

AN EVALUATION OF THE SHAREHOLDERS RIGHTS AND RESPONSIBILITIES IN CORPORATE GOVERNANCE IN NIGERIA

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Abstract

Shareholders' rights and responsibilities are a very germane and relevant aspect of corporate governance. Shareholders play a crucial role in the affairs of companies as they are, in the actual sense, the real owners of companies and possess enormous powers to determine who becomes a director or not through their votes. By virtue of their investments in the company, shareholders are generally entitled to profits accruing from the business of the company. They have powers to make certain decisions, and also play very important role in the governance of the company. The directors of the company are answerable and accountable to the shareholders, and must carry out their responsibilities in the overall interest of the company. This article critically examined the shareholders' rights and interests, as well as their roles in corporate governance in Nigeria. The researchers employed doctrinal research methodology in analyzing the respective ways in which shareholders shape and influence the direction and governance of companies via their rights and responsibilities. Findings in the study revealed that weak and limitations in the legal and regulatory frameworks, difficulty in accessing accurate and timely information about corporate affairs, as well as lack of transparency in the corporate system are some of the challenges bedeviling the rights and responsibilities of shareholders in Nigeria. The study ended with recommendations centered on strengthening and granting enough protection to the shareholders' rights in Nigeria under the law, ensuring timely access to information, openness or transparency in the corporate system among other things.

Keywords: Shareholders, Rights, Responsibilities, Corporate Governance, Companies.

INTRODUCTION

It is a fact generally known that companies play very important roles in the creation of wealth. Companies are basically the medium in which major economic activities are carried out across the globe. The source of revenue or finance for companies is the shareholders, and they provide such finance through their equity investments¹. It is, however, only where the rights of shareholders are protected and guaranteed under the law that they will be motivated to channel in their monies and investment more².

¹S E Ojogbo and N V Ezechukwu, Shareholder Protection: A Comparative Review of the Corporate Legal/Regulatory Regimes in the UK and Nigeria. *Journal of African Law*. 2020; 64(3): 399-424.

²R La Porta et al, "Investor Protection: Origins, Consequences, Reform (1999, *Harvard Institute Economic Research* Discussion Paper number 188) at 2.

Shareholders perform very vital functions in corporate governance. They are actually the real owners of companies, and possess enormous powers. The shareholders not only have power to appoint or remove directors in a company, they play crucial roles in decision-making in corporations. For instance, they can require the board to pursue or not to pursue a particular course of action in the company.

The Nigerian corporate law provides the legal structure that governs the relationship between shareholders and other stakeholders in corporations, their rights and responsibilities in corporate governance as well as their protection. Nevertheless, shareholders always face challenges such as limitation to their rights, and other issues centering on lack of access to vital and accurate timely information in relation to risk factors, corporate affairs and financial performance among others. Hence, it is therefore pertinent to examine the shareholders' rights, interests as well as their role in corporate governance in Nigeria.

2.1 RIGHTS AND RESPONSIBILITIES OF SHAREHOLDERS UNDER THE NIGERIAN CORPORATE LAW

2.2 Who is a Shareholder?

A shareholder (otherwise referred to as shareowner) is “one who owns or holds a share or shares in a company, especially a corporation”³. It is a term used to describe a person who has a share or shares in a company and as such is a part owner of the company. A person or legal entity becomes a shareholder in a company when their name and other details are entered in the corporation's register of shareholders or members⁴, and unless required by law the company is not required or permitted to enquire as to the beneficial ownership of shares. Any person or organization who is called by the name shareholder, must own a minimum of one share in a company's stock or mutual fund to make them a partial owner.

Shareholders of any company, are legally separate from the company itself and they are generally not responsible or liable for the debts of the company. If they are at all to be liable, their liability is only limited to any amount unpaid in the shares they own. They typically receive declared dividends if the company does well and succeed⁵.

2.3 Rights of shareholders in Nigeria

Some of the rights of shareholders include the following:

i. Right to dividend:

Every member of a company, apart from members of a company limited by guarantee, has rights to dividend for his investment and membership in the company. Dividend has been defined judicially as “the payment made out of profits to the shareholders of a company from time to time”⁶. A person who owns share(s) in a company, no doubt is entitled to enjoy in his own right, benefits, rights and privileges which include the payment of dividend to him. The company will be liable to pay interest at current Bank rate to a shareholder on his delayed dividend when owing to the fault of the company, the shareholder's dividend was not sent when those of others were sent⁷.

The court recognized the right of the shareholder to in deed sue for dividend owed him and interest thereon in *Attorney General of Federation v Iyewere*⁸ where it held that where dividend is declared and it becomes payable, it becomes a debt to be paid by the company and each shareholder is entitled to sue the company for his own proportion.

³B A Garner, Black's Law Dictionary (USA: West Publishing Co, 1990) p. 1408.

⁴Fontinelle, Army (November 26th, 2023). “Shareholder” Investopedia.com. Accessed 6th October, 2024.

⁵Ibid.

⁶*Kotoye v Saraki* (1994) NWLR (pt. 357) 414 at 467.

⁷Ibid.

⁸(1986) 4 NWLR (pt. 37) 659.

ii. Right to participate in general meeting and vote:

Every shareholder has right to participate in the general meeting of the company and vote. More so, shareholders in a general meeting have power and right to appoint or remove directors by a resolution passed by a simple majority of votes cast in person or by proxy. Though Board of Directors is empowered to appoint new directors to fill casual vacancies created by death, resignation, retirement or removal, such appointments are, however, subject to ratification by the shareholders in general meetings in as much as the directors act in good faith and due diligence. Apart from participating and voting at the general meeting of the company, a shareholder has a right to apply to the court to order the meeting of the company in which he can attend and vote, where it has been impracticable for a meeting of the company to be called⁹. In *Re Wada*¹⁰, the originating summons before the court alleged impracticability of holding a general meeting of the company and the court ordered that the shareholder had right to order the general meeting of the company.

iii. Right to inspect company's Record:

Shareholders in Nigeria have right to inspect the records of the company. Under Companies and Allied Matters Act (CAMA)¹¹, the right of shareholders to inspect company's record is explicitly outlined. The section provides thus: "a shareholder is entitled to inspect the company's accounting records and registers at reasonable times and places".

iv. Right to have one's liability:

One of the attractions of membership of a limited liability company is the right to have one's liability in the event of the winding up of the company, limited. This limitation could be either to the amount remaining unpaid on the shares held by him¹², or the amount undertaken to be paid by him¹³ except for unlimited companies where there is no such limitations. A shareholder has right to have his liability limited in the event of wounding up of the company.

v. Right of Exercising Proprietary Rights over Shares Held:

A shareholder has right to sell or transfer, mortgage or otherwise deal with his shares in a company, being his incorporeal property, any how he wants subject to the restrictions or conditions in the Articles of Association of the company as regards transfer of shares in private companies¹⁴.

The practice, however, is that a shareholder can trade his shareholding for cash or mortgage same for funds. Every shareholder has a right to transfer his shares and the transfer will be good, even if made to a man of straw when the company is in difficulties, for the purpose of avoiding liability, provided that it is an absolute out-and-out transfer without any trust or reservation for the transferor¹⁵.

2.3. Shareholders' Responsibility

Shareholders, generally, are not liable for the acts or omissions or debts of the company since the liability of shareholders is limited to the amounts paid or yet to be paid on their shares. However, in case of unlimited company, the liability of members for the debts of the company is unlimited. The company is a separate legal personality from its members. The court, nevertheless, may lift the veil of incorporation where a company is a mere sham or is being used as a tool to perpetrate illegality. Where, to the knowledge of a shareholder, the company operates with less than two directors, he may be held liable.

⁹(See Section 223 of Companies and Allied Matters Act, 2020.

¹⁰(2000) FWR (pt. 18) 214 at pp. 229-330.

¹¹CAMA 2020, Section 245.

¹²This, of Course, is the case with companies limited by shares.

¹³This is talking about guarantee companies

¹⁴See section 22(2) of Companies and Allied Matter Act, The restriction is supported by the fact that private companies are usually owned by close friends, associates, family members etc, and it is expected that new members should come within such groups for the mutual trust and often confidence and understanding

¹⁵Topharm and Ivamy, Company Law, (London: Butterworths & Co. Publishers Ltd, 1970) p. 154.

3.0. THE CONCEPT OF CORPORATE GOVERNANCE AND ITS PRINCIPLES

3.1 Meaning of Corporate Governance

Corporate governance, according to Organization for Economic Cooperation and Development (OECD),¹⁶ involves a set of relationships between a company's management, board, shareholders and stakeholders. Corporate governance also provides the structure and systems through which the company is directed and its objectives are set, and the means of attaining those objectives and monitoring performance are determined”.

Corporate governance, more so, is a system of law and sound approaches by which corporations are directed and controlled, focusing on the internal and external corporate structures with the intention of monitoring the actions of management and directors and thereby, mitigating agency risks which may stem from the misdeeds of corporate officers¹⁷. It has to do basically with the means or system in which corporations are governed and directed. It more so, refers to leadership, management and control of a firm by formal and informal, public and private rules¹⁸

Generally, the company or corporation is, itself, modeled as a governance structure acting through the mechanisms of contract¹⁹. Here corporate governance may include its relation to corporate finance. It describes the processes, structures, and mechanisms that influence the control and direction of corporations²⁰.

The reason for corporate governance is to facilitate effective entrepreneurial and prudent management that can deliver the long-term success of the corporation. Therefore, corporate governance is about what the board of a company does and how it sets the values of the company, and it is to be distinguished from the day to day operational management of the company by full time executives. It is the Board of Directors that are responsible for the governance of the companies. The duties of the Board of Directors include setting the company's strategic aims, providing the leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship.

Corporate governance is not the same thing with the daily operational decisions and activities that are executed by the management of an organization. It is actually the domain of the Board of Directors of companies as opposed to the management team. Some of the many domains for which the corporate governance function is include risk management, strategic planning, talent management, and succession planning. A healthy corporate governance function requires a clear and formal separation of duties between management and the Board. It also requires a healthy working relationship between the Board and the Chief Executive Officer. Nigeria, like some other countries of the world has developed their corporate governance principles with Corporate Social Responsibility (CSR) intent by using a guideline of the Organization for Economic Corporation and Development principles and other sources of rules and principles which includes the Companies and Allied Matters Act, Investment and Securities Act and a host of others.

¹⁶OECD (2015), G20/OECD Principles of Corporate Governance, OECD Publishing, Paris. Available at <http://dx.doi.org/10.1787/9789264236882-en>

¹⁷AP Sifuna (2012). “Disclose or Abstain: The Prohibition of Insider Trading on Trial”, *Journal of International Banking Law and Regulation* 27(9).

¹⁸J Weiland (2005), Corporate Governance, Value Management, and Standards: A European Perspective, *Business & Society*, 44, 74-93. <https://doi.org/10.1177/0007650305274852>.

¹⁹O E Williamson, (2002) The Theory of the Firm as Governance Structure: From Choice to Contract, *Journal of Economic Perspectives*.16(3): 171-195.

²⁰G Shailer, Corporate Governance, in D C Poff, A C Michalos (eds.), *Encyclopedia of Business and Professional Ethics*, (Springer International Publishing AG, 2018). <https://doi.org/10.1007/978-3-319-23514-1-155-1>.

3.2 Principles of Corporate Governance

The corporate governance principles were laid down in the Cadbury Report²¹ and the Organization for Economic Cooperation and Development²². In an attempt to codify them, the government of the United States via the Sarbanes-Oxley Act²³, legislated several of the principles recommended in the Cadbury and OECD reports. Some of the principles are:

- i. **Rights and equitable treatment of shareholders**²⁴: Organizations should respect the rights of shareholders and help shareholders to exercise those rights. They can help shareholders exercise their rights by openly and effectively communicating information and by encouraging shareholders to participate in general meetings.
- i. **Interests of other stakeholders**²⁵: Organizations should recognize that they have legal contractual, social, and market driven obligations to non-shareholder, stakeholders, including employees, investors, creditors, suppliers, local communities, customers, and policymakers.
- ii. **Role and Responsibilities of the Board**²⁶: The Board needs sufficient relevant skills and understanding to review and challenge management performance. It also needs adequate size and appropriate levels of independence and commitment.
- iii. **Integrity and ethical behavior**²⁷: Integrity should be a fundamental requirement in choosing corporate officers and board members. Organizations should develop a code of conduct for their directors and executives that promotes ethical and responsible decision-making.
- iv. **Disclosure and Transparency**²⁸: Organizations should clarify and make publicly known the roles and responsibilities of Board and management to provide stakeholders with a level of accountability. They should also implement procedures to independently verify and safeguard the integrity of the company's financial reporting. Disclosure of material matters concerning the organization should be timely and balanced to ensure that all investors have access to clear, factual information.

4.0 THE ROLE OF SHAREHOLDERS IN CORPORATE GOVERNANCE

Generally, the shareholders are the real owners of the company. By the provisions of the Companies and Allied Matters Act (CAMA)²⁹, a shareholder is considered a member of a company once the shareholder subscribes to the Memorandum of Association of the Company at the point of registration, or subsequently has his name recorded or registered in the company's register of members. A shareholder in a company has rights and can partake in the profits of the company by dividends as a consequence of his contribution to the company's share capital³⁰.

Shareholders have a beneficial effect on corporate governance in a company³¹. Their role cannot be overemphasized. They play such vital role such as ensuring that companies engage in effective corporate governance practices. More so, they are involved in various corporate governance decision-making. Shareholders, during General Meetings of the company, exercise their rights maximally, and ensure the enthronement and implementation of good governance in the company. During the Annual General Meeting, the shareholders are provided with opportunity to make

²¹Cadbury Report (UK, 1992).

²²The Principles of Corporate Governance (OECD), 1999, 2004, 2005 and 2023).

²³Sarbanes-Oxley Act of 2002 (US, 2002)

²⁴OECD Principles of Corporate Governance, 2004, Article II and III.

²⁵OECD Principles of Corporate Governance, 2004, Preamble and Article IV.

²⁶OECD Principles of Corporate Governance, 2004 Article VI.

²⁷Cadbury, Adrian, Report of the Committee on the Financial Aspects of Corporate Governance, Gee, London, December, 1992, sections 3.2, 3.3, 4.33, 4.51 and 7.4.

²⁸OECD Principles of Corporate Governance, 2004, Articles 1 and V.

²⁹See Section 105 (1) (2) of Companies and Allied Matters Act, 2020.

³⁰E A Nwobi and N M Ilodigwe, Corporate Governance in Nigeria: An Evaluation of the Role of Shareholders and the Board of Directors, *Chukwuemeka Odumegwu Ojukwu University Law Journal*, Vol. 6 No. 1, 2021.

³¹L A Rebchuk, The Case for Increasing Shareholders Power, 2005 *Harvard Law Review*, 833.

decisions that radically influence the administration of the company³². It is a legal requirement that the notice of an Annual General Meeting must be served on the shareholders within 21 days from the date of the meeting³³. If the company fails to hold the Annual General Meeting, the shareholder will be entitled to apply to the cooperate Affairs Commission to direct the calling of an Annual General Meeting³⁴.

As provided by CAMA, shareholders have power to appoint and remove director³⁵. They also determine the remuneration of directors³⁶. They have power to ratify or confirm actions taken by the Board of Directors³⁷. These are how enormous the powers of the shareholders are!

The shareholders play the role of appointing and replacing auditors³⁸, appointing representatives to the audit committee of the company³⁹, etc. They have the power and right to sue for dividends, petition the court for relief from unfair, prejudicial and oppressive actions⁴⁰, inspect the register of members⁴¹, receive the company's financial statements for the year at least 21 days before the date of the meeting at which they are to be laid⁴², and restrain the company's directors from entering into an illegal or ultra vires transaction or fraud perpetuation as the case may be⁴³.

4.0 CHALLENGES TO SHAREHOLDERS' RIGHTS, INTERESTS AND ROLE IN CORPORATE GOVERNANCE

The shareholders, despite their enormous powers, rights and their important roles in corporate governance, have a lot of challenges. There are several limitations to their powers, rights and interest under the Companies and Allied Matters Act. For example, the rights of the shareholders to attend and vote at the meetings of the company is conspicuously limited and/or restricted to the extent that the Articles of Association may provide that a member shall not be entitled to attend and vote at meeting if he has not paid all the sums payable by him in respect of the members' shares in the company⁴⁴. More so, it is only shareholders who have not less than one-tenth of the paid up capital of the company that can requisition an extra-ordinary general meeting⁴⁵.

The shareholders also have a challenge of not timely accessing accurate information about corporate affairs. This lack of accurate information or lack of access to information on time always deprives them of the exercise of their rights and powers in corporate governance.

There is also the problem of lack of transparency in the corporate system which most of the times is caused by the directors thereby limiting, depriving and denying the shareholders of their rights and roles in the governance and administration of the company.

4.0 Conclusion

The roles of shareholders in corporate governance are very vital that they cannot be overlooked or played down with. This is because shareholders exert much influence in a company through their

³²E Adegbite, K Arnaeshi and O Amao, *The Politics of shareholder Activism in Nigeria* (2012) (105) (3) *Journal of Business Ethics*, 389.

³³CAMA 2020, 5241.

³⁴CAMA 2020, S 237(2)

³⁵CAMA 2020, s273(1) and 288.

³⁶CAMA 2020, s 293.

³⁷CAMA 2020, s 87(5).

³⁸CAMA 2020, s 401.

³⁹CAMA 2020, s 404 (3) (6)

⁴⁰CAMA 2020, ss 735 and 354

⁴¹CAMA 2020, s 112.

⁴²CAMA 2020, ss 387 and 392

⁴³CAMA 2020, s 343.

⁴⁴See CAMA 2020, s 235-240; s 107.

⁴⁵CAMA 2020, s 239.

right to appoint and remove directors, right to vote in the general meetings, power to approach the court to order the holding of general meeting, power to ratify or approve or disapprove certain actions of the board of directors of the company among others. This article not only discussed the rights of the shareholders in Nigeria but also x-rayed the roles that shareholders play in corporate governance. The study also identified some of the challenges limiting the rights of shareholders and also affecting their roles in corporate governance. Based on the challenges highlighted in the study, we recommend the following:

1. There is need to not only strengthen the legal framework providing for the protection of the rights of shareholders but also ensure that companies respect and uphold the fundamental rights of their shareholders as well as give them freedom for the expression of their rights.
2. The right to participate in the affairs of the company should be clearly and properly interpreted. No shareholder should be denied of his rights and the exercise of such rights should not be dependent on any condition.
3. There should be openness or transparency in the corporate system and the governance of companies. Transparency is key to effective corporate governance and companies should ensure that they are open in their dealings especially as it pertains to the rights of shareholders.
4. Shareholders should be availed all information relating to the affairs of the company on time so that they can know of the going-ons in the company and also exercise their right and roles in corporate governance. Timely access to information by shareholders is also key to effective corporate governance.