2)** [19]; and

(c) he is not disqualified under **section 238** [20].

Approved bodies [in relation to **Section 235(2)(a)** [21]

1. Malaysian Institute of Chartered Secretaries and Administrators
2. Malaysian Institute of Accountants
3. Malaysian Bar
4. Malaysian Association of Company Secretaries
5. Malaysian Institute of Certified Public Accountants
6. Sabah Law Association
7. Advocates Association of Sarawak

THE CHANGING ROLE OF COMPANY SECRETARY

Thus far, it could be seen that the Company Secretary is the Chief Administrative Officer of the Company are unessential ingredient in the implementation of sound corporate Governance Procedures. Yet, this enviable position of a Company Secretary has not been accorded the position it deserves in corporate governance.[22] In fact. "there is perhaps no other functioning in the corporate set up who has suffered such a high degree of non-recognition by the common law as the Secretary even when his influence is felt in the Boardroom.[23]"

The veracity of this position is extended to the day-to-day functions of the Company's affairs as: "Not too long ago, the attitude of Director to Company Secretary was contemptible, many Company Secretaries have experienced situations where the Board met in their absence and all

[19] Companies Act 2016
[20] Section 238 of the Companies Act 2016 states that the company secretary will be disqualified if he is an undischarged bankrupt; convicted of any offence referred to under Section 198 (i.e. offences relating to the disqualification of a director); or has ceased to be a holder of a practicing certificate issued by the Registrar under Section 241 (i.e. registration with Registrar).
[21] Companies Act 2016
[22] N. Danjuma, the role of the Company Secretary Incorporate Management (Ibadan: Heinemann Educational books 1991 p. 53.
[23]Edun, Company Secretaries in Public Companies 1989. GRD Pt (No. 2) 12 P17.

they were asked to do was to prepare minutes handed out to them with no question asked. After all, they are supposed to act by order of the Board.[24]"

However, the case of **PANORAMA DEVELOPMENT GUILDFILED LTD VS FIDELIS FURNISHING FABRICS** [25] could be considered to be a major shift from this misconceived perception of a company secretary's role in corporate governance as just a subordinate or a minor clerk without any ostensible authority to make representations on the Company's behalf. The Court held in this Case[26] that signing or entering into certain contracts are inherent in or incidental to the administrative nature of his Office.

In the same vein, Chief N. Edun stated thus "we are now in an era in which Company Secretary are usually among the most respected and take most highly paid officers of their Companies and their appointment to such high office pre-supposes the possession of certain basic qualification and experience. Conception of a Secretary's role as that of a more clerk or servant now clearly boarders on heresy.[27]

STATUTORY DUTIES OF A COMPANY SECRETARY

However, in recent times, the (C.A.M.A) has given statutory recognition to the changing role of a Company Secretary which includes the carrying out of such administrative and other secretarial role as directed by the Directors of the Company. Specifically, section 298(1) of the (C.A.M.A) provides:

a) Attending the meeting of the Company, the Board of Directors and rendering all necessary secretarial services in respect of the meeting and advising on compliance by the meeting with the applicable Rules and Regulations.

b) Maintaining the registers and other records required to be maintained by the Company under the Decree/Act, and

[24] ibid
[25] Edun, Company Secretaries in Public Companies 1989. GRD Pt (No. 2) 12 P17.
[26] Liability of the Company Secretary see Panorama Development (Guildford) Ltd. V. Fedelis Furnishing Fabrics Ltd. Ante
[27] Re State of W joining syndicate (1901) 2 CH. 431

c) Rendering proper returns and giving notification to the commission required under this Decree/Act, and

d) Carrying out such administrative duties as directed by the Director of the Company, Subsection (2) of the same section states that "the Secretary shall not without authority of the Board exercises any powers vested in the Directors.

THE ROLE OR FUNCTIONS OF COMPANY SECRETARY IN CORPORATE GOVERNANCE

Corporate Governance is a system of managing the affairs of Corporations with a view of increasing shareholders value and meeting the expectation of the other stakeholders. This objective cannot be achieved without component Company Secretary.

According to H.A.J Ford, Corporate Governance is about the management of business enterprises organized in corporate form, and the mechanisms by which managers are supervise. Corporate Managers have a measure of power to deal with other people's money. The funds provided by shareholders in the Company, Managers owe duties to their Companies, duties which put legal constrains on their activities yet there is no one-size fit-all job description for Company Secretaries. On the contrary, role responsibilities and positions differ significantly from company to company, depending on the Organization of the firm its corporate governance design. This is as a result of a new phenomenon of corporate governance arising from the growing complexity of corporate practice; the role of the Company Secretary includes specific responsibility for the sound governance of the Company and for the guidance of the Board in the execution of its tasks.

This salient role of a Company Secretary could be segmented to include: Ensuring the smooth running of the Board's and Board Committee's activities by:

Helping the Chairman to set agendas, preparing and presenting papers to the Board and Board Committees, advising on Board procedures and ensuring that the Board follows them:

(a) Acting as primary point of contact and source of advice guidance for;

(b) Particularly, non-executive Directors as regards the Company and its activities in order to support the decision making process;

(c) Facilitating induction of new Directors into the business and their roles and responsibilities, and assisting in the ongoing training and development of directors;

(d) Keeping under close review all legislative, regularly and corporate governance developments that might affect the company's operations, and ensuring the Board is fully briefed on these and that it has regard to them when taking decisions;

(e) Ensuring complaisance with all legal and regulatory requirements including the continuing obligations of the listing Rules and all statutory filing requirements;

(f) Together with Human resources Director, keeping in touch with the debate on Corporate Social Responsibility and stakeholders, and monitoring all developments in this area and advising the Board in relation to its policy and practice with regard to Corporate Social Responsibility and its reporting on that matter;

(g) Managing relations with investors, particularly institutional investors, with regard to corporate governance issues and the Board's practices in relation to corporate governance' and making arrangements for and managing the whole process of the of the Annual General meeting and establishing, with Board's agreement, the items to be considered at the AGM, including resolution s dealing with governance matters.

Company secretaries should have high level responsibilities including advising on governance structure and mechanism, corporate conduct within a company's regulatory Environment, board, shareholder and committee meetings, compliance with legal, regulatory and listing requirements, the training and induction of non-executive, contacts with regulatory and external bodies, report and circulars to shareholders/trustees, involvement in issues of employee benefits such as pensions and employees share ownership schemes[28].

WHY IS THE SECRETARY IMPORTANT AND INDISPENSABLE IN AN ORGANIZATION?

First and foremost, the secretary is important and indispensable in an organization because he is a very versatile human being. He is a human being unlike the other office ingredients or resources that do not have initiative that can only be manipulated by the secretary. He is the organization's

[28] Fabian Ajogwu SAN .corporate governance and group dynamics copyright© page 147

image maker. He is the most important officer to be seen first and last by visitors to the organization.

Although the computer does many jobs hitherto done by the secretary, the computer cannot replace the secretary because of the following peculiarities of the secretary.

1. It is the secretary that is trained to manipulate the computer and thus making it to function.
2. The secretary is trained to receive visitors in a manner that neither the computer nor any other person can do.
3. He knows how to keep secrets and confidential documents.
4. He is the custodian of office information and correspondence.
5. He is in charge of the supplies of the organization
6. He possesses good communication skills and thus making him good in human and public relations.
7. He keeps a good imprest account.
8. He ensures an efficient and effective office by being current in records management and organizational ability.
9. He organizes meetings making sure that preparation before the meeting is faultless and activities during the meeting are carried out properly and after the meeting, things are put in order. He ensures accurate recording of minutes and prompt dissemination of the minutes.
10. He is the acceptable assistant of the chief executive since the chief executive cannot perform all the office functions despite his knowledge of the computer. He prepares light refreshment for the boss. He keeps his diary and constantly reminds him of his schedule. He prepares his itinerary and makes flight and hotel reservations for the chief executive.
11. It is the secretary that other office workers look up to for solving office problems and who can help them with required information.

At common Law, a Company Secretary was perceived as a mere servant of the Company who lacked any authority to bind his Company. Thus **Lord Esher M.R.** stated the historical perception

and roles of Company Secretaries in **Barnet Hoares and Company v. South London Tramways Company**[29]**stated that a Company Secretary**. He stated inter-alia that,

> "A Secretary is a mere servant; his position is that he is to do what he is told and no person can assume that he has any authority to represent at all; nor can anyone assume that statements made by him are necessarily to be accepted as trustworthy without further inquiring[30]

Lord Esher's approach was to see the Secretary as the competent recorder and records keeper whose presence at board meetings was solely to take and keep records but who otherwise was like any other staff of the Company, a servant. It is not quite clear what convinced the later change in perception of the status, function and lately duties of the Company Secretary in the early part of the 20th century but by 1968 when the now abrogated Companies Decree was promulgated, the position had become taken seriously enough for specific provisions to be made for the Company Secretary, see Section 197(1). Lord Denning, that foresight jurist, had become convinced enough that the Corporate world was looking at a Secretary with increased status, responsibilities and roles, and in **Panorama Development (Guildford) Limited V. Fidelis Furnishing Fabrics Limited**[31] the Company Secretary of the Defendant Company hired cars from the Plaintiff Company, using hiring agreement which he signed and stamped ostensibly for the Defendant Company's business, although in reality for his own purposes. The Plaintiff sued for outstanding charges and the Defendant Company denied liability contending that the Secretary was acting for himself and was not in a position to bind the Company by Contract. The Defendant was held liable**.** **Lord Denning M.R** refused to follow the ruling in Barnett's case, holding inter alia that:

> Times have changed. A Company Secretary is a much more important person nowadays than he was in 1887. He is an officer of the Company with extensive duties and responsibilities. This appears not only in modern companies Acts but also by the role which he plays in the day to –day business of the Companies. He is no longer a mere clerk. He regularly makes representations on behalf of the Company and enter into contracts on its

[29] (1887) 10 Q.B.D 815 at P.817

[30] See also: Houghton & Co. v. Nor hard, Lowe & Wills Ltd (1928) AC 1, where it was held that a Company Secretary has no implied authority to bind the Company by Contract; Daimler Co. Ltd v. Continental Tyre, etc. Co Ltd (1916) 2 Ac 307 or issue a writ in a Company's name; or lodge defences in the name of the Company Edington v. Dunbar Steam Laundry Co. (1093) 11 S.L.T.117

[31] (1971) 3 W.L.R 440

behalf which comes within the day-to-day running of the Company's business. So much that he may be regarded and held out as having authority to do and responsibilities. He is certainly entitled to sign contracts with the administrative side of a Company's affairs such as employing staff and……. so forth. All such matters now come within the ostensible authority of a Company secretary".

In Okeowo and Ors v. Milgliore[32]it was held that "a Company Secretary is a principal Officer of the Company". In Wimpey (Nigeria) Limited v. Balogun[33] the Court held that:
A Company Secretary is indeed a high ranking officer in the Company set up and is indeed part of the management of the Company.

The more we have had time to reflect on the views of Lord Esher, Lord Denning, and the latest provisions on Company Secretaries set out in Section 295-298 of the 1990 Decree, the more our comic and literary perception of the differences in the old versus new Company Secretary paints the following picture.

We comically see the old Company Secretary through our minds eye as that shy, awkward disillusioned attendee of a meeting at which he says next to nothing, takes records and is supposed to shiver even when directors cough at the meetings. We see the new Company Secretary as the perfectly dressed female increasingly or male occasionally who is assertive, confident, qualified and hasty to be observed and taken serious at board meetings. Again he or she says next to nothing, takes records but would look a director straight in the face if that director coughs or sneezes in a manner outside the modicum of cultural etiquette.[34]

STATUS

As to status more specifically, the recent provision in Section 296 of the Companies and Allied Matters Decree 1990 setting out detailed minimum qualification for Company secretaries has two effects:

[32]Supra
[33] (1986) 2 NWLR (pt. 28) p.328
[34] Essay on Company law by Professor E.O Akanbi

(a) It ensure that Secretaries are seen to be and are indeed qualified professionals of their own right.

(b) It recognizes that the enlarged status which the Company Secretary has acquired over decades now compels that a Company should not appoint persons whose qualifications cannot match the job.[35]

Section 296 Companies and Allied Matters Decree 1990 provides that only people belonging to certain professional bodies or who though not belonging to such bodies have had some minimal experience can be appointed Company Secretaries. The future Company Secretary must be

(a) a member of the Institute of Chartered Secretaries of Nigeria or such similar bodies; or

(b) a legal practitioner; or

(c) a member of the Institute of Chartered Accountants of Nigeria or such similar bodies; or

(d) a person who has held office of Secretary in public Company for at least three years of the five years preceding this appointment in a public Company; or

(e) a body corporate consisting of members qualified under (a-d).

Section 296(d) endorses appointees who do not belong to the Institute of Chartered Secretaries, Chartered Accountant or are not legal practitioners if they held the office of the Secretary of a public Company for at least three years of the five years preceding this appointment in a public Company. But what happens to existing Company Secretaries of Public Companies who do not belong to the elite club of Professionals listed in Section 296 (a-c) and have not had the requisite years of experience listed in Section 296(d). Are they out of employment? It would seem so theoretically but in practice there is no enforcement provisions or mechanism to ensure compliance with the requirement.[36]

One cursory provision which expands the status of the Company Secretary is that contained in Section 296(1) which removes the power of appointment of Company Secretaries from

[35] ibid
[36] ibid

management and places that on the board, although practical reality would favour a continuity of the old practice which was for management to appoint a Company Secretary and have the board confirm it. The latest provision in mode of appointment implies that a Company Secretary can no longer be seen as an ordinary board. The Section sets out detailed provisions on the manner of removal of the incumbent. It provides that:

Where it is intended to remove the Secretary of a public Company, the board of Director shall give him notice-

(a) stating that it is intended to remove him;
(b) setting out the grounds on which it is intended to remove him;
(c) giving him a period not less than seven working days within which to make his defence and;
(d) giving him an option to resign his office within a period of seven working days.

What then happens in a situation as is the current practice where a Company Secretary holds a dual position in the Company E.g. Legal Adviser/Company Secretary, Company Secretary/head of Administration etc.? Although the correct position should be that he could be removed from the management position but not Company Secretary position without reference to the board, the reality is that as the incumbent is one and the same person in his dual capacity, that other role of his may become protected by the armour that shields his Company Secretary status.

It is important for employers to note that a Company Secretary has become a board appointee and accordingly his or her removal should be part of a board deliberation which complies with the detailed principles of natural justice laid out in Section 296(1). A Company Secretary is no longer a mere servant; he is a much more important person now than he was perceived in the past.

CONCLUSION

There is no gainsaying the fact that the secretary is one single employee of any organization that is most important and needed. No matter the innovation or invention brought about by the computer, the presence of the secretary (a human being) is needed for the computer to function.

The secretary is a subordinate and an assistant that is needed by the chief executive for making telephone calls and receiving telephone calls. He is the only person trained in the efficient and the effective management of information, office correspondence and human resource for the benefit of the organization and in attaining the organization's objectives.

The computer is only an instrument or tool in the hand of the secretary and it cannot replace the secretary. The secretary will always be required in the office. Although they may not be many as it used to be, they are still needed and useful. One thing the secretary needs in order to keep his job is retraining, which can be done by attending classes or participating in online education for more knowledge on how to operate new office technology such as internet and teleconferencing computer facilities. As long as the secretary keeps abreast of challenges in modern technologies he will not be redundant or found wanting and he will always be relevant in today's modern office.

Thus far, the gradual progression of a Company Secretary in corporate governance is easily discernible. In addition to being an office of the company with substantial authority in the administrative sphere, he is also imbued with powers and duties derive directly from the Article and the C.A.M.A. This position has been given full consideration by the Supreme Court in Okeowo V. Migiore[37] where Idigbe J.S.C. observed that in Nigerian Law, a company secretary is "a principal office of the Company". To the same effect was Wimpey Ltd. Balogun's case[38].

Section 295 of the CAMA has fleshed out the qualification of a Company secretary, it is however, suggested that the qualification of a company secretary especially of a public company would need to be strengthened. There are clearly very sound reasons for a Company of knowledge required in company administration certainly administration certainly cannot be achieved without professional training.

It is therefore necessary, to restrict the professional qualification to those areas important to company administration if sound corporate governance, procedures are to be implemented.

[37] (1979.) 11 S.C. 138 (1979) NSC C. 210
[38] (19….) 2 NWLR 322.

The importance and indispensability of the secretary in any organization cannot be overstressed. We now have automated offices or what some people call “paperless” offices. These offices use modern machines and methods in order to save such resources as time, effort and money. Human labour is also reduced greatly.

Finally, it is necessary for every company to have a secretary, for financial institutions in the group structure, the parent and the subsidiary should each have their separate company secretaries. there is always a danger that the company secretary of the parent company would attempt to get involved in the company secretarial affairs of the subsidiary. This should not be encouraged. While it is necessary that the policy direction of the two companies are aligned and that officers of the parent company offer help where necessary, it should not degenerated excessive interference by the parent in the affairs of the subsidiary. similarly, the loyalty of the subsidiary company’s has to lie with subsidiary’s board and not with the parent company or its board.[39]

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