



Protection of Investors

Whether you are a Sierra Leonean or a foreign investor, the laws and regulations in force are there to protect you and your investment.

You are assured of the fullest protection under the Companies Act 2009, the Companies (Amendment) Act 2014 and related legislations.

My sister Fanta is going to be a shareholder. Can she own shares? What does she need to know? Can you tell me quickly? Sure we can.

Governance

Anyone can own shares in a company and in as many registered companies as they wish but you must have attained the age of 18 years, be of sound mind and not an undischarged bankrupt. You should not in any way have been disqualified by the law to own shares or be a member of a company.

There is a lot Fanta can do as a shareholder or a member of a company.

1. The articles of her company would tell her the rights and liabilities attached to her shares or membership. Members or shareholders can pass a resolution to change the rights attached to a share. The right to vote and attend meetings though comes with being a shareholder or a member. Members/shareholders are to hold a general meeting every year and if Fanta has 10% or more of paid up share capital she can call an extraordinary general meeting.

Fanta can trade in her shares if the articles permit but she has to make sure a proper instrument of transfer is completed.

2. Fanta and other members have a right to remove a Director from office before the end of his/her term by a simple majority resolution as long as the articles of the company permit them.
3. Shareholders have the power to issue shares up to its share and to approve new shares. They can also issue new classes of shares. They can issue what is known as preference shares and this would entitle herself and any other members to a fixed share in the profit of the company. If she holds a preferential share, that share can carry more than one vote.
4. If the company articles say so and members pass a resolution to the effect, Fanta could also be entitled to pre-emptive rights.
5. If your articles permit you and provided you complete the necessary instrument of transfer, you can transfer your shares.

Wow.

A member or shareholder can also appoint or dismiss an auditor. If a company is not classified as a small company, members/shareholders have to appoint an auditor to audit companies accounts and this has to be done every year. Public companies have to have an audit subcommittee made up of its members as well. (Sec 310 (2) of CA2014.

Members are to ensure the CEO is not the Chairman of the board. This is in order that no

one individual has unfettered powers of decisions. The laws of Sierra Leone have no restrictions on the number of executive or non-executive

members. The decision is for the members to make.

Ordinarily, Fanta's company or its nominees cannot hold shares in a parent company but a subsidiary company may acquire shares in its holding company where the subsidiary company is interested as a personal representative or trustee unless the holding

company "or any of its subsidiaries is beneficially interested other wise than by way of security for the purpose of a transaction entered into by it in the ordinary course of a business which includes the lending of money".

I hear her mention something about 'extent of director's liability'. What does that mean? aahhhh that. She wants to know how answerable she would be if she serves as a Director.

Action could be taken against a Director for any act that causes damage to a company business or investment. A Director could be sued directly.

Shareholders can sue a Director for breach of any of their duties or for negligence. (Section 232 (2) CA 2009). When a Director understands their duties and performs their duties with care, the investment would be protected. A Director could be used to recover damages for loss suffered as a result of breach on their part.

A court can cancel a transaction that may have been undertaken by Director (s) which has resulted in loss or damage to business or investment or that may have been prejudicial to the rights of the member or shareholder.

It is important for Fanta to know that Directors cannot and should not exceed their powers unless a resolution is passed giving the Director in question an approval or the right to exceed their powers. A Director could be held liable for damage caused to company business or investment.

I can see you looking at your watch. Do you have a few more minutes? I want to tell you about disclosure. This is more important than what I was going to do. Let me take a seat. Go on.

Disclosure could be non-financial or financial.

To start with it is important to know that the law does not prohibit Fanta from holding shares or becoming a member of two or more companies. The law does not also prohibit or stop a

Director to have personal interest in the affairs of one company or in a contract or transaction your company is entering into. It is best to avoid such a situation.

However it is always prudent to disclose your interest where there is likely to be a conflict.

A Director cannot use his/her advantage to any money, assets or information of the Company.

Any conflict i.e. where your personal interest clashes with the interest of the company, there

has to be immediate disclosure (Sec231(6) of CA2009 as amended)

This transaction would have to be published by the directors of the Company and a notification is to be filed with the commission (section 231(7) CA 2009 as amended).

Which commission are you referring to? – The Corporate Affairs Commission. There are times when Fanta and other members may need an independent opinion as to whether they should proceed with the transaction where a conflict of interest has been disclosed.

They can agree at a general meeting to seek the advice of the Commission. (Section 236 (3) of CA 2009 as amended).

When you disclose your interest, the Director would not be allowed to take a vote on that issue now.

Why? ... just so that the decision to be taken on the transaction is fair. If for some reason the Director voted, the vote would not be counted.

The consent of members/shareholders has to be given before the transaction to which the conflict relates occurs. The company may at a later stage ratify the transaction.

A resolution would have to be reached by members in order for the implementation of the transaction with the conflict of interest to be approved. (Sec 238 (5) CA2009.

If a member of the Company is a director, **yes she says she is going to be a director**, then there are certain provisions of the Companies

Act 2009 and the Companies (Amendment) Act 2014 that applies.

Section 247 (2), (4) and (6) of the CA). The Company has to keep information on all directors.

- (a) Present forename and surname;
- (b) Any former forename and surname;
- (c) His usual residential address;
- (d) His nationality;
- (e) His business or occupation, if any;
- (f) Particulars of any other directorships held by him; and
- (g) The date of his birth.

A Director has to disclose any secret profit or other benefits that may have been derived from a contract or transaction (Sec 235 (3) CA 2009). Financial disclosures on the other hand go beyond that which is required of the individual director. It is the responsibility of the company to disclose.

Once within 18 months of incorporation and once every 12 months to prepare and file financial statements (Sec 288 (1) CA 2009). The statement shall include statement of accounting policies, balance sheet, an income statement, investments,

details of indebtedness, auditors report, and directors report. The statements are to have explanatory notes disclosing the particular of subsidiary companies and its shareholders etc.

The auditors of a company shall make a report to the members on the accounts examined by them; and on every balance (Section 310). Every company should file annual returns to which is to be attached the financial statements. The Contents of the returns would depend on the type of company that has been registered. However general provisions of an annual report would

include the name and registered address of the company, the particulars of the directors and secretary, if a company limited by shares: the share capital, the issued shares, total amount of indebtedness of the company in respect of mortgages and charges.

Financial statements are to be published (Sec 305 (1 & 2) CA 2009).

A company and every officer who fails to submit annual returns would be liable to payment of a daily fine of Le 850,000. (Sec 320 of the Companies Act as amended).

A public company is mandated to publish its prospectus which would state the securities that would be offered for sale, the price at which they are being offered and other information prescribed by legislation and the prospectus must be registered with the Commission.

What is shareholder law suit? What protection has she got?

Firstly Fanta needs to know that as any shareholder, even if holding 10% or less of shares or membership rights is protected by the law.

She has 9% of shares: Then She is referred to as a minority shareholder. No matter how many shares you hold you are still protected under the law. Before the amendment of the companies act 2009, she would have had so many restrictions but now..it's different. With 10% or less of shares or rights in a company she has a right to inspect documents relating to any transaction. It does not matter if it's for a law suit or not. (Section 120 (2) CA Amendment 2014).

What if they say no because she is a woman?

Whether a shareholder or member is a man or a woman these laws apply to everyone. If the company denies Fanta the right to inspect the documents all she would have to do is to inform the Commission in writing and a directive would be given.

As a shareholder she can have access to any documents she needs; New section 120 (2) of the Companies (amendment) act 2014 makes that very clear. Whether or not Fanta is going to initiate a law suit, and irrespective of the number of shares she holds, she can inspect any document relating to

any transaction of the company and the company has to make it available.

If the company does not make these documents available, the Commission is to be informed in writing and a directive would be given.

But there is more:

Even with 10% or less of shares or membership rights you can request that the Commission, a member can request an investigation is conducted on their behalf (Section 276 of CA 2009).

The court can also appoint an investigator to investigate the affairs of the Company. Section 268 as amended. But remember. The request has to be justifiable.

Say an action is instituted in Court relating to the affairs of the Company, the member concerned would under the Civil Procedures rule Order 27 R1, have the right to access any documents that would have been referred to in the pleadings.

Also, we have in our law books The Right to Access Information Act (2013).

This act provides that every person has the right to access information held by or is under the control of a public authority. It means a shareholder under this law also has the right to access information held by or is under the control of a private body where that information is necessary for the enforcement or protection of any right.

In addition a shareholder can sue a company or Director in his/her personal capacity.

A member can:

- a) Sue a Director for breach of director's duty under 231, 233, 234, 235 (Section 240 as amended) - civil liability. All that has to be proved is that the Director was negligent, he committed fraud or he acted in bad faith.
- b) Apply to the court for relief on the ground that the affairs of the company are conducted in an illegal or oppressive manner or unfairly discriminatory against a member. Section 266 of CA 2014. In this case a court can
- c) Sue a corporation under Part 1V of the Criminal Procedure Act as amended that may have committed an indictable or summary offence.
- d) When you bring an action against a director, you can recover damages, and personal profits from the transaction.
- e) The Commission can also institute proceedings against the company (section 241 (3) CA 2009).

SO you see - It's not only the Companies Act 2009, or its amendments from which protection could be sought. Protection is sought under civil procedure rules and other regulations.

All investors are protected under the laws of Sierra Leone

DUTIES OF DIRECTORS

The Companies Act 2009 and its subsequent amendment set out duties of a Director of a company. In addition the company as a separate

legal entity is subject to statutory controls and the directors are responsible for ensuring that the company complies with such statutory controls.

A Director owes duties to the company, whether those duties come under statute or not.

DUTIES TO THE COMPANY

A Director stands in a relationship of trust to his company.

A Director should at all times act in the best interest of the company. When a Director sets out to take a decision on behalf of the company he/she is to consider the following:

- The interest of the members, employees, and the company as a whole
- If there is a special class of members, consider the impact that decision would have on those members

A Director shall in the exercise of his powers and discharge of his duties honestly and in good faith and again in the best interest of the company, exercise a degree of care, diligence and skill which any Director in like circumstance would exercise.

Directors are trustees and agents of a company: what this means is that directors have to account for all moneys and properties of a company. A Director is to immediately disclose to members and directors any conflict of interest that may arise between his duty to the Company and his personal interest.

It is the responsibility of the directors to ensure that the company maintains full and accurate accounting records, prepare annual returns and financial accounts and information under the accounts.

The law states that every company shall at each annual general meeting appoint an auditor. The amendment of the companies act however provided that the accounts of small companies need not be audited.

The Director of every company shall prepare a report each year known as a Director's Report

DUTIES TO THE COMMISSION

- Give notice on change of director/secretary
- Give notice on change of registered address
- Submission of annual returns & financial statements
- Determination of accounting reference period
- Registration of charges
- Submission of information of company