

Sustainable companies, sustainable capitalism: A new model built on the concept of directors duties

The trading company has been at the vanguard of the advancement of capitalism, which is presumptively regarded as based on progressive unsustainable levels of exploitation of earth resources and therefore inherently hostile to sustainable development. Leading companies have also been associated with subversion of political systems, systematic and gross violations of human rights and social equity, promotion of inapt cultural models for advancing sustainability, even whilst professing to be ethical and socially responsible. The notion of the ‘sustainable company’ or ‘sustainable capitalism’ appears, therefore to be an oxymoron. However, the concept of corporate social responsibility has in recent time transmuted into the concept of ‘corporate sustainability’ - a term that is mostly discussed as a green speak, more of a slogan than a concept with substantive green content.

This paper is a comparative survey of the shareholder/stakeholder theories of corporate control and the concepts of CSR, corporate sustainability and the social and legal duties and roles of companies and their directors in delivering sustainable development. It argues that in order to do so there is a need for a new model of the trading company and Darwinian capitalism. It discusses the judicial evolution of the norms of corporate sustainability from a domestic and international perspective and critically examines the theme of society, corporate purpose and mission and outlines the framework for the new sustainable company. The paper:

1. Identifies the meaning and features of corporate sustainability as a template for a new (sustainable) corporate governance model;
2. Proposes practical models of the sustainable company and sustainable capitalism;
3. Outlines the new legal duty of company directors to implement CSR/Corporate sustainability;
4. Demonstrates that this legal duty exists as an implied duty irrespective of legislation;
5. Emphasizes the continuing importance of value-creation/profitability in promoting sustainable development.

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Bio-data

Olawale Ajai holds a doctorate degree in law from the Obafemi Awolowo University, Ile Ife. He is a Legal Practitioner of the Supreme Court of Nigeria. He was a Senior Lecturer at the Obafemi Awolowo University, Ile –Ife, an Assistant Research Professor and Acting Director of Research at the Nigerian Institute of Advanced Legal Studies, University of Lagos, Akoka. He was Group Company Secretary/Legal Adviser, later Executive Director, Human Capital and Legal and later still, Executive Director, Marketing and Strategy at Dunlop Nigeria Plc. He is currently a Professor of Legal, Social and Political Environment of Business at Lagos Business School, Pan African University, Lagos. He is an alumnus of the Harvard Kennedy School of Government and IESE Business School. He is a member of the IUCN Environmental Law Commission (ELC), a Fellow of Leadership for Environment and Development International and a member of the Institute of Directors of Nigeria. He has published books, learned articles and conference papers and monographs in corporate law and finance, business and commercial laws, environmental law, public and private law.