



Death Is the Easy Case: The Legal Architecture of Corporate Control and Business Continuity during Founder Incapacity, Probate Delay and Family Conflict

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Introduction

When a business depends heavily on its founder, succession planning often begins and ends with who will inherit the shares. But inheritance answers only part of the problem. The business also needs to know who can lawfully make decisions when the founder can no longer act. A will may provide for the transfer of shares after death, but by itself, it does not appoint directors, ensure that enough directors are available to hold a valid board meeting, or authorise anyone to operate the company's bank accounts.

The gap becomes clearer when one person holds several roles. A founder may be the majority shareholder, chairman, managing director and principal bank signatory, while also personally owning company assets, guaranteeing debts and controlling digital accounts. Legally, these are separate responsibilities, each deriving authority from its own rules, documents or arrangements. Taking over one does not automatically give a person authority to perform the others.

Death provides a definite event that sets recognised legal procedures in motion for administering the founder's estate and transferring assets. Incapacity can create greater uncertainty because it may be temporary, recurring or disputed. A family's agreement that the founder is unwell does not, by itself, transfer shares or give a relative authority to run the company. The starting point is that an incorporated company has a legal identity separate from its founder and acts through its directors

and other authorised persons. Succession planning must therefore address both ownership and the company's ability to operate during the founder's absence, any delay in administering the estate and potential family disputes. For each important decision, the arrangements should clearly establish who may act, when that authority takes effect and what evidence banks, business partners and others can rely on.

I. The Constitutional Error: Treating Influence as Authority

Under the Companies and Allied Matters Act 2020 (CAMA; 'the Act'), authority to act for a company comes from the law and the company's constitutional documents. Family relationships do not, by themselves, confer that authority. Subject to CAMA and its articles of association, a company acts through its members in general meeting, its board of directors, and duly authorised officers or agents. The board generally manages the business and may delegate its powers to committees or a managing director¹.

Being the founder's spouse, child, executor, attorney or family elder does not automatically entitle a person to a board seat, to instruct the company's officers or to enter into commitments on its behalf. Unless the articles of association require otherwise, a director need not hold shares in the company². Equally, inheriting shares does not automatically give the beneficiary a management role.

"Control" needs to be understood in its different forms. Share ownership determines voting rights, while the articles of

¹Companies and Allied Matters Act 2020 (CAMA), ss 87–89; *Fort Ifeanyi Dike v Kay-Kay Construction Limited* (2017) 14 NWLR (Pt. 1584) 1, 110–111 paras, B-D.

²CAMA 2020, s 277(1).

association and any shareholders' agreement govern how those rights may be exercised. At board level, control depends on who can appoint directors, the requirements for a valid meeting and decisions requiring specific approval. Day-to-day management depends on delegated authority, while financial control involves bank mandates, borrowing powers and payment approvals. Control over business assets may also depend on ownership, licences and access to data.

A founder may exercise all these forms of control, but they do not automatically pass to one person when the founder can no longer act. Planning should therefore begin by identifying every role and power the founder holds, where each authority comes from, what could suspend or end it, who can appoint a replacement or authorise someone else to act, and what evidence banks, regulators, registrars or business partners will require. A will is one part of this process. Corporate law addresses who may act for the company, while succession law addresses the administration and transfer of the founder's estate. Effective planning must consider both.

II. Death Transfers Rights in Shares, Not Ownership of the Company's Assets

A will is an important part of succession planning, but it deals with property belonging to the person making it. A founder may leave shares to beneficiaries, but cannot use a will to dispose of company-owned land, money, intellectual property or contractual rights. A will also cannot, by itself, appoint a director or managing director or authorise someone to operate the company's bank accounts.

The company remains governed by CAMA, its articles of association and valid decisions of its authorised bodies. Even where a will gives shares to a beneficiary, that gift does not immediately confer voting or membership rights. CAMA provides for probate or letters of administration as evidence a company must accept and recognises the legal personal representative's title to shares held by a deceased sole shareholder. Until registration, however, a person entitled to the shares may generally receive dividends and other benefits but cannot exercise membership rights at meetings unless the articles provide

otherwise. Entitlement to the financial benefits of shares, authority to transfer them and the right to vote are therefore distinct³.

The dispute in *Tika-Tore Press Ltd v Abina*⁴ shows why this distinction matters. After a substantial shareholder died, his administrators applied to be registered in respect of his shares. Before the relevant general meeting, the directors allotted 91 of the company's remaining 93 shares to themselves and other individual defendants. The administrators challenged the allotment, alleging that its purpose was to secure voting control. The Supreme Court allowed the defendants' appeal and dismissed the administrators' action. Under the applicable articles of association, the administrators could not exercise voting rights before registration, and the disputed allotments were at most voidable. The decision illustrates the difficulties an estate may face while registration remains outstanding and cannot yet fully exercise the voting rights attached to the deceased's shares.

The probate process does not, by itself, resolve these management problems. In Lagos, the High Court Rules provide procedures for obtaining grants of representation, entering caveats and resolving probate disputes. The applicable Administration of Estates Law, together with the deceased's will if any, and any applicable personal law, may also affect entitlement to the estate⁵. These rules determine who may administer or benefit from the estate. They do not automatically appoint an interim chief executive, provide enough directors for a valid board meeting, replace a bank signatory or prevent a breach of the company's contracts. The company therefore needs arrangements that allow it to continue operating while the estate is being administered.

III. Incapacity and the Gap in Decision-Making Authority

Incapacity creates a different problem: the founder still owns the shares but may be unable to exercise the rights attached to them or manage the business. CAMA disqualifies a "lunatic or person of unsound mind" from serving as a director and provides that a director must vacate office upon becoming "of unsound mind"⁶.

This language is dated, and the provisions do not set out a complete process for assessing incapacity, managing a temporary loss of capacity or restoring authority after recovery.

³CAMA 2020, ss 173, 175(2)–(3), 178 and 179.

⁴*Tika-Tore Press Ltd v Abina* (1973) All NLR 334.

⁵High Court of Lagos State (Civil Procedure) Rules 2019, Orders 61–64; Administration of Estates Law, Cap A3, Laws of Lagos State 2015.

The National Mental Health Act provides a court process for managing the property and affairs of a person who cannot do so because of a mental disorder. On appropriate medical evidence, the High Court may make orders covering the person's property and business affairs. It may also make temporary orders where urgent action is needed before a final decision⁷.

These court powers must be distinguished from the authority to run the company. An order concerning the founder's affairs may cover the founder's shares and personal business interests. It does not, by itself, make a court-appointed manager a director, chairman or chief executive of the company. Appointment to those positions remains subject to CAMA, the articles of association and the relevant corporate decisions and contracts. The company therefore needs its own lawful arrangements for allocating responsibilities when the founder cannot act. Those arrangements should separate the medical assessment from the decisions the company may take in response. The relevant documents should identify who may request an assessment, how many medical practitioners should conduct it and how their independence will be protected. They should also define the questions to be assessed, including whether the founder can understand relevant information, weigh the available options and make decisions about the business.

The documents may provide for temporary delegation of specified powers, regular reviews and a clear process for restoring authority after recovery. They should also guard against interference by anyone who stands to benefit from a finding of incapacity. These arrangements must remain consistent with the applicable legal requirements. A medical diagnosis alone should not trigger an automatic and irreversible transfer of ownership or corporate office without proper safeguards and an opportunity for review.

Medical information also requires careful handling because health status is sensitive personal data. The company should receive only the verified information needed to apply its agreed

procedures. Medical records should not be circulated freely among relatives, directors or employees. The process must comply with the confidentiality requirements of the National Mental Health Act⁸ and the applicable requirements of the Nigeria Data Protection Act 2023⁹. A power of attorney may help another person exercise powers that the founder can lawfully delegate in a personal capacity. Before relying on it, however, the advisers must confirm whether it remains effective after the founder loses capacity under the applicable law. It cannot, by itself, appoint someone to a corporate office or override CAMA and the company's article of association.

IV. Putting Authority in Place Before the Crisis

Business continuity starts with a board that can lawfully function without the founder. The articles of association should allow enough directors to hold valid meetings, provide for another director to chair meetings when necessary, and set clear procedures for giving notice and filling vacancies. They should also provide for written resolutions and electronic meetings where permitted by law. The board should approve a clear allocation of responsibilities covering interim management, spending limits, communication with lenders and regulatory compliance. Proper appointment matters, under CAMA, a person who acts as a director without being duly appointed generally cannot bind the company unless the company has held that person out as a director. *Iwuchukwu v Nwizu*¹⁰ and *Longe v First Bank of Nigeria Plc*¹¹ illustrate, in different circumstances, why appointment to and removal from board office must follow the applicable legal procedures. A management announcement or family agreement cannot replace those procedures.

Succession planning should therefore form part of the company's governance arrangements. For companies within its scope, the Nigerian Code of Corporate Governance expects succession plans to cover the chairman, chief executive, directors and senior management, including unexpected vacancies and longer-term transitions. The Financial Reporting Council's guidelines for smaller businesses also distinguish management succession from

⁶CAMA 2020, ss 283(b) and 284(1)(d).

⁷National Mental Health Act 2021, ss 49–50.

⁸National Mental Health Act 2021, s 21.

⁹Nigeria Data Protection Act 2023, ss 24(1), 25(1) and 30(1), read with s 65 (definition of 'sensitive personal data').

¹⁰*Iwuchukwu v Nwizu* (1994) 7 NWLR (Pt 357) 379.

¹¹*Longe v First Bank of Nigeria Plc* (2010) 6 NWLR (Pt 1189) 1.

¹²Financial Reporting Council of Nigeria, Nigerian Code of Corporate Governance 2018 (2018) para 11.2.5.7; Financial Reporting Council of Nigeria, SME Corporate Governance Guidelines (May 2024) paras 1.2 and 2.1–2.2.1.

ownership succession and encourage preparation for both planned and emergency changes¹². A founder-led business should identify the positions that may need to be filled, who can act temporarily and the limits of each person's authority. It should also prepare suitable successors and review whether the arrangements will work in practice.

These arrangements must respect the legal limits on permanent appointments. In *U.O.O. Nigeria Plc v Okafor*¹³, decided under the former CAMA, the Supreme Court distinguished appointment as a director for life from purported life tenure as chairman or managing director. The Court held that the latter arrangements could not override the statutory framework governing those offices. The Act does not provide an irrevocable right to remain chairman, managing director or chief executive for life¹⁴. A founder's wish to retain a position permanently must therefore be considered within those limits.

The transfer of ownership requires separate planning. The articles of association and any shareholders' agreement should work together to address restrictions on share transfers, existing shareholders' rights to buy shares before outsiders, decisions requiring special approval and what happens if a shareholder becomes incapacitated. They may also set out when shareholders can buy or sell their interests, how the shares will be valued, how a purchase will be funded and how deadlocks will be resolved. A trust or holding company may help maintain stable voting control, but the structure must be properly implemented. The relevant shares must be transferred, the powers and duties of those managing them must be clear, and applicable tax, stamp duty, regulatory consent and ownership disclosure requirements must be addressed. A plan on paper is insufficient if the legal ownership and supporting records remain unchanged. CAMA's significant-control rules also cover indirect ownership and other arrangements through which a person exercises control¹⁵.

Finally, the arrangements must work with the institutions and people on whom the business depends. Banks require valid mandates and verification documents. Loan agreements may impose conditions on changes in ownership or control. Key-

person insurance policies must be checked, payment platforms need the correct access permissions, and regulators may require approvals, notifications or checks on proposed office-holders. The same review should cover essential assets held personally by the founder, including land, trademarks, software, domain names and licences. If the company's right to use them is not properly secured, it may become dependent on the administration of the founder's estate. A board resolution is therefore only part of the preparation. The person authorised to act must also be able to prove that authority promptly to the bank, regulator or business partner whose cooperation is needed.

V. Managing Probate Delays and Family Disputes

Family disputes can disrupt a business when different people rely on different grounds for claiming authority. One branch of the family may have enjoyed the founder's trust, another may obtain authority to administer the estate, and a third may hold seats on the board. Meanwhile, professional managers may be the only people with the knowledge needed to keep the business running. CAMA provides remedies for some of the resulting difficulties. A court may order a company or board meeting where calling or conducting one is impracticable. Personal representatives may also seek protection under specified provisions dealing with minority interests, and the court may grant relief against oppressive or unfairly prejudicial conduct. Where all directors and shareholders have died, CAMA permits a personal representative to apply to the Court for an order convening a meeting of the shareholders' personal representatives to appoint new directors¹⁶. These remedies can help resolve a crisis, but relying on them leaves the business exposed while the necessary steps are taken.

A family constitution can help reduce disagreements before they affect the company. It can set out the family's approach to ownership, employment in the business, dividends, access to information and the preparation of future successors. It can also establish a forum for discussing disputes. The Financial Reporting Council's guidelines recommend a family constitution and a written family-governance structure. The International Finance Corporation handbook similarly distinguishes a family assembly

¹²*U.O.O. Nigeria Plc v Okafor* (2020) 11 NWLR (Pt 1736) 409.

¹³CAMA 2020, ss 281 and 288.

¹⁴CAMA 2020, ss 119 and 868; Persons with Significant Control Regulations 2022, Regulations 3–5.

¹⁵CAMA 2020, s 273(2).

or council from the company's board and management¹⁷. A family council does not, however, acquire corporate decision-making powers simply because the family establishes it. Any arrangement intended to bind the company, shareholders, trustees or executives must be reflected in the appropriate legal document, such as the articles of association, a shareholders' agreement, a trust deed or an employment contract.

These distinctions matter because family membership, ownership and management carry different interests and responsibilities. Family members may focus on the welfare of relatives and family unity. Owners may be concerned with returns on their investment and the company's long-term survival, while managers must attend to its daily operations. One person may occupy all three roles, but the authority attached to each remains separate¹⁸. The company's arrangements should make those boundaries clear so that family influence, ownership rights and management powers are each exercised through the proper channels.

VI. Bringing the Continuity Arrangement Together

A business continuity plan requires several documents and procedures that work together. Each should make clear who has authority, when that authority takes effect and how it can be exercised if the founder is unavailable. The plan should cover six areas:

1. Corporate governance: The articles of association, board composition and procedures should allow the company to function without the founder. They should address the number of directors needed for valid meetings, the filling of vacancies, delegation of powers and replacement of senior executives.

2. Ownership and estate planning: The will and shareholders' agreement should contain compatible provisions for transferring shares, exercising voting rights and funding any agreed purchase of shares. Where a trust or holding company is appropriate, it should be properly established and the relevant transfers completed.

3. Incapacity procedures: The plan should specify the evidence needed to establish incapacity, who may act temporarily and the limits of that authority. It should also protect medical confidentiality, require regular review, guard against conflicts of interest and explain how authority may be restored after recovery.

4. Finance and essential assets: Banking arrangements should provide for replacement signatories whom the bank can recognise. The plan should also address lender notifications and consents, personal guarantees, contractual provisions concerning the founder's absence, and insurance to meet any resulting funding needs. The company's rights to use essential land, intellectual property and licences should be properly secured.

5. Family governance: A family constitution or council should provide a forum for sharing information, discussing expectations and resolving disagreements. Any arrangement intended to confer enforceable rights or decision-making powers should also appear in the appropriate legal documents.

6. Operational continuity: Access to digital systems should reflect each person's responsibilities, with more than one authorised administrator where appropriate. Passwords and other access credentials should be securely stored and available to authorised persons. The business should also have a tested procedure for responding to the founder's sudden absence.

VII. Coherence is the Measure of the Design

The documents must be consistent with one another. If a will leaves shares to a beneficiary but a buy-sell clause requires the estate to sell those shares, the plan should explain what the beneficiary will receive. A trust deed should not promise voting powers that the articles of association do not permit. An agreed method of valuing shares also needs a workable means of funding their purchase. Similarly, appointing an interim chief executive achieves little if payments still require the founder's signature. Directors appointed during an emergency must act in the company's interests, even where a particular branch of the family nominated them. Their statutory duties continue throughout the crisis¹⁹.

The review should begin with the company's existing records and arrangements. These include its register of members, persons with significant control filings, articles of association, shareholder and board records, delegated powers, employment and service contracts, bank mandates, loan and security documents, guarantees and insurance policies. The review should also cover ownership and licence records for essential assets, digital systems and access to critical accounts.

¹⁷Financial Reporting Council of Nigeria, SME Corporate Governance Guidelines (May 2024) paras 8.1–8.2; International Finance Corporation, IFC Family Business Governance Handbook (4th edn, IFC 2018).

¹⁸Renato Tagiuri and John Davis, 'Bivalent Attributes of the Family Firm' (1996) 9(2) Family Business Review 199, 200–201 <<https://doi.org/10.1111/j.1741-6248.1996.00199.x>> accessed 18 September 2026.

¹⁹CAMA 2020, ss 305–309.

The next step is to put the agreed arrangements into effect. Transfers must be completed, required consents obtained, filings made and bank mandates accepted. Those expected to act in the founder's absence should understand their responsibilities. Original documents should be securely stored, with a short set of supporting records readily available to anyone who needs to prove their authority. Documents that are signed but never put into effect may leave the company exposed and create disputes about what the founder intended.

The plan should then be tested against the events likely to follow the founder's sudden absence. Who receives the first notification? Who calls the board meeting? Can salaries be paid and funds accessed? Who communicates with lenders, exercises voting rights and appoints replacement management? How will any eventual transfer of shares be completed? For each step, the plan should identify the responsible person, the source and limits of their authority, the evidence required, whose cooperation is needed and what happens if the proposed arrangement fails.

Working through this sequence can reveal gaps that are easy to miss when each document is reviewed separately.

Conclusion

A will can determine who inherits the founder's shares, but it does not, by itself, determine who will run the company. Administering the founder's estate and managing the business are separate responsibilities. Incapacity may create greater uncertainty because the founder remains alive and retains ownership but may be unable to make decisions, with no automatic replacement. Planning must therefore establish who can act, when their authority begins, what evidence supports it and how their decisions will be reviewed. The aim is to build a business that can operate lawfully without depending on the founder's constant involvement. Ownership succession planning addresses who will ultimately receive the founder's interest in the business. Management succession and continuity planning establish who will lead the company and how it will continue operating during the transition.

