THE BOARD OF DIRECTORS

Delegation of Power within a Company

Within a company, all the powers are usually given to the board of directors. For example, this is an article in the standard articles of association (constitution) of Nigerian companies. The board of directors then delegates some of its powers to executive management, and executive management are responsible for the day-to-day business operations.

There are no laws or standard rules, however, about what the role of the board of directors should be, or how much authority for decision-making should be retained by the board (and how much should be delegated to executive management). The delegation of power within a company may therefore vary between companies.

The Role of the Board of Directors

The role of the board of directors is not to manage the company. This is the role of management. Specifying the role of the board of directors, and making the board accountable for its performance in the role, is a key aspect of corporate governance. The role of the board of directors is specified in codes of corporate governance. There are many different codes or statements of corporate governance principles.

In Nigeria, the Code of Corporate Governance states that the board is accountable and responsible for the performance and affairs of the company. The Code also states that the board shall:

i. Define the strategic goals of the company
ii. Ensure that the human and financial resources of the company are effectively deployed toward attaining the company's goals
iii. Oversee the effective performance of management in order to enhance shareholder value and meet the company's obligation to its employees and other stakeholders.
iv. Ensure the company carries out its business in accordance with its articles and memorandum of association and in conformity with the laws of the country.
v. Ensure that the highest ethical standards are observed and the company's business is carried out on an environmentally sustainable basis.

Decision-Making and Monitoring Roles

The role of a board of directors is a combination of decision-making and monitoring.

- A board should retain certain responsibilities, and should make decisions in these areas itself.
- Where the board delegates responsibilities to executive management, it should monitor the performance of management. For example, the board should expect senior management (usually the Chief Executive Officer) to account to the board for the performance of the company. In addition, the board should be responsible for monitoring the system of internal control that management has put in place.

In addition, the board should be accountable to the shareholders for its performance in carrying out these twin roles of decision-making and monitoring.

ICSA Guidance Note on Matters Reserved For the Board

Corporate governance codes and principles are not specific about what exactly the decision-making responsibilities of the board should be. The Institute of Chartered Secretaries and Administrators (ICSA) has published a Guidance Note, suggesting that in each company there should be a formal, written list of matters for which the board will take the decisions, and will not delegate to management. These include monitoring responsibilities as well as decision making responsibilities. The Guidance Note ('Matters Reserved for the Board') provides a suggested schedule of board responsibilities, that it should not delegate. This is listed under 12 headings or categories.

S/N	Responsibility	Comment
1	Strategy and management	The board is responsible for the overall management of the company or group. This involves: Approving the long-term objectives and commercial strategy; Approving the annual budget and capital expenditure budget; Oversight of operations; Review of the performance of the company; Decisions about expanding operations, and decisions about closing down any significant part of operations.
2	Structure and capital	Changes relating to the capital structure of the group, or its management and control structure. Also decisions about any change in the company's status, such as going from private company to public company status
3	Financial reporting and	Approval of financial statements and results; Approval of dividend policy; Approval of treasury policies, such as

	controls	foreign currency exposures and the use of financial derivatives.
4	Internal controls	Ensuring that there is a sound system of internal control and risk management, by monitoring the systems that are in place.
5	Contracts	Approval of major capital projects and strategically-significant contracts; Approval of loans or foreign currency transactions above a stated amount; Approval of all major acquisitions and disposals.
6	Communication	Approval of all communications to shareholders and the stock market, and all major press releases
7	Board membership and other appointments	Decisions about appointments to the board, appointment of the company secretary and the appointment of the company's auditors
8	Remuneration	Decisions about the remuneration of all directors and senior managers, including the approval of major share incentive schemes (which may also require approval by the shareholders.
9	Delegation of authority	The board is responsible for deciding what responsibilities should be delegated to board committees, and should decide on the division of responsibilities between the chief executive officer and the board chairman
10	Corporate governance matters	The board is responsible for corporate governance matters such as communications with the company's shareholders, deciding the balance of interests between the shareholders and other stakeholders and ensuring that independent non-executive directors continue to be independent
11	Policies	Approval of company policies, such as health and safety policy and environmental policy
12	Other issues	Such as decisions affecting the company's contributions to its employees' pension fund, the appointment of the company's main professional advisers, and decisions to prosecute, defend or settle major litigation disputes involving costs or payments above a specified amount.

Unitary Boards and Two-Tier Board Structures

In most countries, companies have a unitary board. This means that there is a single board of directors, which is responsible for performing all the functions of the board. However in some countries (such as Germany and the Netherlands), all or most large companies have a two-tier board.

Two-tier boards

A two-tier board structure consists of:

i. A management board, and
ii. A supervisory board.

The management board is responsible for the oversight of management and business operations. It consists entirely of executive directors, and its chairman is the company's chief executive officer.

The supervisory board is responsible for the general oversight of the company and the management board. It consists entirely of non-executive directors, who have no executive management responsibilities in the company. Its chairman is the chairman of the company, who is the most significant figure in the corporate governance structure.

The responsibilities of the management board and supervisory board should be clearly defined. For example, it is a requirement of Germany's code of corporate governance (the Cromme Code) that the supervisory board should have a list of matters that require its attention.

A function of the chairman of the company (and supervisory board) is to work closely with the CEO. As chairman of the management board, the CEO reports to the chairman of the company. If there is a good relationship between the CEO and chairman, the chairman will speak for the company's management at meetings of the supervisory board.

Germany has been closely associated with a stakeholder approach to corporate governance, and the interests of stakeholder groups are recognised by representation on the supervisory board. Directors on the supervisory board normally include:

i. Representatives of major shareholders of the company;
ii. Representatives of the employees or a major trade union;
iii. Former executive managers of the company, possibly former members of the management board who have now retired from the company.

In large companies, the supervisory board can be quite large, in order that it can represent a sufficient number of different stakeholder interests. Directors who represent an interest, such as

the interests of a major shareholder or the company's employees, are not 'independent' – unlike most non-executive directors on the unitary boards of listed companies (stock market companies) in other countries.

Comparison of Unitary Boards and Two-Tier Boards

An obvious question to ask is which type of board structure, a unitary board or a two-tier board structure, provides better corporate governance? Each type of board structure has its strengths and weaknesses. In the analysis below, the strengths of a two-tier board structure are, by implication, weaknesses of a unitary board, and vice versa.

Advantages of a two-tier board structure

i. It separates two different roles for the board. The management board is responsible for operational issues, whereas the supervisory board is able to monitor the performance of management generally, including the executive directors on the management board.
ii. It is an appropriate structure for a company that recognises the interests of different stakeholder groups. These stakeholder interests can be represented on the supervisory board, without having a direct impact on the management of the company.
iii. The legal duties of non-executive directors on the supervisory board can be different from the legal duties of executive directors on the management board. This is sensible, because independent directors are part-time appointments and are not involved in the management of the company. In a unitary board, the legal duties of non-executive directors and executive directors are the same.

Advantages of a unitary board

i. Unitary boards can be small in size, because there is no requirement to appoint directors who represent stakeholder interest groups. Small boards are more likely to act quickly in an emergency or when a fast decision is required.
ii. In a unitary board structure, it is easier for the non-executive directors and the executive directors to work co-operatively. With a two-tier structure, there is a risk that the two boards will not co-operate fully, especially when the chairman of the company and the CEO do not work well together.
iii. Unitary boards work towards a common purpose, which is what the board considers to be the best interests of the shareholders and others. With two-tier boards, there is more opportunity

for disagreements on the supervisory board between directors who represent different stakeholder interests.

Composition and Size of the Board

The board is responsible for the long-term success of the company. The composition of the (unitary) board of a major company in many countries consists of:

i. A chairman, who may be an executive director but is more usually a non-executive director;
ii. (Sometimes) a deputy chairman;
iii. A chief executive officer, who is an executive director;
iv. Other executive directors;
v. Other non-executive directors.

The board and its committees should have the appropriate balance of skills, experience, independence and knowledge of the company to enable them to discharge their respective responsibilities effectively. All directors should be able to allocate sufficient time to the company to discharge their responsibilities effectively.

A board of directors should not be too big. The code of corporate governance in Nigeria specifies that the size of the board should not be less than five (5) and should not exceed fifteen (15) persons. Boards must consider the benefits of diversity – e.g., improving the gender balance – when making appointments.

Executive and non-executive directors

A unitary board in large companies consists of executive directors and non-executive directors (NEDs). Non-executive directors are found on the boards of most stock market companies, but they are also appointed to the boards of subsidiary companies within a group and to the boards of private companies. Nigerian listed companies are required to include non-executive directors on their board. Other companies are not required to appoint non-executive directors, but might do so voluntarily.

Executive directors are directors who also have executive management responsibilities in the company. They are normally full-time employees of the company. Examples of executive

directors are the chief executive officer (CEO) and the finance director (chief finance officer or CFO.

Non-executive directors or NEDs are directors who do not have any executive management responsibilities in the company. NEDs are not employees of the company. They are not full-time. When they are appointed there should be a clear understanding about how much time (each month or each year) the NED will probably be required to give to the company's affairs. However, the status of executive directors and non-executive directors, as directors, is exactly the same.

Independence

All directors should show independence of character. They should be able to reach their own views and judgements, and should be able to express their personal opinions with conviction. In this sense, 'independence' means reaching opinions, expressing them and not necessarily agreeing with everything that fellow directors say. These characteristics of independent character are mentioned in the Principles for Corporate Governance in the Commonwealth (the CACG Principles). These state that: 'The board should be composed of people of integrity who can bring a blend of knowledge, skills, objectivity, experience and commitment to the board which should be led by a capable Chairman who brings out the best in each director. Crucial to this is having a proper director selection process to avoid the propensity for 'cronyism' and 'tokenism'.' In corporate governance, however, 'independence' means something much more specific than having an independent mind.

Independent Directors

It is argued that the board of directors should consist partly of independent directors. An independent director is an individual who:

- Has no link to a special interest group or stakeholder group, such as executive management, other employees of the company, a major shareholder, a supplier or a major supplier or customer of the company;
- Has no significant personal interests in the company, such as a significant contractual relationship with the company.

Given this definition of an independent director, it is impossible for an executive director to be independent, because he or she has a direct link with executive management. Only non-executive directors can be independent. However, not all NEDs are independent. A NED is not independent when there are relationships with the company or circumstances that would be likely to affect the director's judgement.

Independent directors are defined in various codes and principles of corporate governance. Definitions of 'independent director' vary between countries and codes. In Nigeria, an independent director is defined as a non-executive director who:

i. Is not a substantial shareholder in the company (which means that directly or indirectly, his/her shareholding must not exceed 0.1% of the company's paid up capital);
ii. Is not a representative of a shareholder who is able to significantly influence management;
iii. Has not been employed by the company (or group) or has served in any executive capacity in the company (or group) for the preceding three financial years;
iv. Is not a member of the immediate family of an individual who is or has been employed in an executive capacity in the company (or group) in the past three financial years;
v. Is not a professional adviser to the company other than as a director;
vi. Is not a major/significant supplier or customer of the company;
vii. Has no significant contractual relationship with the company (or group) that might interfere with his/her independence;
viii. Is not a partner or executive of the company's statutory audit firm, internal audit firm or other consulting firm for three financial years preceding his/her appointment as an independent director.

Furthermore, there should be at least one independent director on the board of a public company.

Board Balance and Independent Directors

The status of directors as independent or 'not independent' is significant for companies that are required to comply with a code of corporate governance. A general principle of good corporate governance is that there should be a suitable balance of individuals on the board. A board should consist of directors with a suitable range of skills, experience and expertise. However, there should also be a 'balance of power' on the board, so that no individual or small group of

individuals can dominate decision-making by the board. The board should include a balance of executive and non-executive directors (and in particular independent non-executive directors) such that no individual or small group of individuals can dominate the board's decision-taking.

Experience has shown that in the past, a feature of many large public companies that have collapsed dramatically has been a domination of the board's decision making by an individual or a small group of individuals. In the UK, for example, a link between bad corporate governance and domination by a powerful individual was evident in the cases of the Maxwell Communications Corporation (headed by Robert Maxwell) and Polly Peck International (headed by Asil Nadir). Both these companies collapsed unexpectedly in the early 1990s.

Diversity

Acting as agents of shareholders, directors are expected to collectively devise operational and financial strategies and to monitor the effectiveness of the company's practices. In order to do this effectively they must use judgment, accept responsibility and be accountable for their actions (three principles of sound corporate governance). Recent studies suggest one way of enhancing corporate governance is to diversify the board.

Diversity means having a range of many people that are different from each other. Categories might include: age, race, gender, educational background, professional qualification, experience, personal attitudes, marital status and religion. Board diversity aims to cultivate a broad spectrum of demographic attributes and characteristics.

Benefits of Board Diversity

Diversifying the board should have the following benefits:

i. More effective decision making: A diverse board should help reduce 'groupthink' and hence result in more objective decisions being made. Groupthink describes the tendency of a group to make collective decisions that minimise conflict rather than critically evaluate alternatives. Diversity should help the board approach problems from a greater variety of perspectives and raise challenging questions resulting in a more vigorous debate. This will help retain focus on managing and controlling risks and the companies' customers through better quality decisions. With ever increasing competition in a global environment a more diverse board will be better placed to understand diverse stakeholders' claims. For example, a multinational

company might benefit from having a range of foreign nationals on the board. A consumer-facing industry may benefit from having females as well as males on the board.

ii. Better utilisation of talent pool for NEDs: Traditionally the search for non-executive directors (NEDs) has been restricted to male candidates with similar backgrounds to existing members of the board. Broadening the target population by diversifying candidate profiles will foster better use of the available talent pool.

iii. Enhancement of corporate reputation and investor relations by establishing the company as a responsible corporate citizen: Employing a diverse board is a positive signal to both internal and external stakeholders that the company does not discriminate against minorities. This can enhance corporate reputation through positioning the company as a socially responsible equal-opportunity organisation. By reflecting the diversity of society and the community with a diverse board the social contract between a business and its stakeholders plus the strategic fit with the environment becomes significantly enhanced. One key point to recognise is that an increasing number of institutional investors are starting to take into account board diversity as an investment appraisal metric.

Drawbacks of Diversifying the Board

The following drawbacks may arise with greater diversification of the board:

i. Increased conflict and friction which may promote cliques or sub-groups and ultimately lead to a resistance to share information and debate effectively;

ii. Tokenism: meaning that rather than taking an active role and contributing positively to decision making, board minorities may feel they are only there to 'make up the numbers' and fulfil a quota. This can lead to an undervaluing of skills and suppressed contribution to the organisation. The risks from tokenism can increase if the board overlooks other more suitable candidates in order to simply fill quota.

Promoting Diversity

Diversity can be promoted in a number of ways:

i. Imposing quotas: The most common legislative diversity quotas are for gender diversity – e.g. the rules in Norway since 2008 have required at least 40% of board members to be female. Public sector organisations are increasingly facing quotas in

other areas such as race and disability. Quotas generally achieve results quicker than voluntary action and also force organisations to address barriers to diversity.

ii. Enhancing transparency and disclosure: This is implemented through corporate governance codes that require companies to disclose their diversity policy and compliance therewith. Supporters of the transparency (rather than legislation/quota route) believe that appointments should be made based on business needs, skills and ability rather than legislative requirements that may be inappropriate in the market. For example, the UK Corporate Governance Code requires companies to: Incorporate diversity as a consideration in making board appointments; and disclose in their annual reports a description of the board's policy on diversity and its progress in achieving the objectives of that policy Australia and Hong Kong promote diversity using a similar 'comply or explain' approach.

THE ROLES OF CHAIRMAN, CHIEF EXECUTIVE OFFICER AND NEDS

Separation of the roles of chairman and chief executive officer

The two most powerful positions on the board of directors are those of chairman and chief executive officer (CEO). To avoid the risk that one individual might dominate decision-making by the board, in Nigeria, the Code of Corporate Governance states that for all public companies with listed securities, the positions of chairman and chief executive officer shall be separate and held by different individuals. This is to avoid over concentration of powers in one individual. The UK Corporate Governance Code states that:

i. The roles of chairman and chief executive officer should not be held by the same person.
ii. In addition, a CEO should not go on to be the chairman of the company. The idea behind the provision in the Code is that a CEO who 'steps up' to become the company chairman might seek to dominate or influence his successor as CEO. However, some companies have argued that when a CEO decides that he wants to do something different, a company might be able to retain his experience and knowledge of the company's affairs by offering him a part-time role as chairman.

Role of the CEO

The CEO is responsible for the executive management of the company's operations. He or she is the leader of the management team and all the senior Executive Managers report to the CEO. If there is an executive management committee for the company, the CEO should be the chairman of this committee. Other executive directors may sit on the board of directors, the CEO reports to the board on the activities of the entire management team, and is answerable to the board for the company's operational performance.

Role of the Board Chairman

In many public companies, the role of chairman is part-time. The UK Corporate Governance Code states that on appointment to the position, the chairman should be independent. If companies comply with the code, a chairman will therefore be both independent and non-executive. The board chairman, or company chairman, is the leader of the board of directors. He or she is responsible for managing the board. Whereas codes of corporate governance have little to say about the responsibilities of the CEO, they have quite a lot to say about the role and functions of the chairman.

The UK Corporate Governance Code identifies the following responsibilities for the board chairman:

i. The chairman is responsible for its effectiveness in performing all aspects of its role. The chairman also sets the agenda for board discussions.
ii. The chairman is responsible for ensuring that all directors receive 'accurate, timely and clear information'. This is particularly important for non-executive directors, who rely for most of their information about the company on what the chairman provides. If they are not well-informed, NEDs are unable to contribute effectively to the discussions of the board or to decision-making.
iii. The chairman is also responsible for communications between the company and its shareholders.
iv. The chairman is responsible for ensuring that the NEDs contribute effectively to the work of the board, and for ensuring co-operative relationships between the NEDs and executive directors.

In 2003, a report on non-executive directors was published in the UK. This was called the Higgs Report (after its author) and some of the recommendations in the report were reproduced in the Higgs Suggestions for Good Practice which was issued as a supplement to the UK Corporate Governance Code.

The Higgs Suggestions include a slightly more detailed list of the functions of the board chairman. The role of the chairman, according to Higgs, should be to:

i. Run the board and set its agenda: The agenda should be mainly forward-looking, and should concentrate on strategic matters (not details of management).
ii. Ensure that all members of the board receive accurate, timely and clear information 'to help them reach well-informed and well-considered decisions'.
iii. Ensure effective communication with the shareholders: The chairman should make sure that the other directors are aware of the views of the major shareholders.
iv. Manage the board, and make sure that enough time is allowed for the full discussion of complex or controversial issues.
v. With the assistance of the company secretary, arrange for the induction of new directors after their appointment, and the continuing training and development of all the board directors.
vi. Organise the performance evaluation of the board, its main committees and its individual directors.
vii. Encourage the active participation in the board's affairs by all the directors.

The responsibilities of the chairman of board of directors in the Nigerian Code of Corporate Governance are similar to the Higg's suggestions. Additional responsibilities in the Nigerian code are:

- Playing a leading role in ensuring that the board and its committees are composed of the relevant skills, competencies and experience.
- Acting as the main link between the board and the CEO; advising the CEO in the effective discharge of his/her duties.

The Role of Non-Executive Directors

One of the reasons for having independent non-executive directors on a board is to give the board a better balance, and to reduce the possibility that the board may be dominated by one individual or a small group of individuals.

The four roles of NEDs identified in the Higgs Guidance are as follows:

i. **Strategy**: NEDs should challenge constructively and help to develop proposals on strategy.
ii. **Performance**: NEDs should monitor the performance of executive management in meeting their agreed targets and goals.
iii. **Risk**: NEDs should satisfy themselves about the integrity of the financial information produced by the company, and should also satisfy themselves that the company's systems of risk management and internal control are robust.
iv. **People**: NEDs should be responsible for deciding the remuneration of executive directors and other senior managers, and should have a major role in the appointment of new directors and in the 'succession planning' for the next chairman and CEO of the company.

These roles suggest that NEDs on a unitary board have the complex task of acting partly as a colleague of the executive directors, and partly as a 'policeman'. They act as a colleague in discussing strategy and helping to develop strategy. However, they act as a 'policeman' in monitoring the performance of executive management, checking the integrity of financial reporting, evaluating the effectiveness of the risk management system and internal control system, and deciding the remuneration of their executive colleagues.

It can be argued that a function of independent NEDs is to reduce the agency costs arising from the conflict of interests between the shareholders and management, by acting as independent monitors of the company's management and also by negotiating remuneration.

Criticisms of NEDs

NEDs are often criticised for failing to perform effectively in their role. There are three main criticisms.

i. **Lack of knowledge** about the company and the industry or markets it operates in. NEDs often lack the information about the company that they need to make well-informed

decisions. The chairman is responsible for ensuring that all directors are properly informed, but this is an 'ideal situation' that does not always exist in practice.

ii. **Insufficient time with the company**: NEDs might not spend as much time with the company as they need to, in order to perform their role effectively. When a NED is appointed, there should be an understanding about how much time the NED will be expected to spend with the company. Even so, the agreed amount of time might not be sufficient.

iii. **Accepting the views of executive directors**: The NEDs might be too willing at times to accept the views and opinions of executive directors, because the executives know more about the company's operations. When the NEDs are too willing to agree with the executive directors, they do not contribute as much as they should to discussions on strategy.

In spite of these criticisms of non-executive directors, it is now widely accepted in many countries that major companies should have a strong presence of independent NEDs on the board. When NEDs do not appear to be effective in their role, institutional shareholders might well take action.

DIRECTORS AND THE LAW

Appointment, Election and Removal of Directors

An aspect of corporate governance is the power of the shareholders to appoint directors and remove them from office. Practice in the UK is fairly typical of other countries.

- When a vacancy occurs in the board of directors during the course of a year, the vacancy is filled by an individual who is nominated and then appointed by the board of directors.
- However, at the next meeting of the company's shareholders (the next annual general meeting), the director stands for election. In Nigeria, as in the UK, the director is proposed for election, and is elected if he or she obtains a simple majority (over 50%) of the votes of the shareholders.
- Existing directors are required to stand for re-election at regular intervals. In Nigeria, as in the UK, most companies include in their constitution (articles of association) a requirement that one-third of directors should retire each year by rotation and stand for re-election. This means that each director stands for re-election every three years. (This is why appointments of NEDs are for periods of three years.)
- It is usual for directors who retire by rotation and stand for re-election to be re-elected by a very large majority. However, when shareholders are concerned about the corporate governance of a company, or about its financial performance, there might be a substantial vote against the re-election of particular directors.
- When a director performs badly, it should be expected that he or she will be asked by the board or the company chairman to resign. This is the most common method by which directors who have 'failed' are removed from office.
- Occasionally, a director might have the support of the board, when the shareholders want to get rid of him. UK company law allows shareholders (with at least a specified minimum holding of shares in the company) to call a meeting of the company to vote on a proposal to remove the director. A director can be removed by a simple majority vote of the shareholders. When a director is removed from office, he retains his contractual rights, as specified in his contract of employment. This could involve a very large payment.

Duties and Legal Obligations of Directors

Directors have certain legal duties to their company. If they fail in these duties, they could become personally liable for the consequences of their breach of duty. Their duties are to:

i. act within their powers;
ii. promote the success of the company for the benefit of its shareholders;
iii. exercise independent judgement
iv. exercise reasonable skill, care and diligence;
v. avoid conflicts of interest;
vi. not to accept benefits from a third party; and
vii. declare any interest in a proposed transaction with the company.

Prior to the Companies Act 2006, the legal duties of UK company directors to their company have been:

i. a duty of skill and care; and
ii. a 'fiduciary duty': this is a duty to act in the utmost good faith in the interests of the company.

Two examples of a breach of fiduciary duty are putting personal interests ahead of the interests of the company (when there is a conflict of interest) and failure to disclose a personal interest in a contract with the company. Both of these breaches of duty are agency problems, identified in agency theory.

Conflicts Of Interest

A director would be in breach of his fiduciary duty to the company, for example, if he puts his own interests first, ahead of the interests of the company. One example from UK law is the case of an individual who was the managing director of a company that provided consultancy services. One client decided that it would not use the company for planned consultancy services, but indicated that if the managing director applied for the contract personally, it might be willing to give the consultancy work to him. The managing director informed his fellow directors that he was ill, and persuaded the company to release him from his contract of employment. On ceasing to be a director of the company, he applied for the consultancy work with the client, and was given the work. His former company successfully sued him to recover the profits from the

contract. The court decided that the former managing director was in breach of his fiduciary duty to the company, because he had put his own interests first, ahead of the interests of the company in obtaining the contract work for himself.

Disclosure of Interests

A breach of fiduciary duty would also occur if a director has an interest in a contract with the company but fails to disclose this interest to the rest of the board and obtain their approval. Typically, a company director might be a major shareholder in another company which is about to enter into a supply contract with the company. When this situation occurs, the director must disclose his interest as soon as possible to the rest of the board, and obtain their approval. Failure to disclose the interest would make the director liable to hand over to the company all his secret profits from the contract.

In Nigeria, as in the UK, it is also a criminal offence for a director to fail to disclose an interest, and the punishment for a breach of this law is a fine.

Stock market restrictions on share dealings by directors

Taking advantage of price-sensitive information about a company to buy or sell shares, or to encourage anyone else to buy or sell shares, is a criminal offence, known as insider dealing. Insider dealing is an offence. However, directors of a company will often be in a position to judge how well or badly the company is performing when other investors are not in a position to make the same judgement. If they buy or sell shares in their company, they might be suspected of insider dealing and putting their own interests first.

When an individual such as a director is found to have carried out insider dealing (or insider trading):

- he might be found to have committed a criminal offence, and face a fine and imprisonment, and/or
- he might be found liable in civil law to the individuals at whose expense he made his profit.

In the UK, the law on insider dealing has been supplemented by a code of conduct for directors and other senior employees of listed companies. This code is known as the Model Code. All listed companies are required to apply this code of conduct, or a code that is no less strict.

Applying the Model Code will help to maintain investor confidence in the activities of company directors. The main requirements of the Model Code are as follows.

i. Directors must not deal in shares of their company during a ‘close period’. A close period is the period before the announcement to the stock market of the company’s interim and final financial results.
ii. A director must not deal in shares of the company at any time that he has price-sensitive information.
iii. Before dealing in the company’s shares at any other time, a director must obtain the prior permission of the chairman.

Disqualification of Directors

The corporate law of a country might provide for the disqualification of any individual from acting as a director of any company, where the individual is guilty of behaviour that is totally unacceptable from a director. To some extent, laws on the disqualification of directors might possibly provide some protection to the shareholders of a company. However, disqualification only occurs after the unacceptable behaviour has occurred.

In Nigeria, as in the UK, for example, the law allows a court to disqualify an individual from acting as a director of any company in a variety of circumstances. These include:

i. when a director is bankrupt;
ii. when a director is suffering from a mental disorder;
iii. when a director has been found guilty of a crime in connection with the formation or management of a company (such as the misappropriation of company funds).

However, the disqualification of an individual from acting as a director is more likely after a company has become insolvent, rather than whilst the company is still operational and solvent\