

Misrepresentation In Company's Prospectuses: Causes, Effects and Legal Remedies

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ABSTRACT

It is a known fact that company securities, are basically funds available to the company which is in turn converted to shareholdings for company's operation. A public company tends of offering its securities to the public for sale. However, integrity is a keyword in today's business and no entity, either natural or artificial persons, would anticipate and embark on prospects or agenda with a drive to intentionally destroy its integrity. This paper explores the causes, Effects, and legal remedies associated with false or misleading statements in prospectuses. The causes of misrepresentation often stem from corporate fraud, negligence, pressure to attract investors, and inadequate regulatory compliance. Companies may overstate financial performance, conceal risks, or provide misleading projections to manipulate investor perception. The Effects of misrepresentation can be severe, leading to financial losses for investors, reputational damage for companies, regulatory penalties, and, in extreme cases, criminal liability for company directors. High-profile cases have demonstrated the impact of such fraudulent disclosures on both individual investors and the overall economy. Legal remedies for misrepresentation in prospectuses vary across jurisdictions but generally include civil liabilities, criminal sanctions, and regulatory interventions. In Nigeria, key legal frameworks such as the Companies and Allied Matters Act (CAMA) 2020, the Investment and Securities Act (ISA) 2007, and Securities and Exchange Commission (SEC) regulations provide mechanisms for investor protection and corporate accountability. Courts may award damages to affected investors, impose fines on companies, or nullify misleading contracts. This paper concludes that stronger enforcement of existing laws, enhanced corporate governance, and increased investor awareness are essential in mitigating the risks of prospectus misrepresentation and ensuring a fair and transparent financial market.

Keywords: Prospectus, Misrepresentation, Investors, Securities.

1.0 Introduction

Ideally, there is a need for the protection of investors (the public) from the danger of losing their money to fake and fraudulent investments. Therefore, certain restrictions are placed on the invitation by the company to buy or subscribe to the securities. The law permits the registration of these securities prior to their proposed offering for sale or subscription to the public or before they are offered privately, provided they registered with the Security and Exchange Commission. The purpose of prospectus is to ensure that all potential subscribers and purchasers of securities are fully informed of all facts material to their decision to subscribe or purchase securities from the company. The major characteristics of a company¹ is that it can offer its securities to the public for sale or subscription. Misrepresentation in company prospectuses is a significant issue that affects investor confidence, corporate transparency, and market stability.

Furthermore, where a document is issued through which an offer for sale is made to the public, and it states that the company has allowed or agreed to allot securities with a view to all or any of those securities being offered for sale to the public, such a document shall be deemed a prospectus – unless the contrary is proven.² It shall be regarded as evidence, that an allotment, or an agreement to allot securities, was made with a view to the securities been offered for sale to the public, particularly if the allotment occurred within six months prior and the company had not received consideration for those securities before that date.³

Accordingly, it is unlawful to issue any form of application for securities in a public company except the form is issued with a prospectus. The essence of a prospectus is to ensure that subscribers and purchasers of company securities are fully informed of all facts to their decision to subscribe or purchase securities of a company.⁴

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¹ A public company in this context. Section 24 Companies and Allied Matters Act 2020 defines a Public Company as any company other than a private company shall be a public company and its memorandum of association shall state that it is a public company.

² Investment and Securities Act 2007, S 82 (1)

³ *Ibid.*

⁴ J O. Orojo, *Offer of Securities to the Public for Sale or Subscription: Company Law and Practice in Nigeria*, 5th edition, LexisNexis Butterworth (2008), Page 416.

2.0 Definition of Terms

2.1.1 Prospectus

A company prospectus is a critical document that provides investors with essential information about a company's financial health, business operations, and investment risks. Misrepresentation in a prospectus can have severe Effects for companies, directors, and investors. This seminar will explore the Effects of misrepresentation in company prospectuses in Nigeria. Section 315 of the **Investment and Securities Act 2007**, particularly the interpretation section of the Act defines the term **Prospectus** as:

any written or electronic information, notice, advertisement or other forms of invitation offering to the public for subscription or purchase, any shares debentures or other approved and recognized securities of a company and other issues or scheme.

While Section 868 Companies and Allied Matters Act 2020 ⁵ defines prospectus as

any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company and includes any document which, save to the extent that it offers securities for a consideration other than cash,

The invitation ⁶ bears a peculiar meaning and refers to cases only where application forms are sent or issued to potential subscribers. Subscribers may have access to the company's shares and may sue the company in cases of misrepresentation especially where the prospectus was issued to make subscribers buy shares knowing that the contents therein are false.

It should be recalled that company securities are funds available to the company and converted into the form of shareholding for the company's operation which may be internally or externally obtained. This contains shares, debentures or other forms of securities that may come in form of corporate or commercial bonds.⁷

⁵ *Impari materia* to Section 567 Companies and Allied Matters Act 2004

⁶ Section 67 Investment and Securities Act (Investment and Securities Act) 2007 states that no person shall make any invitation to the public to acquire or dispose of any securities of a body corporate unless the body is a public company that has complied with section 73 to 87 Investment and Securities Act 2007, or a statutory body established by the Act.

⁷ *Ibid.*

By virtue of Section 78 Investment and Securities Act, it shall be lawful to make an invitation to the public to dispose of or acquire any securities of a company if within 6 months before such invitation,⁸ they have been delivered to the Commissions,⁹ and registered, a prospectus as required by the Act.

A prospectus has been described as a legal document which provides detailed information about the financial security or investment opportunity that is being offered for sale to the public, by a company.¹⁰ It has further been described as the legal documents which includes information such as the terms and conditions of the offering, the risks associated with the investment, the financial statements of the issuer, and any other relevant information that potential investors may need to make an informed decision about whether or not to invest.¹¹

This is purposeful for the declaration of the entire information about the company to ensure that all potential subscribers and purchasers of securities are fully informed of all facts which are material and important to their decision to subscribe and purchase shares or debentures.¹² The contents of a company's prospectus include the name of the company, particulars of directors, and numbers of founders or deferred shares.¹³ Where the shares are offered to the public, the prospectus shall state the amount to be raised by public offer; the purchase price of any property purchased by the company or that which the company intends to purchase; the period of the opening of the subscription list; the number of shares issued in the past, other assets and liabilities of the company; names addresses of company's directors and auditors, parties to the issue; financial information of the company, chairman's statement letter; summary of the offer; accountant's report, editor's report, solicitor's report, the timetable of the offer, application of proceeds particulars of solicitors to the offer, particulars of proceeds, particulars of solicitors to the company among others.

⁸ Note that an invitation can be restricted hence it is made solely to existing shareholders of the company or, where the shares are in uniform with list existing shares.

⁹ Securities and Exchange Commission – Investment and Securities Act 2007

¹⁰ G. K. Kapoor & Sanjay Dhamija, 'Company Law and Practice, Pooja Law House Publications, (2013) 98, <https://vbook.pub/documents/company-law-and-practice>, accessed on the 5th February 2025

¹¹ Soumya Mishra, 'Misrepresentation in Prospectus, An Analysis of Civil and Criminal Liabilities' International Journal of Advances in Engineering and Management (IJAEM) (2023) 1 < https://ijaem.net/issue_dcp/ > accessed on the 21st February 2025

¹² Where facts are falsified, all persons making the invitation and every officer who is in default is guilty of committing an offence punishable by a fine.

¹³ These are shares taken up by founders or promoters of a company and are relatively cheaper. These types of shares are credited in this manner for services rendered during the promotion of a yet to be incorporated company

2.1.2 Registration of Prospectus

Section 80 (1) of the Investment and Securities Act 2007 provides for the registration of prospectus. The Act provides that no prospectus may be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there had been delivered to the commission, a copy of the prospectus for registration, signed by all the named directors¹⁴

However, the prospectus is often accompanied by:

- a. Any consent to the issuance of the prospectus is required by section 68 of the Investment and Securities Act 2007 as required in respect of an expert's statement.
- b. In the case of a general prospectus, a copy of any contract is required by paragraph 11 of the third schedule which connoted that the copy must be delivered in the English language.
- c. In case of a prospectus wherein an exception certificate has been issued a contract copy, memorandum of a contract should be available for inspection in connection with all applications made under Section 53¹⁵ to securities exchange.
- d. Wherein the persons making the report have made it without giving reasons and have indicated it in any adjustments, a written statement signed by those persons must be stated and the reasons for the adjustment.

The commission cannot register a prospectus until it is satisfied, that it is - and signed as required by law, it has been endorsed and all required documents (if any) attached to it and the prospectus complies with the Act in its entirety. If a prospectus is issued without a copy of it being registered, the company and all parties therein commit an offence punishable with fine¹⁶

2.2 Statement in lieu of Prospectus

A statement in Lieu of prospectus is a document used in certain situations when a company is issuing securities, such as shares or debentures.¹⁷ it is an alternative to a full prospectus, which is detailed documents that provides a full information about a company and the securities being offered.¹⁸ A view at the Investment and Securities Act 2007¹⁹ the statement in lieu of a Prospectus

¹⁴ Or proposed directors as the case may be,

¹⁵ This means that in cases where there exists or purportedly exists an application to the Federal High Court for winding up of the company, such application must accompany the prospectus for registration

¹⁶ Fine of N25,000 in case of a company, and N5,000 in case of an individual therein involved.

¹⁷ G. K. Kapoor & Sanjay Dhamija: *ibid.* See also www.lwgal.vidhiya.com last assessed 2nd March 2025

¹⁸ *Ibid.*

¹⁹ Investment and Securities Act 2007, S 81

is an alternative to the company's prospectus. A statement in Lieu of prospectus typically contains key information about the company, the securities, and the terms of the offer being made to the public, but its less comprehensive than a full prospectus. It is often used when the securities are being offered in a specific context, like a rights issue or an offer to existing shareholders.²⁰

The Statement in Lieu of Prospectus is a document filed with the Registrar of the Companies (ROC) when the company has not issued prospectus to the public for inviting them to subscribe for shares. The statement must contain the signatures of all the directors or their agents authorized in writing. It is similar to a prospectus but contains brief information.²¹ The Statement in Lieu of Prospectus needs to be filed with the registrar if the company does not issues prospectus or the company issued prospectus but because minimum subscription has not been received the company has not proceeded for the allotment of shares.

2.3 Expert's Statement and statement in lieu of Prospectus

It should be said without hesitation, that the prospectus which seeks to invite persons to subscribe to securities includes a statement purported to be made by an expert e.g. a legal practitioner, engineer, valuer or accountant.²² Therefore, for a prospectus to be issued, the expert must have given written consent to the issuance of the prospectus and has not in any way withdrawn such consent.²³

Statement in lieu of prospectus is a document filed when the company has not issued a prospectus to the public inviting them to subscribe for shares.²⁴ The Act²⁵ provides for a statement in lieu of prospectus and is required to be delivered to the commissions when a public company, having a share capital which does not issue a prospectus on, or with reference to its formation, or which has a prospectus but has not proceeded to allot shares on any of the shares offered to the public for subscription. The company is precluded from allotting shares unless a statement in lieu of prospectus is delivered to the commission 3 days before the allotment of shares. Equally, the

²⁰ G. K. Kapoor & Sanjay Dhamija, *Ibid*

²¹ Companies and Allied Matters Act 2020 S 156

²² It could be recalled that the contents of a prospectus, certain experts were mentioned. And all these are experts in various professional fields

²³ J. O. Orojo *ibid* Page 422

²⁴ *Ibid*

²⁵ Investment and Securities Act 2007, S 90

Companies and Allied Matters Act ²⁶ provides that a company has the power to pay commission where a person subscribes to statement in lieu of prospectus as thus:

156. (1) A company may pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any share in the company or procuring or agreeing to procure subscription, whether absolute or conditional, for any share in the company if

c) the amount or rate percent of the commission paid or agreed to be paid is-

(ii) in the case of shares not offered to the public for subscription, disclosed in the statement in lieu of prospectus, or a statement in the prescribed form signed in like manner as a statement in lieu of prospectus, and delivered to the commission for registration before the payment of the commission, and where a circular or notice, not being a prospectus inviting subscription for the shares is issued, also disclosed in that circular or notice;

2.4 Differences Between Prospectus And statement in lieu of Prospectus

The difference between prospectus and statement in lieu of prospectus is described in the points given below:

1. A legal document published by the company to invite the general public for subscribing to its shares and debentures is called prospectus. A document published by the company when it does not offer its securities for public subscription is called a statement in lieu of prospectus.
2. The prospectus is issued to encourage public subscription. On the other hand, a statement in lieu of prospectus is issued in order to be filed with the registrar of companies
3. The company publishes a prospectus to raise funds from the general public. Conversely, when the funds are to be raised from known sources, the statement in lieu of prospectus is used

²⁶ Companies and Allied Matters Act 2020, S 156

4. A prospectus contains all the relevant details, prescribed by the Act, On the contrary, a statement in lieu of prospectus contains similar details as given in a prospectus, but in short
5. Minimum subscription required is to be stated in a prospectus but not in a statement in lieu of prospectus because the document is not concerned with an offer to issue securities at a stated price to subscribe.²⁷

It would be quite clear that both the documents are used in different situations, or simply opposite circumstances. Hence, before issuing any of these two, you must know whether you want the public subscription or not.

3.1 Misrepresentation in Prospectus

Misrepresentation is the act of making a false statement, omitting material information, or providing misleading information in a prospectus. This is a serious offense because a prospectus is a legal document that investors rely on to make informed decisions about whether or not to invest in a security. If a company or its directors are found to have made a misrepresentation in a prospectus, they may face both civil and criminal liability. Misrepresentation in a prospectus refers to providing false or misleading information to investors in the prospectus. This is a serious offense and can lead to civil and criminal liability for the company and its directors.²⁸ As a document containing information that the public can use to subscribe to or purchase a company's securities, if it contains any inaccuracies, it will result to major Effects.

When a person issues or permits a prospectus containing a statement which turns out to be untrue and misleading, any person who acts on such a statement and suffers loss or damages can hold the issuer liable. The person who suffers loss has remedies both in common law and under the Securities and Exchange Commission Act. hence, a company's prospectus is the document in the securities market as it provides information to potential investors about the company, its operations, financial position, and the securities being offered for sales. They allow investors to

²⁷ S Surbhis, 'Differences Between Prospectus and Statement in Lieu of Prospectus December 23, 2017 <<https://www.keydifferences.com/key-differences-between-prospectus-and-statement-in-lieu-of-prospectus>> (accessed on the 2nd February 2025)

²⁸ Soumya Mishra *ibid*.

make informed decisions about whether or not to invest in a particular security - a guide for an investor. transparency and fairness in the securities market, which is important for investor protection and the overall health of the economy, must be ensured. Misrepresentation refers to a false statement of fact made by one party to another, which induces the other party to enter into a contract or take some other actions. In the context of a prospectus, misrepresentation can occur when the information contained in the document is inaccurate, incomplete, or misleading.

The Court in *New Brunswick And Canada Railway Co Vs. Muggeridge*²⁹ emphasized that those who issue a prospectus holding out to the public on advantages which will accrue to a person who takes shares in a proposed undertaking...are bound to state everything with strict accuracy, and not only to abstain from stating facts that which is not so, but also to omit no one fact within their knowledge, the existence of which might in any degree affects the nature or extent, or quality of the privileges and advantages which the prospectus holds out as inducements to take shares.

A false statement may consist of a half-truth. The common law remedies available for a person who had to suffer loss for misrepresentation in a prospectus and rescission of the contract³⁰ the company would be liable if the officers know that the statement is false. Thus, the company will be vicariously liable in this case.³¹

In some circumstances, the directors or promoters may be liable. However, an allottee can bring an action against a company, but a person who later purchases securities in the company may not do so, because the prospectus was not addressed to him³²if the allottee has prior notice of the omission. This action is based on the tort of deceit. It is then necessary to prove that the misrepresentation of facts is material, if the allottee acted upon the said facts, if the misrepresentation was fraudulent and the allottee suffered damages.

It is noteworthy that damages are being measured by the actual difference between the value which the share would have appreciated and the true value of the shares at the time of allotment. Damages

²⁹ (1859) 62 E.R 263 High Court of Chancery

³⁰ In the law of Contract, the Courts can free non-liable parties from their agreed obligations and will effectively seek to restore them to the *status quo ante*. See Jason Fernando "Meaning of Contract" December 10 2021 <<https://www.investopedia.com/meaning-of-contract>> (assessed on the 2nd February 2025)

³¹ This connotes fixing an employer with the liability for the tort committed by his employee while the latter is in the course of his employment. See also, Bizibrains Okpeh "Modern Approach to the Doctrine of Vicarious Liability" <<https://www.lawpavilion.com/blog/modern-approach-to-the-doctrine-of-vicarious-liability>> (accessed on the 30th January 2025)

³² And the law in some circumstances will not avail such persons or an allottee wherein such persons have notice to the omission.

can be claimed for substantial non-compliance with the Act particularly where such non-compliance has caused loss or harm.

Examples of misrepresentation in a company's prospectus include failing to disclose material facts, such as ongoing litigation or regulatory investigations, that could materially affect the company's prospects in the future, or overstating the company's financial performance by inflating revenue or understating expenses (overstating revenue indicates a direct intention by the company to misrepresent the real information). Others include making untrue claims on the company's goods or services, such their efficacy or safety, etc. ³³

3.2 Causes of Misrepresentation in Prospectus

While Nigeria has a solid legal framework through the Companies and Allied Matters Act (CAMA) 2020, the Investment and Securities Act (ISA) 2007, and regulations set by the Securities and Exchange Commission (SEC), enforcement remains a challenge. Causes of misrepresentation includes fraudulent intent, corporate negligence, competitive pressures, and regulatory loopholes. Misrepresentation in a company prospectus can have severe Effects.

Understanding the causes of misrepresentation can help companies take steps to prevent it and ensure compliance with regulatory requirements. Misrepresentation in a company prospectus can occur due to various reasons. One of those reasons includes; failure to disclose material information or omitting important facts can lead to misrepresentation. In *SEC vs. Texas Gulf Sulphur Co.*, ³⁴ the SEC sought permanent injunctions amongst other reliefs restraining future proscribed activity by all individuals and the defendants from making any untrue statement of material facts, omitting to state material facts necessary to make the statements made, in the light of the circumstances under which they were not made, not misleading, namely from issuing, publishing, distributing or otherwise disseminating materially false, misleading, inadequate or inaccurate press release and other communications and reports about Texas Gulf's activities and operations.

Furthermore, overly optimistic statements about a company's future prospects or failure to provide clear and concise information can be misleading and lead to misrepresentations the court in *Derry*

³³ S. Mishra ibid

³⁴ (1968) 401 F.2d 833

*vs. Peek*³⁵ established that for a statement to be considered as fraudulent, it must be proven that the person making it knew it was false, did not believe it to be true or was reckless as to its truth.

Misrepresentation in a company prospectus can have severe Effects. Understanding the causes of misrepresentation can help companies take steps to prevent it and ensure compliance with regulatory requirements.

3.3 Effects of Misrepresentation in Prospectus

The Effects of misrepresentation may be civil liability: Anyone who loses money due to a prospectus's false representations may file a lawsuit against the business to recover damages or the company and its officers may also be subject to criminal proceedings for making false statements in a prospectus, which may result in imprisonment and fines. Directors, promoters, and experts may be held liable for damages suffered by investors who relied on the misrepresentation. Investors can sue for compensation, and courts may award damages for losses incurred.³⁶ Directors and others may face criminal charges for making false statements or omitting material facts. This can result in fines, imprisonment, or both.³⁷

Furthermore, investors may claim compensation for losses suffered due to the misrepresentation. Companies may have to pay significant amounts in damages, which can impact their financial stability. Directors can be held liable for deceit if they make false statements in a prospectus with knowledge of their falsity, and parties who were misled by such misrepresentation, can bring an action against the company and those aware of such misrepresentation are precluded from claiming any reliefs.³⁸

Some other Effects may include the fact that the company's brand, governance and goodwill may be negatively impacted. Misrepresentation can lead to negative publicity, damaging the company's reputation and brand. Thus, Directors may be disqualified from serving as directors or taking part in company management.³⁹ This can have serious Effects for the director's career and reputation. Regulatory bodies may investigate, and litigation may ensue, resulting in significant costs and time

³⁵ (1889) 14 App Cas 337

³⁶ As regards civil liability. See *Derry v. Peek* (1889) 14 App Cas 337

³⁷ Companies and Allied Matters Act (CAMA) 2020, S 507

³⁸ *Peek Vs. Gurney* (1873) LR 6 HL 377. The Court also established important principles regarding the liabilities of Directors for misstatements in a prospectus and the rights of investors who rely on such statements.

³⁹ See also *McConnel Vs Wright* (1903) 72 LJ Ch 347

commitments. In essence, companies may have to devote substantial resources to defending themselves against claims.

The issue of misrepresentation in company prospectuses remains a serious concern in financial markets, as it undermines investor confidence, distorts market integrity, and exposes stakeholders to undue financial risks.⁴⁰ The Effects of misrepresentation ranges from investor losses and legal liabilities to reputational damage and economic instability. The court will not allow a party to use its company as a cover to dupe, cheat and or defraud an innocent citizen who entered into lawful contract with the company, only to be confronted with the defence of the company's legal entity as distinct from its directors.⁴¹

4.0 Remedies for criminal liability for Misrepresentation

If a prospectus contains any false statement or misrepresentation of material facts, the company and its officers may be held criminally liable under the provisions of the Companies Act. The penalties for such offenses may include fines, imprisonment, or both. The Investment and Securities Act criminalizes officers for any misstatement or false statement made in the prospectus. The proceedings can result in imprisonment, fines, or both.⁴²

The law through the courts, imposes penalties on the company and its officers for any violation of the securities laws, including the making of false statements or misrepresentations in the prospectus. In the case of *NOSDRA vs. Exxonmobil*,⁴³ the respondent at the court of appeal argued that there was no justification for the penalty levied by NOSDRA and that the administrative body has no inherent powers under the provisions of the NOSDRA Act⁴⁴ to impose fine because such powers are vested in the courts only. The Court of Appeal ruled in favour of the Respondent that the imposition of the Penalties by NOSDRA was *ultra vires* its powers, and penalties or fines are imposed as punishments for an offence or violation of law and the power as well as the competence to establish that an offence has been committed belongs to the Court.⁴⁵

⁴⁰ B Hannigan (2018) 'Company Law' (1 edn Oxford University Press) 122

⁴¹ Akinwunmi O. Alade v. ALIC (NIGERIA) Limited & Anor (2010) 12 S.C (Part II) 59

⁴² Investment and Securities Act 2007, S 87

⁴³ Unreported Appeal No CA/C/244/2017

⁴⁴ National Oil Spill Detection and Response Agency Act of 2006, S 6(2) and (3)

⁴⁵ Although, it has been said that this Judgment has far reaching implications and effects as it could be interpreted to mean that fines and penalties imposed by the Federal Inland Revenue Services and their state counterparts as well as other statutory agencies without prior recourse to courts are invalid. See also <https://nairametrics.com/2018/05/26> - implications of the *Nosdra vs ExxonMobil* – court ruling, last assessed on 3rd March 2025

Similarly, the court in *Shell (Nig) Exploration and Production Co. Ltd Vs. NOSDRA*⁴⁶ applied the doctrine of *stare decisis* emphasizing the importance of consistency in judicial decisions and highlighting the limitations of the powers of the agencies in imposing penalties and fines, emphasizing the role of courts in determining liabilities.

The Act has the power to make decisions affecting the perpetrating company and its officers from the securities market if they are found to have violated the securities laws.⁴⁷ This can result in the company and its officers being prevented from raising funds from the capital markets. Misrepresentation in a prospectus is a serious offense that can lead to civil and criminal liability for the company and its directors. Investors who have been misled by false or misleading statements in a prospectus can sue for damages under the Act. Section 87 proffers conviction to a fine of not less than ₦500,000 or to imprisonment of a term not exceeding three years or to both such fine and imprisonment.⁴⁸

i. Rescission of Contract

Rescission of a contract in the context of a company prospectus is a legal remedy designed to annul a contractual agreement when it has been induced by false, misleading, or incomplete disclosures in the prospectus. This remedy aims to restore the parties to their pre-contractual positions, essentially undoing the transaction that was based on erroneous representations. A person may bring an action to rescind a contract and claim the return of the price paid and strike out the name of the register where a person takes shares under the prospectus of a company and suffer loss, provided that the statement was false.⁴⁹ It is important to consider the effect of omission as against the effect of misrepresentation as mentioned above. Omission of any matters required to be stated in the prospectus will not give the right to rescind the contract, although it may give the right to an action against the directors. However, the right to rescind will be lost if the Plaintiff⁵⁰ does not act promptly or proceeds to apply for winding up the company. This amounts to a waiver of the right to rescind.⁵¹

⁴⁶ 2021 LCN/15564 (CA)

⁴⁷ Investment and Securities Act 2007 S 313 (6)

⁴⁸ Investment and Securities Act 2007

⁴⁹ It is immaterial whether it was innocently made. Now, this is the reason why the Act requested for the experts' statements to ensure that such representations to the public inviting them to subscribe to the securities of the company is error-free.

⁵⁰ Federal High Court uses Plaintiff, as same possesses jurisdiction according to the Nigerian Constitution 1999 As Amended

⁵¹ J. O. Orojo, *Op Cit* page 424 see also <https://lawbhoomi.com/Misstatement and Liability of Misstatement in a Prospectus> last assessed on 1st March 2025

ii. **Compensation under the Act**

Under the Investment and Securities Act (ISA) in Nigeria, compensation serves as a key remedy for investors who have suffered losses due to misrepresentations in company prospectuses. The ISA is designed to protect investors by holding companies accountable for providing accurate and complete information during the securities offering process. Section 85 (1) and (2) of the Investment and Securities Act 2007 provides that where a prospectus invites a person to subscribe to securities in a company, certain persons will be liable to pay compensation to all persons who subscribe to such securities on the prospectus for the loss or damages sustained as a result of the subscription because of the untrue statements therein contained. The persons are:

- 1.1.a director of the company as at the time wherein the prospectus was issued;
- 1.2.a promoter of the company;
- 1.3.persons who had authorized the issuance of the prospectus; and
- 1.4.a person who has authorized himself to be named as a director and is so named a director

The entire above-named persons are liable except:

- a. Where he proves the withdrawal of his consent to be a director before the issuance of the prospectus and or it was issued without his knowledge. However, the acts of a director remain valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification. This does not apply where there has never been any appointment made that could be validated or in a case of fraudulent usurpation of authority.⁵²
- b. Where he proves that the prospectus was issued without his knowledge, and when he became aware of the issuance, he gave notice that it was done without his consent
- c. Where he proves that after the issuance of prospectus but before allotment, on becoming aware, he withdrew his consent and gave public notice of same or
- d. Where he proves that he had acted on and believes statements made by experts, believing the same to be authentic on reasonable grounds.

⁵² Companies and Allied Matters Act 2020, S 286. See also *Morris V Kansan (1946) Ac 459; 1 All Er. 586*. See YH. Bhadmus, 'Bhadmus on Corporate Law in Practice, (2nd edn Chenglo Publishers) 182.

Per NWODO JCA in *Olawepo v. S.E.C.*⁵³ in his lead judgment held that the phrase “*Every person*” used in Section 305 Investment and Securities Act is limited to persons who are responsible to the company for the conduct of the business of the company and the company as a distinct person.

4.1 Protection of Experts

Experts such as auditors, legal advisors, valuers, and industry consultants, play an integral role in preparing and verifying the contents of a company prospectus. Their opinions and reports help ensure that the prospectus reflects accurate and complete information to potential investors. However, given the potential liability if the disclosed information turns out to be misleading, legal frameworks have been put in place to protect these experts when they act in good faith. Experts play a crucial role in the preparation of a company’s prospectus, providing professional opinions on financial statements, asset valuations, legal matters, and other critical disclosures. Given their involvement, they face potential liability if the information they provide is later found to be misleading or false. However, legal frameworks across various jurisdictions, including Nigeria, offer certain protections to experts under specific conditions. It is the law that an expert having given his consent under the law will not be liable in respect of an untrue statement,⁵⁴ as a person who authorizes the issuance of a prospectus if he can prove the withdrawal of his consent before the delivery of the prospectus. After the registration of the prospectus and before the allotment, he can prove the withdrawal of his consent and gave notice of same. Moreso, a person is not deemed to have authorized the issuance of a prospectus on the reason-giving consent required by the Act with the inclusion of a statement purportedly made by an expert.⁵⁵

A person named as a director in a prospectus that has neither consented nor has withdrawn his consent before the issue or has not consented to the issuance of prospectus where his consent is required is entitled to be indemnified by all other directors of the company against all liabilities resulting from the issue⁵⁶

5.0 Conclusion and Recommendations

⁵³ (2011) LPELR – 3598, pp 22-27, Para E-A, (2011) 16 NWLR Part 1272, Pg 122 @ 145 PARA E-F

⁵⁴ Investment and Securities Act 2007, S77 deals with experts’ statement on prospectus i.e the expert has not withdrawn his consent before delivering the prospectus to the commission, and from the contents of the prospectus the expert has not withdrawn his consent

⁵⁵ Investment and Securities Act 2007, S 85 - 86 (2). see also J. O. Orojo, *ibid* page 425

⁵⁶ *Ibid*

Misrepresentation in a company's prospectus can have severe Effects for investors. Here are some ways misrepresentation can affect investors. Investors may suffer financial losses if they make investment decisions based on false or misleading information. It may deprive investors of the ability to make informed decisions about their investments. Repeated instances of misrepresentation can erode investors' trust in the company and the market as a whole. It also may increase the risk of investment, as investors may be unaware of potential pitfalls or risks associated with the investment. Investors may need to pursue legal action to recover losses, which can be time-consuming and costly. Furthermore, Investors may miss out on alternative investment opportunities while invested in a company with misrepresented information. The law criminalizes the offence of including an untrue statement for the issuance of a prospectus.⁵⁷ This signifies an intention to commit fraud and is liable to a pay fine, or imprisonment unless he can show that the statement is immaterial or that he has reasonable grounds to believe the authenticity of that statement. On the other hand, untrue statements are statements in lieu of prospectus being authorized and delivered for registration, such persons who authorized such deliveries is liable to fine or imprisonment unless he can show that the statement is immaterial or that he has reasonable grounds to believe the authenticity of that statement.

As professionals, it is not impossible to consider and adhere to ethics and professional conducts in compilation of a company's prospectus. There exist ethical issues which must be fully taken in to consideration. The company before advertising should fully declare the overhaul of information in its possession in order to avoid misrepresentation or misleading the public or potential subscribers. The experts involved in their dealings must also be diligent. Conflicting interest must be disclosed where necessary and the basic instruction from clients should be followed to the later, by the experts involved. The prospectus also must disclose its true state which includes assets, liabilities, pending litigations in the prospectus before issuing same to the public.

Regulatory agencies must adopt a more proactive approach, ensuring stricter compliance, conducting thorough audits, and imposing stringent penalties on entities that issue misleading prospectuses. Legal proceedings for cases of misrepresentation should be expedited to serve as a deterrent for future violations.

⁵⁷ Investment and Securities Act 2007, S 86

Enhanced corporate governance is also critical in curbing misrepresentation. Companies must prioritize ethical standards, transparency, and accountability in their financial disclosures. Board members and management should ensure due diligence in prospectus preparation, while auditors and financial advisors must uphold professional integrity in verifying financial statements and risk disclosures. Regulatory bodies should also introduce mandatory independent verification of prospectus claims to ensure accuracy and prevent misleading information from reaching investors.

Additionally, increasing investor awareness is essential in safeguarding market participants. Many investors, particularly retail investors, may lack the financial literacy to detect red flags in prospectuses. Public education campaigns, investor protection programs, and simplified prospectus summaries can empower investors to make informed decisions. Regulatory agencies and financial institutions should collaborate to provide accessible information and promote transparency in securities offerings.

Finally, tackling misrepresentation in company prospectuses requires a multifaceted approach that combines legal enforcement, corporate responsibility, and investor education. By reinforcing regulatory frameworks, promoting ethical business practices, and enhancing public awareness, financial markets can be made more transparent and trustworthy. A well-regulated securities market not only protects investors but also fosters economic growth by attracting both local and foreign investments, thereby ensuring long-term financial stability.