THE ROLE OF ADVISORY BOARDS IN STARTUP COMPANIES IN NIGERIA

Introduction

Startups are young technology driven companies with innovative ideas and solutions capable of changing the status quo in their respective industries. Majority of Startups do not survive beyond their first five years of inception for a number of reasons; some of which include the lack of business acumen, managerial experience and technical expertise necessary to scale the company to the next level. A startup can, however, make up for these deficiencies by establishing an Advisory Board.

This newsletter highlights the importance of Advisory Boards to Startups and the factors distinguishing them from the Board of Directors.

What is an Advisory Board?

An Advisory Board is an informal body of individuals set up by the management or board of directors of a company to provide business and strategic advice to the company. Advisory Boards usually consist of industry experts who can provide relevant assistance and advice to the Startup in areas where the company is lacking such as marketing and sales of products, investment options, technical experience and regulatory support, amongst others.

What is the difference between an Advisory Board and the Board of Directors of a Company?

Advisory boards are not a substitute for a company's board of directors. The table below highlights the differences between an Advisory Board and the Board of Directors of a company.

	Advisory Board	Board of Directors
Establishment	There is no statutory requirement to have an advisory board. The number of members is at the sole discretion of the management and the Board of Directors of the company.	The Companies and Allied Matters Act, 2020 (CAMA) mandates all companies to have a Board and to appoint at least 1 director.
Functions	The board provides business and strategic advice to the management or the board of directors.	The board directs the affairs of the Company.
Decision making	It has no decision-making powers.	The board is empowered by CAMA (and other relevant legislations) to make decisions on behalf of and for the company.

Qualification	There is no statutory provision on the qualification of members of an advisory board. It is, however, recommended that they should be experts in the field in which the company requires guidance.	Section 283 of CAMA, provides for persons who are disqualified from being appointed as directors eg persons who are less than 18 years old.
Statutory filings upon removal or appointment	This is not required.	Statutory filings are required to be made to the Corporate Affairs Commission and other relevant regulatory bodies.
Formal Meetings	Formal meetings are not required. Members of the board may give advice to the management of the company through informal means such as telephone conversations, emails e.t.c.	The Nigerian Code of Corporate Governance, 2018 requires companies to hold formal board meetings every quarter.
Fiduciary duty	The members of the Advisory board do not have a fiduciary duty towards the company.	The directors of the board members have a fiduciary duty towards the company.

What are the Benefits of Advisory Boards to Startups?

Members of the Advisory Board can assist Startups by bridging experience/ knowledge gaps in the management of Startups. They also provide fresh opinions and perspectives regarding the business of the company.

The appointment of well-known professionals and experts on the Advisory Board can increase the credibility of the company as clients, vendors, investors and other companies in the industry are more willing to partner with Startups who have experienced oversight.

Advisory Boards provide an informal and inexpensive avenue for Startups to gain insights from professional and experts without conferring control or decision-making powers on them.

Conclusion

While the establishment of an Advisory Board for a Startup is an important step towards ensuring its survival, Startups are advised to discuss with the members of the Advisory Board and agree on the workings of the advisory relationship. Such discussions should be documented and must contain provisions for remuneration (where necessary), the mode of providing advisory services as well as the protection of the company's confidential information and intellectual property.