

**THE MANAGEMENT OF BANKS AND THE RIGHTS OF SHAREHOLDERS
UNDER THE ASSET MANAGEMENT CORPORATION OF NIGERIA**

CYNTHIA CHIOMA NWOKPOR

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SUPERVISOR

DR. ONYINYECHUKWU THERASA EZE

SEPTEMBER, 2025.

DECLARATION


I, **CYNTHIA CHIOMA NWOKPOR** student of the faculty of law Alex Ekwueme federal University, Ebonyi state, do hereby declare on my honor, that this project has not been previously presented either wholly or in part for the award of any other degree, diploma, certificate or publication in any university, other higher institutions or elsewhere.

CYNTHIA CHIOMA NWOKPOR

DATE

CERTIFICATION

This is to certify that this long essay titled 'The Management of Bank and the Right of Shareholders Under the Assets Management Corporation in Nigeria' has been assessed and approved by the Undergraduate Studies Committee of the Faculty of Law, Alex Ekwueme Federal University, Ndufu Alike Ikwo, as an original work carried out by Cynthia Chioma Nwokpor, with registration number 2020/LW/14769 in the Faculty of Law, Alex Ekwueme Federal University, Ndufu Alike Ikwo, under the guidance and supervision of Dr. Onyinyechukwu Theresa Eze.



DR. ONYIENYCHUKWU THERESA EZE
(SUPERVISOR)

12 - 09 - 25
Date



DR. KELECHI GOODLUCK ONYEGBULE
(HAND OF DEPARTMENT)



DATE

PROF. ESENI AZU UDU
(DEAN, FACULTY OF LAW)

DATE

External Examiner

Date

DEDICATION

To God Almighty for his Love, Mercies, Grace and the Lovely Persons in my Life.

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<i>Salomon v Salomon & Co Ltd (1897) AC 22.</i>	35

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- Asset Management Corporation of Nigeria Act, 2010 (as amended), Cap A1, Laws of Federation of Nigeria (LFN) 2024. 31, 32, 34, 37, 39, 41, 42,51
- Asset Management Corporation of Nigeria Act, Cap A24, Laws of the Federation of Nigeria (LFN) 2019 (as amended) 1, 2, 7, 34, 21, 35
- Asset Management Corporation of Nigeria Act, 2010 (as amended), Cap A1, Laws of Federation of Nigeria (LFN) 2024. 34, 35.
- Banks and Other Financial Institutions Act (BOFIA) 2020, Cap B3, Laws of the Federation of Nigeria. 1, 2, 6, 9, 10, 11, 36, 37, 38
- Central Bank of Nigeria Code of Corporate Governance for Banks in Nigeria Post Consolidation. (2006) 33
- Central Bank of Nigeria (CBN) Act, Cap C4, LFN 2007. 6, 9, 10, 11, 41, 42
- Constitution of the Federal Republic of Nigeria 1999 (as amended), 2, 6, 15, 21 31 32
36, 39, 50
- Companies and Allied Matters Act (CAMA) 2020, Cap C20, LFN 2024. 2, 6, 7, 16, 23, 24,
35, .38, 39, 40, 42, 49, 50
- Nigeria Deposit Insurance Corporation Act, Cap N102, LFN, 2006. 6, 11

LIST OF ABBREVIATION

AMC	Asset Management Companies
AMCON	Asset Management Corporation of Nigeria
ALM	Asset and Liability Management
ALM	Anti - Money Laundering
BOFIA	Banks and Other Financial Institutions
CAC	Corporate Affairs Commission
CAMA	Companies and Allied Matters Act
CBN	Central Bank of Nigeria
CEO	Chief Executive Officer
CFRN	Constitution of the Federal Republic of Nigeria
EBA	Eligible Bank Assets
EFI	Eligible Financial Institutions
ERM	Enterprises Risk Management
FAT	Fairness, Accountability and Transparency
FBN	First Bank of Nigeria
FMBN	Federal Mortgage Bank of Nigeria
HR	Human Resources.
IMF	International Monetary Fund
NAME	National Asset Management Agency
NPL's	Non-Performing Loans
NDIC	National Deposit Insurance Corporation
OECD	Organization for Economic Co-operation and Development 22

SEC Security and Exchange Commission

TARP Troubled Asset Relief Program

ABSTRACT

The study examined the intricate relationships between the asset management corporation of Nigeria (AMCON) bank management and shareholders rights. The management of banks and the protection of shareholder rights under the Asset Management Corporation of Nigeria (AMCON) are fundamental to ensuring the stability and resilience of the Nigerian financial sector. Within the years under review of this study, the banking industry, as well as Nigeria economy was characterized by unprecedented financial and economic crisis, which led to the effect of the crisis of the stock market collapsed by 70 percent in 2008-2009 and many Nigeria banks sustained huge losses, particularly as a result of their exposure to the capital market and down to stream oil and gas sector. Based on these problems in the banking industry and the effect of globalization it influences the interest in this study. The general objective of the study is to determine the present of the law on Asset Management of Bank and the Right of Shareholders. The research is interdisciplinary in scope and addresses both legal and social economic issues. To ascertain information for this research work, doctrinaire research methodology was used, while the secondary date element of empirical research where data from Asset Management Corporation of Nigeria (AMCON) was used as source of information to illustrate the work. The findings stated that the right of shareholders depended largely on provisions in a corporation charter and by-law; that shareholders in corporation are shielded from personal liberality for debts and obligations of the corporation, and also, that the consolidation programmed were necessitated by the need to strengthen the banks, thereby playing pivotal roles in driving development across the sector of the economy. The study recommended adequate practices of banking laws and regulations within the industry, risk focused and rule based regulatory framework, Strick enforcement of corporate governance principles in banking, expeditions process for rendition of returns by banks and other financial institutions through to eases and finally the revision and updating of relevant laws for effective corporate governance and ensuring greater transparency and accountability in the implementation of banking laws and regulation.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

The banking sector plays a critical role in the economic development of any nation, acting as a financial intermediary for mobilizing and allocating capital. The sector has faced several challenges, including poor corporate governance accumulation of toxic assets and systemic instability. In response to the 2009 banking crisis, the Asset Management Corporation of Nigeria (AMCON) was established through the *AMCON Act of 2020* as a resolution mechanism to stabilize distressed financial institutions and revive confidence in the sector.¹ The enactment of the *Banks and Other Financial Act (BOFIA) 2020* introduced a modern legal framework for banking regulation, replacing the earlier *BOFIA 1991 Act*. The *BOFIA 2020 Act* aims at strengthening the Central Bank of Nigeria's (CBN) supervisory powers and ensure the soundness of the financial system.²

However, the operation of AMCON and the regulatory implications of *BOFIA, 2020* have raised important questions about the protection of shareholder rights in Nigeria banking sector. As AMCON intervenes in distressed banks, often by acquiring non-performing loans, taking over management, or facilitating mergers. It exerts influence that can dilute or override the interests of shareholders.³ However, *BOFIA 2020* strengthens the CBN's powers to revoke licenses and

¹ *Asset Management Corporation of Nigeria Act*, Cap A24, Laws of the Federation of Nigeria (LFN) 2019 (as amended)

² *Banks and Other Financial Institutions Act*, Cap B3, Laws of the Federation of Nigeria.2020

³ CU Uche, & AE Ehikwe, (2012). Rescuing banks and sacrificing shareholders: The AMCON experience. *Nigerian Journal of Banking and Financial Law*,6(2), 44-60

appoint bridge institutions without the prior consent of shareholders.⁴ This creates a legal and policy dilemma on how to balance financial stability with investor right.

1.2 Statement of the Problem

The management of banks and the protection of shareholder's rights under the *Asset Management Corporation of Nigeria Act 2010* present significant legal and financial challenges. *The Asset Management of Nigeria* (AMCON) was established in 2010 to address the banking crises caused by non-performing loans (NPLs) and corporate governance failure.⁵ While its intervention has helped stabilized failing banks and restore confidence in the financial sector, it also led to conflicts with shareholders, raising concerns about ownership rights, due process, and corporate governance.⁶

One major problem is the dilution of shareholder ownership in banks taken over by AMCON. When AMCON acquires a distressed financial institution, existing shareholders often lose control without adequate compensation or legal recourse. This creates uncertainty among investors, discouraging future investments in the banking sector. The absence of a clear compensation mechanism raises concerns about fairness and the protection of property rights.⁷ Another issue is the tension between financial stability and shareholder rights. AMCON's statutory mandate prioritizes stabilizing failing banks, sometimes at the expense of shareholders, which raises legal and ethical questions about whether the corporation's actions align with corporate principles under the *Companies and Allied Matters Act (CAMA), 2020*.⁸

⁴ *The Banking and Other Financial Institution Act*, Laws of the Federation of Nigeria, No. 5, 2020.

⁵ *Asset Management of Corporation of Nigeria Act*, Cap A24, Laws of the Federation of Nigeria (LFN) 2010

⁶ *Asset Management of Corporation of Nigeria Act*, Laws of the Federation of Nigeria, No. 4, 2010.

⁷ *Constitution of the Federal Republic of Nigeria 1999* (as amended), s.44; *Okonkwo v Cooperative Banks Ltd* (2003) 8 NWLR (Pt.822) 347.

⁸ *Constitution of the Federal Republic of Nigeria 1999*(as amended), s.36; *Companies and Allied Matters Act*, C20,

Again, there is a lack of clear precedents governing shareholders rights in AMCON-managed banks. Court rulings on AMCON's powers have often favored financial stability over investor protection, thereby leaving shareholders with limited legal remedies. This legal uncertainty raises fundamental concerns about the extent of AMCON's authority and the rights of affected investors.⁹

1.3 Aim and Objectives

The aim of this study is to critically examine the legal and intuitional mechanism for managing banks in Nigeria, with focus on the role of the Asset Management Corporation of Nigerian (AMCON), and to assess the implications of these mechanisms on the rights of shareholders within the framework of the *Banks and Other Financial Institutions Act (BOFIA) 2020* and relevant judicial pronouncements.

The objectives of this study include:

1. To analyze the legal and institutional framework for bank management in Nigeria.
2. To examine the role of AMCON in distressed bank interventions.
3. To evaluate the implications of BOFIA 2020 on corporate governance and shareholder rights.
4. To investigate judicial responses to conflicts between regulatory authorities and shareholders.
5. To propose legal and policy recommendations for balancing stability and investor protection.

1.4 Research Questions

LFN 2020.

⁹ *AMCON v Seametrics Industries Ltd* (2017) LPELR-42560 (CA).

The research will address the following key questions:

1. What are the existing legal and institutional frameworks governing bank management in Nigeria?
2. What is the role of AMCON in the intervention and resolution of distressed in Nigeria?
3. How does *BOFIA 2020* influence corporate governance and protect or limit shareholder rights?
4. How have Nigerian courts interpreted conflicts between regulatory authorities (such as AMCON and the CBN) and shareholders?
5. What legal and policy reforms can be recommended to ensure a balance between financial stability and shareholder protection?

1.5 Research Methodology

The study adopts doctrinal legal research methodology, relying on primary source such as statutes & case law. Secondary sources including journal articles, books, and report from regulatory bodies with support the analysis.

1.6 Significance of the Study

This study is significant for several reasons. First, it contributes to academic literature on banking law and corporate governance in emerging economies. Second, it offers practical insights for policymakers and regulators on how to reconcile the objectives of systemic stability with investor rights. Third, it is relevant to shareholders, investors, and civil society actors interested in promoting accountability in financial regulation.

1.7 Scope and limitations

This research focuses on Nigerian banks affected by AMCON interventions and the regulatory changes introduced by *BOFIA 2020*. While the study draws on both legal analysis and case

studies, it is limited by the availability of primary data of affected banks and the confidential nature of some regulatory processes.

The study adopts a doctrinal legal research methodology, relying on primary sources such as statutes and case law. Secondary sources including journal articles, books, and reports from regulatory bodies will support the analysis.

This method is best for this study because the research is primarily focused on analyzing existing legal frameworks, statutory provisions, case law, and institutional practices governing bank management and shareholder rights in Nigeria.

Given that the study aims to interpret legal provisions evaluate judicial decisions, and propose reforms, the doctrinal method provides the appropriate tools to identify legal principles, trace the development of the law, and access consistency in judicial reasoning. It also facilitates a structured comparison between different legal instruments and the roles of institutions like Central Bank of Nigeria (CBN), AMCON, and the judiciary.

The doctrinal research is well suited to answer the core questions of the study, which revolved around legal mechanisms, statutory interpretation, and the rights of protection. It enables a normative assessment of whether the current legal regime adequately balance financial sector stability with the protection of investor rights.

1.7 Chapter analysis

In discussing the topic ‘The management of banks and the right of shareholders under the asset management corporation of Nigeria’ the research work is divided into five chapters to ensure that the topic is properly appreciated.

Chapter one, which is the introductory chapter set the stage for understanding the topic wherein background to the topic: ‘The Management of Bank and the Right of Shareholders under the Asset Management Corporation of Nigeria (AMCON)’. It clearly articulates the research problems, aim and objectives, methodology, significance of the study, scope and the structure of the research.

Chapter two at this stage some key concepts of the topic are discussed such as bank, management, shareholders, right, asset, corporation it also explores relevant legal and economic theories, including agency theory, stakeholder theory, and corporate governance theory, in order to give jurisprudential basis to the topic. The chapter also reviewed the positions of different authors on the topic and the likely gap in knowledge that this long essay intends to fill.

Chapter three, this chapter outlines the legal and institutional basis for AMCON's operations. The legal framework includes: The *Constitution of the Federal Republic of Nigeria 1999* (as amended), providing fundamental rights, including property.¹⁰ *The AMCON Act, 2010* (as amended), granting powers to acquire NPLs and take over banks.¹¹ *The Banks and Other Financial Institutions Act (BOFIA)*, regulating banking operations.¹² *The Companies and Allied Matters Act (CAMA) 2020*, governing shareholder rights and corporate governance.¹³ *The Central Bank of Nigeria (CBN) Act 2007*, outlining CBN's supervisory role.¹⁴ The Nigeria Deposit Insurance Corporation (NDIC), protecting depositors during bank resolutions.¹⁵ The Securities and Exchange Commission (SEC), ensuring fair treatment of shareholders in the

¹⁰ The Constitution of the Federal Republic of Nigeria 1999 (as amended), Sections 43 & 44.

¹¹ Asset Management Corporation of Nigeria Act, 2010 (as amended), Cap A1, Laws of Federation of Nigeria (LFN) 2024.

¹² Banks and Other Financial Institutions Act (BOFIA) 2020, Cap B3, Law of the Federation of Nigeria.

¹³ Companies and Allied Matters Act (CAMA) 2020, Cap C20, LFN 2024

¹⁴ Central Bank of Nigeria (CBN) Act, Cap C4, LFN 2007.

¹⁵ Nigeria Deposit Insurance Corporation Act (NDIC) 2006, Cap N102, LFN 2024

capital market. The institutional framework details the roles of CBN, NDIC, and SEC in supporting AMCON, ensuring compliance with legal standards, and protecting stakeholder interests

Chapter four delved into the main topic under discourse, which is AMCON's practical impact. The causes of banking distress in 2009 included poor risk management and overexposure to oil and capital markets, as seen in the Reuters report on AMCON's takeover of three nationalized banks in 2011. AMCON's interventions, such as injecting NGN 285 billion into Mainstreet Bank (formerly AFRI bank), aimed to recapitalize and stabilize these banks. The nature and types of shareholders include majority shareholders (often large investors or government), minority shareholders (smaller investors), and institutional shareholders (e.g., pension funds). Legal rights and responsibilities, as per *CAMA 2020*, include voting on key decisions, receiving dividends, accessing information, and suing for breaches like oppression or fraud.¹⁶ AMCON's impact on shareholder control and interest is significant.¹⁷

Chapter five concluded the work with brief summary of findings and necessary recommendations.

¹⁶ Companies and Allied Matters Act 2020, Section. 343-353

¹⁷ Asset Management Corporation of Nigeria 2010 Section .34

CHAPTER TWO

REVIEW OF RELATED LITERATURE

2.1 Conceptual framework

2.1.1 Bank

A bank, in its simplest form, is a financial institution that acts as an intermediary, facilitating the flow of money and credit within the economy.¹

The Banks and Other Financial Institutions Act (BOFIA) defines a bank as ‘any person or institution licensed by the Central Bank of Nigeria (CBN) to receive deposits on current account, savings account, or other similar accounts, and to pay or collect cheques drawn by or paid in by customers, and to provide finance or credit facilities to customers generally’.²

In classical economic terms, a bank is described as ‘an institution which accepts deposits from the public and creates credit’.³

The Banks and Other Financial Institutions Act (BOFIA) defines a bank as: ‘a company which is engaged in the business of receiving deposits on current account, savings account or other similar accounts, paying or collecting cheques drawn by or paid in by customers, provision of finance or such other business as Governor may, by order published in the Federal Gazette, designate as banking business.’⁴ Banks in Nigeria are central to economic growth, financial inclusion, and stability. They perform vital intermediation functions while operating under a regulated framework aimed at protecting stakeholders and preserving systemic integrity. The evolving regulatory

¹ National Open University of Nigeria, BFN308: *Banking and Finance Courseware* (Lagos: NOUN Press, 2025)

² Banks and Other Financial Institutions Act (BOFIA) Cap B3, LFN 2024, 2020, s 2.

³ G Crowther, *Report of Committee on the working of the Monetary System* (London: His Majesty’s Stationary Office) 1934

⁴ *Banks and Other Financial Institutions Act 2020*, Cap B3, LFN 2024, s 131.

environment continues to shape the structure and operations of banks in response to technological, economic, and global developments

2.1.1.1 Types of Banks in Nigeria

Banks in Nigeria can be categorized based on the services they render, their scope of operation, and the markets they serve. The major types of banks include:

- a. **Commercial Banks:** These are the most common types of banks in Nigeria. Licensed under *Banks and other Financial Institution Act 2020*⁵ to carry on general banking services including; saving, current, and fixed deposit accounts, as well as loans, overdrafts, and trade finance. Examples include Zenith Bank PLC, First Bank of Nigeria Ltd, and Guaranty Trust Bank.
- b. **Microfinance Banks:** This type of bank provides financial services to the underserved, particularly small businesses and low-income individuals. They play a critical role in promoting financial inclusion and are licensed under specific microfinance guidelines issued by CBN.⁶
- c. **Development Banks:** These are specialized institutions established to provide long term financing sectors critical to national development, such as agriculture, housing, Infrastructure. Notable examples include the Bank of Industry (BOI) and the Bank of Agriculture (BOA).
- d. **Merchant Banks:** Merchant banks are investment banks that provides corporate loans, underwriting services, and investment advisory to corporations and high net worth individuals. They do not provide retail banking services.
- e. **Non-Interest (Islamic) Banks:** These banks operate under Islamic banking principles and do not engage in interest-based transactions. A notable example is Jaiz Bank Plc.

⁵ *Banks and Other Financial Institutions Act 2020*, No. 5, Law of the Federation of Nigeria.

⁶ Central Bank of Nigeria, *Revised Microfinance Policy Framework for Nigeria* (CBN 2011)

f. Mortgage Banks: They provide loans for real estate development and mortgages to individuals and developers. They are regulated by the Federal Mortgage Bank of Nigeria (FMBN) in conjunction with the CBN.⁷

2.1.1.2 Roles of Banks

Banks perform several roles that enhance economic development and stability. These include:

a. Mobilization of Savings: Banks mobilize surplus funds from individuals and institutions and channel them to productive sectors of the economy.⁸

b. Credit Creation: By providing loans and advances, banks create credit, which increases the purchasing power in the economy and stimulates investment.⁹

c. Facilitation of Payments: Banks facilitate domestic and international payments through instruments such as cheques, electronic transfers, and payment cards, enhancing commercial transactions.¹⁰

d. Foreign Exchange Management: Banks, especially commercial and merchant banks, play a role in foreign exchange trading and management under the regulation of the CBN.¹¹

e. Economic Development: Through financial intermediation, banks provide capital to businesses and governments, thereby promoting industrialization, infrastructure development, and employment.¹²

⁷ *Banks and Other Financial Institutions Act 2020*, No. 5, Law of the Federation of Nigeria.

⁸ Central Bank of Nigeria, *Understanding Monetary Policy No.53: Functions of Banks* (CBN,2 015).

⁹ *Banks and Other Financial Institutions Acts 2020*, No. 5, Laws of the Federation of Nigeria.

¹⁰ *Ibid*,

¹¹ *Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 1995*, Cap F34, Laws of the Federation of Nigeria.

¹² OE Igbinoia, 'the Role of Banks in Economic Development in Nigeria' (2013) 4(2) *Journal of Business and Management* 23.

2.1.1.3 Regulatory Features of Banks in Nigeria

The Nigerian banking sector is regulated by a comprehensive legal framework anchored on statutory provisions, prudential guidelines, and supervisory oversight.

a. Central Bank of Nigeria (CBN): The CBN is the apex regulatory authority. Its responsibilities include issuing banking licenses, regulating monetary policy, supervising financial institutions, and ensuring financial stability.¹³

b. Nigeria Deposit Insurance Corporation (NDIC): The NDIC provides insurance coverage to depositors in the event of bank failures and promotes public confidence in the banking system.¹⁴

c. Corporate Affairs Commission (CAC): Banks must be registered as companies under the *Companies and Allied Matters Act (CAMA)* and meet corporate governance requirements.

d. *Banks and Other Financial Institutions Act (BOFIA)*, 2020: BOFIA provides the primary legal framework for the regulation of banks. It covers licensing, supervision, insolvency, mergers, and enforcement actions.¹⁵

e. Capital Requirements: The CBN prescribes minimum capital thresholds that banks must maintain to ensure solvency and protect depositors. For example, commercial banks with international licenses are required to maintain a minimum capital of ₦50 billion.

2.1.2 Management

Management is certainly one subject that can be defined in many ways but the key elements which are the use of resources and attainment of corporate objects must be incorporated in any of such definition for it to be acceptable.

¹³ *Central Bank of Nigeria Act*, Cap C4, Laws of the Federation of Nigeria (LFN), 2004, s.2.

¹⁴ *Nigeria Deposit Insurance Corporation Act*, Cap N102, LFN, 2004. Section 2

¹⁵ *BOFIA 2020*, ss 3–30.

To E.L. Brech, cited in Pilbeam 'Management is a social process entailing responsibility for the effective and economic planning and regulation of the operations of an enterprise, in fulfillment of a given purpose or task'¹⁶ 'such responsibility includes but not limited to: a. Judgement and decision in determining plans and in using data to control performance and progress against operations. b. The guidance, integration, motivation and supervision of the personal composing the enterprise and carrying out its operations.'

According to Harold Koontz 'management is the art of getting things done though and with people in formally organized group'.

Management is traditionally defined as the process of planning, organizing, leading, and controlling an organization's activities to achieve defined objectives.¹⁷ Henry Fayol, one of the pioneers of modern management theory, described management as 'forecasting and planning, organizing, commanding, coordinating, and controlling'.¹⁸

In banking, management refers to the effective utilization of financial and human resources to ensure the profitability, stability, and compliance of the banking institution.¹⁹ Bank management involves strategic planning, asset and liability management, credit risk management, customer relationship management, and compliance with banking laws and regulations.

2.1.2.1 Functions of Management

The universally accepted functions of management include:

- a. Planning: Defining goals and deciding how to achieve them.
- b. Organizing: Arranging tasks and resources to implement plans.
- c. Leading: Motivating and directing personnel to work efficiently.
- d. Controlling: Monitoring and evaluating performance and making adjustments.

2.1.2.2 Importance of Management in Nigerian Banks

¹⁶ EFL Brech, *The Principles and Practice of Management* (Longman, 1975).

¹⁷ H Koontz and C O'Donnell, *Principles of Management* (New York: McGraw-Hill, 1976) p. 3.

¹⁸ H Fayol, *General and Industrial Management* (London: Pitman Publishing 1949)

¹⁹ PS Rose and SC Hudgins, *Bank Management & Financial Services*, 9th edn (New York: McGraw-Hill Education, 2013).

Banking institutions in Nigeria operate in a complex and highly regulated environment. Effective management is indispensable for:

- a. **Regulatory Compliance:** Banks must adhere to regulations by the Central Bank of Nigeria (CBN), the Nigeria Deposit Insurance Corporation (NDIC), and international standards such as Basel III.²⁰
- b. **Risk Management:** Managing credit, liquidity, market, and operational risks to prevent financial distress.
- c. **Profitability and Sustainability:** Efficient allocation of resources to ensure long-term sustainability.
- d. **Corporate Governance:** Ensuring transparency, accountability, and ethical conduct, especially following reforms in the banking sector post-2009 banking crisis.²¹

2.1.2.3 Components of Bank Management in Nigeria

- a. **Strategic Management:** This involves long-term planning and strategic decision-making to adapt to market trends, technology, and competition. For example, Nigerian banks are investing in digital transformation strategies to align with global fine tech trends.
- b. **Human Resource Management:** Recruitment, training, and retention of skilled employees are central to bank performance. Effective HR management is essential in developing banking leaders and maintaining customer service quality.

²⁰ Central Bank of Nigeria, *Revised Prudential Guidelines for Deposit Money Banks in Nigeria* (Central Bank of Nigeria, 2020).

²¹ LS Sanusi, *The Nigerian Banking Industry: What Went Wrong and the Way Forward* (Central Bank of Nigeria).

c. Financial Management: Bank management is responsible for asset and liability management (ALM) to ensure liquidity and profitability. This includes managing interest rate risk, credit risk, and capital adequacy.

d. Risk and Compliance Management: Given the exposure to various financial risks, bank management must develop robust frameworks for enterprise risk management (ERM) and anti-money laundering (AML) compliance, as mandated by the CBN Guidelines on Risk-Based Supervision.²²

2.1.2.4 Challenges of Bank Management in Nigeria

a. Regulatory Changes: Frequent updates in regulatory requirements demand adaptability.

b. Technological Disruptions: The rise of fintech and mobile banking requires new management approaches.

c. Economic Instability: Currency fluctuations, inflation, and oil price volatility affect bank strategies.

d. Corporate Governance Issues: Historical lapses in governance have led to the failure or takeover of some Nigerian banks.²³

2.1.3 Right

Rights are fundamental entitlements or legitimate claims that individuals or groups possess, often guaranteed by legal systems, societal conventions, or ethical doctrines. They empower the holder to engage in certain acts or to demand conduct from others. In both legal jurisprudence and corporate regulation, rights underpin justice, governance, and order.

²² Central Bank of Nigeria, *Guidelines on Risk-Based Supervision* (Central Bank of Nigeria, 2019).

²³ National Deposit Insurance Corporation (NDIC). *Annual Report on Failed Banks and Lessons Learned*. (2010)

Rights are those conditions of social life without which no men can seek to be himself at his best.

– Professor Laski.²⁴

A right is an interest recognized and protected by a rule of right (law). It is an interest, respect for which is a duty, and disregard of which is a wrong. –Salmond.²⁵

A person can be said to have a right only when another or others are bound or obliged by law to do something or forbear in regard to his rights. It means that a right has always a corresponding duty. –Austin.²⁶

This essay explores the concepts of rights within legal and shareholder frameworks, with specific reference to evolving legal interpretations.

Legal rights are rights that are recognized and protected by law. These rights originate from constitutions, statutes, regulations, and judicial precedents. They are enforceable through courts and legal institutions, thus ensuring that individuals and groups can seek redress when such rights are infringed.²⁷

2.1.3.1 Characteristics of Legal Rights

Three defining features of legal rights include:

- a. Legal Source – They arise from codified instruments like national constitutions, statutes, and international conventions.²⁸
- b. Enforceability – They may be enforced through litigation or administrative remedies.²⁹

²⁴ JH Laski, *A Grammar of Politics* (London: George Allen & Unwin, 1925) 91

²⁵ JW Salmond, *Jurisprudence* (12th edn, London: Sweet & Maxwell, 1966) 232

²⁶ J Austin, *The Province of jurisprudence Determined* (2nd edn, London: John Murray, 1861) 372

²⁷ A Oyeboade, *Law and Nation-Building in Nigeria: Selected Essays* (University of Lagos Press 2005) 117.

²⁸ LJ Ogundipe, 'Nature and Sources of Law in Nigeria' *Nigerian Journal of Jurisprudence* (2020) 8(2), 98.

²⁹ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 6(6) (b).

c. Universality within Jurisdiction – Legal rights apply to all individuals within the territory of the enforcing legal system.³⁰

2.1.3.2 Categories of Legal Rights

Legal rights are broadly classified into the following:

a. Human Rights- these are fundamental and inherent in all human beings. They include the right to life, personal liberty, freedom of thought and expression which are enshrined in international instruments such as the Universal Declaration of Human Rights 1948.³¹ In Nigeria, these rights are protected under

b. Civil Rights- these guarantee equal protection and access to legal remedies, such as right to vote, right to freedom from discrimination, and access to public services.³²

c. Property Rights- these confer ownership and control over tangible and intangible assets, including land, buildings, and intellectual property.³³

d. Contractual Rights- these arise from agreements enforceable by law, breach of which allows the aggrieved party to seek remedies such as damages or specific performance.³⁴

It is important to note that legal rights are not absolute. For instance, the freedom of expression may be limited in order to prevent defamation or hate speech.³⁵ Legal rights evolve alongside societal transformation, and courts continually interpret them to suit contemporary realities.

2.1.3.3 Shareholder Rights: In corporate law, shareholders are individuals or legal persons who hold shares in a company and are thus considered part-owners. As such, they are entitled to certain

³⁰ MO Unegbu, *Constitutional Law in Nigeria* (2nd edn, University of Ibadan Press 2018) 133.

³¹ Universal Declaration of Human Rights Ga Res 217A (III) UN GAOR, 3rd Sess, UN Doc A/810(1948)

³² F Falana, *Fundamental Rights Enforcement in Nigeria* (2nd edn legal text Publishing 2017) 74.

³³ *Companies and Allied Matters Act 2020*, ss 42, 43.

³⁴ A Obilade, *The Nigeria Legal System* (Sweet & Maxwell 1979) 229.

³⁵ *Nigerian Broadcasting Commission v AIT* (2021) 14 NWLR (Pt. 1793) 122.

legal rights under corporate law, often articulated in a company's articles of association or shareholder agreements and supplemented by statutory provisions such as the *Companies and Allied Matters Act (CAMA) 2020*.³⁶ These rights include:

a. Voting Rights – Shareholders have the right to vote on critical matters, including the election of directors and major structural changes in the company. This ensures democratic participation in governance.³⁷

b. Right to Dividends – Shareholders are entitled to dividends when declared by the board, subject to the company's financial status.³⁸

c. Right to Information – They may inspect annual reports, financial statements, and minutes of meetings. This transparency facilitates accountability and informed decision-making.³⁹

d. Right to Sue – Shareholders may bring an action against directors or the company in instances of misconduct, breach of fiduciary duty, or oppressive conduct under section 353 of CAMA 2020.⁴⁰

e. Right to Transfer Shares – Shareholders may dispose of their shares unless restricted by pre-emptive clauses in private companies.⁴¹

f. Pre-emptive Rights – This right allows existing shareholders to be given the first option when new shares are issued, thus preventing dilution of their holdings.⁴²

g. Right to Attend Meetings – Shareholders have the right to attend and participate in general meetings, ask questions, and vote on resolutions.⁴³

³⁶ *Companies and Allied Matters Act 2020*, ss 40–46.

³⁷ *Ibid*, s 265.

³⁸ *Ibid*, s 379.

³⁹ *Ibid*, s 332

⁴⁰ *Ibid*, s 353

⁴¹ *Ibid*, s 147.

⁴² *Ibid*, s 142.

⁴³ *Ibid*, ss 238–240.

2.1.3.4 Contemporary Trends in Shareholder Rights

There is growing advocacy for stronger shareholder rights, especially in Nigeria's post-AMCON and BOFIA reform era. Shareholders now demand enhanced transparency and accountability from management, particularly in banks and financial institutions. However, excessive shareholder influence may risk stifling managerial discretion and long-term strategic planning.⁴⁴

2.1.4 Shareholders

A shareholder is any natural or juristic person who owns at least one share in a company, thereby acquiring an ownership interest proportionate to their shareholding. This ownership entitles the shareholder to certain privileges, such as participation in governance, receipt of dividends, and access to company information, depending on the class and extent of shares held.⁴⁵

2.1.4.1 Classifications of Shareholders

Shareholders of a company can be classified into two

- a. Majority shareholders are those whose shareholding exceeds 50% of the voting shares in a company. This level of ownership typically grants them control over corporate decisions, including the appointment of directors and approval of major transactions.
- b. Minority shareholders are those holding less than 50% of a company's voting shares. They often lack effective control over management decisions and are, therefore, more susceptible to the actions of the majority. As a result, legal systems across jurisdictions offer varying degrees of statutory and equitable protection to safeguard their interests.

⁴⁴ A Chukwuemeka, 'Revisiting Shareholders' Rights under Nigerian Corporate Law' (2023) 15(1) *University of Nigeria Law Review* 1.

⁴⁵ PMH Legal, 'What Powers & Rights Does a Minority Shareholder Have?' < <https://www.pmllegal.com/minority-shareholder-rights-and-powers> > accessed 10 June 2025.

2.1.4.2 Legal Status and Rights of Shareholders

Shareholders, whether majority or minority, are entitled to a set of core legal rights that form the basis of their participation in corporate governance. These include:

- a. Voting Rights: The right to vote on fundamental corporate matters, such as mergers or the election of directors.
- b. Dividend Entitlement: The right to receive declared dividends.
- c. Right to Information: The ability to access the company's financial records and minutes of general meetings.
- d. Pre-emptive Rights: In some systems, the right to purchase new shares to maintain their percentage ownership.⁴⁶

2.1.4.3 Duties of Director

- a. Duty of Loyalty: To act in the best interest of the company.
- b. Duty of Care: To exercise diligence and reasonable judgment.
- c. Duty of Good Faith: To avoid conflicts and act lawfully in the discharge of their functions.⁴⁷
- d. Duty not to fetter discretion to vote in a particular way
- e. Duty not to conflict duty and personal interest

2.1.4.4 Legal Remedies

Shareholders, particularly minorities, have access to legal remedies in cases of mismanagement or infringement of rights, such as:

- a. Derivative Actions: Initiated on behalf of the company to redress wrongs against it.

⁴⁶ PC Miller Law, 'Minority Shareholder Rights in Private Companies' < <https://millerlawpc.com/rights-minority-shareholders-private-companies> > accessed 10 June 2025.

⁴⁷ Berg Plummer LLP, 'Fiduciary Duty to Shareholders Explained' < <https://bergplummer.com/blog/commercial-litigation/fiduciary-duty-shareholders> > accessed 10 June 2025.

- b. Personal Actions: For direct injury suffered by the shareholder.
- c. Representative action: initiated by a shareholder on his behalf and that of the other minority shareholders.
- d. Oppression Remedies: Statutory protections, such as orders for buyouts or injunctions.
- e. Appraisal Rights: In cases of mergers, shareholders may demand fair value for their shares.⁴⁸

2.1.4.5 Enforcement of Rights

Rights may be enforced through:

- a. corporate statutes (e.g., *Companies Act 2006 in the UK & Companies and Ailed Act 2020*).
- b. Securities regulations
- c. Shareholder agreements
- d. Judicial intervention

2.1.5 Asset

In AMCON's operational context, an 'asset' typically refers to non-performing loans, credit facilities that borrowers have defaulted on, along with the collateral backing these obligations. These may include real estate properties, machinery, vehicles, and financial instruments such as stocks and bonds. For instance, AMCON's acquisition portfolio includes commercial and residential properties foreclosed through debt resolution procedures.⁴⁹ By purchasing these impaired assets, AMCON facilitates liquidity for banks and allows the reallocation of capital toward productive sectors.⁵⁰

⁴⁸ The Corporate Governance Institute, 'What does fiduciary duty mean?' <<https://www.thecorporategovernanceinstitute.com/insights/lexicon/what-does-fiduciary-duty-mean>> accessed 10 June 2025.

⁴⁹ Asset Management Corporation of Nigeria, 'Disposal of Assets,' AMCON Website <<https://www.amcon.com.ng/disposal-of-assets>> accessed 10 June 2025.

⁵⁰ Ibid.

Legally, AMCON's acquisition targets are referred to as 'Eligible Bank Assets' (EBAs). According to Section 61 of the *AMCON Act*, these are assets of EFIs specified by the Central Bank of Nigeria (CBN) Governor under Section 24 of the same Act.⁵¹ This statutory definition is expansive, allowing the CBN Governor to designate various classes of assets as eligible for acquisition. Furthermore, eligible financial institutions (EFIs) include both operating and defunct banks licensed or previously licensed under the *Banking and Other Financial Institutions Act (BOFIA) 2020*.⁵²

AMCON's role extends beyond asset acquisition to include their management and disposal. The corporation may restructure loans, negotiate debt settlements, or initiate legal proceedings to recover debts. By section 48 of the *AMCON Act* there is authorization to act as or appoint a receiver for debtor companies whose assets are pledged as collateral.⁵³ Moreover, the Act permits AMCON to take all necessary steps to realize the full value of the acquired assets

AMCON's extensive legal powers have sparked debates over potential constitutional infringements. Critics argue that the corporation's ability to seize and sell assets without prior judicial approval violates the right to fair hearing under Section 36 of the Nigerian Constitution.⁵⁴ Although Nigerian courts have occasionally upheld interim asset preservation measures, concerns remain about AMCON's deviation from principles like privity of contract and non-retrospectivity of laws.⁵⁵ For instance, in *Esai Dangabar v. Federal Republic of Nigeria*,⁵⁶ the court upheld the

⁵¹ *AMCON Act*, Cap A1, LFN 2010, s 61.

⁵² *BOFIA 2020*, s 2

⁵³ *AMCON Act 2010*, s 48.

⁵⁴ *Constitution of the Federal Republic of Nigeria 1999* (as amended), s 36.

⁵⁵ Michaelmas Chambers, 'Understanding AMCON' < <https://michaelmaschambers.com.ng> > accessed 10 June 2025

⁵⁶ *E Dangabar v F R N* (2014) LPELR-24121(CA).

interim attachment of assets as a protective measure pending final adjudication.⁵⁷ Nonetheless, these practices continue to provoke legal and academic scrutiny.

Likewise, AMCON's intervention in the financial system has had a stabilizing effect. By removing toxic assets from bank balance sheets, AMCON helps restore financial health and facilitates further credit creation. As of recent reports, the corporation is still battling to recover over ₦4 trillion in outstanding obligations.⁵⁸

2.1.6 Corporate Governance

This refers to the of rules, systems, and processes by which companies are directed and controlled. It encapsulates the mechanisms through which corporate objectives are established and achieved, while ensuring the interests of diverse stakeholders are protected. These stakeholders include shareholders, directors, employees, customers, creditors, regulators, and the wider society. The ultimate aim is to promote accountability, transparency, and sustainable business practices in both managerial and board-level operations.⁵⁹

At the core of modern corporate governance is a set of interrelated theories that seek to explain how companies should be managed and how conflicts between interest groups can be addressed. These include corporate governance theory in its general form, stakeholder theory, and agency theory. Each provides a different lens through which governance structures and practices can be understood and evaluated.

2.2 Theoretical Frameworks

2.2.1 Corporate Governance Theory

⁵⁷ Ibid,

⁵⁸ Vanguard Newspaper, 'AMCON's Debt Recovery Challenges' <<http://www.vanguardngr.com>> accessed 10 June 2025

⁵⁹ Organization for Economic Co-operation (OECD). G20/OECD *Principles of Corporate Governance* <<https://www.oecd.org/corporate/principles-corporate-governance.htm>> accessed June 2025

Corporate governance theory encompasses the structural, legal, and behavioral principles that guide the direction and control of companies. While not always articulated as a distinct theory, it functions as an overarching field that integrates various governance models. The Organization for Economic Co-operation and Development (OECD) defines corporate governance as: ‘The system by which business corporations are directed and controlled’.⁶⁰ This system is generally built upon three key principles: fairness, accountability, and transparency (commonly referred to as the FAT principle).⁶¹

The theory draws its early foundation from the work of Adolf A. Berle and Gardiner C. Means, who, in their 1932 seminal text *The Modern Corporation and Private*, identified the separation of ownership and control in large corporations.⁶² However, modern conceptualization of corporate governance theory was formalized in 1999 by the OECD through its Principles of Corporate Governance, later revised in 2004 and 2015.⁶³

According to OECD: ‘Corporate governance involves a set of relationship between a company’s management, its board, its shareholders and other stakeholders’ it also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.⁶⁴

Modern governance structures aim to regulate the interaction among internal actors (such as the board of directors and management) and external actors (such as regulators and shareholders).⁶⁵

More than 80 countries have enacted corporate governance codes to institutionalize best practices.⁶⁶ These codes may be promulgated by state institutions, stock exchanges, professional

⁶⁰ Organization for Economic Co-operation and Development (OECD), G20/OECD Principles of Corporation Governance (Paris: OECD Publishing, 2015)

⁶¹ European Corporation Governance Institute (ECGI), ‘Codes and Principles,’ <<https://ecgi.global>> accessed 12 July 2025.

⁶² AA Berle and GC Means, *The Modern Corporation and Private Property* (New York: Macmillan, 1932)

⁶³ Ibid,

⁶⁴ OECD, G20/OECD Principles of Corporate Governance (2015).

⁶⁵ Lawyers Club India, ‘Theories of Corporate Governance,’ <<https://www.lawyersclubindia.com>>.

⁶⁶ ECGI, ‘Codes of Corporate Governance,’ European Corporate Governance Institute, <<https://ecgi.global>>.

bodies or investor associations. For instance, Nigeria's corporate governance framework is shaped by the *Companies and Allied Matters Act (CAMA) 2020* and the *Nigerian Code of Corporate Governance 2018*.⁶⁷ The primary concern of corporate governance theory is to construct a structure that minimizes misalignment between management objectives and shareholder interests while promoting ethical standards and corporate responsibility.⁶⁸ Corporate governance theory provides a foundation for assessing how AMCON exercises its powers in managing failing banks. By applying the FAT principle, AMCON is expected to:

- a. Promote fairness in the treatment of both majority and minority shareholders
- b. Uphold accountability in decision-making and operations and
- c. Ensure transparency during intervention processes.

While AMCON's actions are aimed at stabilizing the financial sector, they often involve restructuring corporate governance and overriding certain shareholder rights.⁶⁹ The theory helps us assess whether AMCON's interventions align with governance principles and whether shareholders are fairly treated within that restructuring process.

2.2.2. Stakeholder Theory

Stakeholder theory challenges the traditional shareholder-centric model of the corporation by asserting that the firm's responsibility extends to all parties who are affected by its operations. It was first propounded by R. Edward Freeman in his landmark 1984 book *Strategic Management: A Stakeholder Approach*.⁷⁰ Freeman defined a stakeholder as:

⁶⁷ Companies and Allied Matters Act 2020 (Nigeria); Nigerian Code of Corporate Governance 2018.

⁶⁸ TaxGuru, 'Corporate Governance and Theories of Corporation Governance,' < <http://taxguru.in>. >

⁶⁹ *Asset Management Corporation of Nigeria Act*, Cap A1, Laws of the Federation of Nigeria 2024.

⁷⁰ RE Freeman, *Strategic Management: A Stakeholder Approach* (Boston: pitman, 1984)

‘Any group or individual who can affect or is affect or is affected by the achievement of the organization’s objectives’.⁷¹

The theory asserts that the purpose of a firm is to create value for all its stakeholders -which include shareholders, employees, customers, suppliers, creditors, governments, communities, and the wider society.⁷² This theory rests on the ethical proposition that all stakeholders possess intrinsic value, and that decision-making should reflect a balance among competing interests.⁷³ The stakeholder model is increasingly relevant in an era of corporate social responsibility and environmental, social, and governance standards. Companies are expected not only to generate profit but also to respect social norms and contribute to sustainable development.⁷⁴ Critics, however, argue that stakeholder theory may dilute the efficiency of market mechanisms by imposing competing obligations on managers.⁷⁵ Nonetheless, in practical terms, firms now embed stakeholder considerations into their governance structures through inclusive policies, social investment, and community engagement.⁷⁶ This theory is highly relevant to AMCON’s mandate, which extends beyond shareholder interests to include the public interest and systemic stability of Nigeria’s banking sector. While AMCON is mandated to act for the public good, stakeholder theory cautions against marginalizing any single stakeholder group. It urges ethical consideration and compensation mechanisms, especially when shareholder rights are suspended in favor of regulatory objectives.⁷⁷

⁷¹ Ibid, 25.

⁷² Lawyers Club India, ‘Theories of Corporate Governance,’ < <https://www.lawyersclubindia.com> > accessed 12 July 2025.

⁷³ CWL Hill, & TM Jones, ‘Stakeholder-Agency Theory,’ *Journal of Management Studies*, [1992] (29) (2), 134-154.

⁷⁴ Lawyers Club India. ‘Theories of Corporate Governance,’ < <http://www.lawyerclubindia.com> > accessed 12 July 2025

⁷⁵ SE Mansell, ‘Shareholder Theory and Kant’s ‘Duty of Beneficence’ *Journal of Business Ethics*, [2013] (117)

⁷⁶ MC Jensen, & Meckling, WH., ‘Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure,’ *Journal of Financial Economics*. [1976.] (3) (4)

⁷⁷ Redalyc, ‘The Concept of Corporation Governance,’ < <https://www.redalyc.org> > accessed 12 July 2025.

2.2.3. Agency Theory

Agency theory explains the conflicts that may arise in relationships where one party (the principal) delegates authority to another (the agent) to act on its behalf. It was first propounded by Michael C. Jensen and William H. Meckling's 1976, in their article *Theory of firm: Managerial Behavior, Agency Costs and Ownership Structure*.⁷⁸

They defined agency relationships as follows:

‘An agency relationship is a contract under which one or more persons(principals)engage another person(agent)to perform some service on their behalf which involves delegating some decision-making authority to the agent.’⁷⁹ This misalignment, known as the agency problem, leads to issues such as information asymmetry, moral hazard, and adverse selection.⁸⁰

Berle and Means had earlier observed in 1932 that the separation of ownership and control in modern corporations can result in managerial opportunism.⁸¹ Agency theory provides tools to address these concerns, including incentive-based compensation, board oversight, disclosure obligations, and shareholder activism.⁸²

Today, agency theory remains foundational in corporate governance research, particularly in contexts where dispersed ownership leads to weak monitoring structures.⁸³ Mechanisms such as performance contracts, internal audits, and governance committees are applied to reduce agency costs and align interests.⁸⁴

⁷⁸ MC Jensen, & WH Meckling, ‘Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure,’ *Journal of Financial Economics*, [1976] (3) (4), 305-360.

⁷⁹ Ibid, 308.

⁸⁰ DM Van-Slyke, ‘Agents or Stewards: Using Theory to Understand the Government-Nonprofit Social Service Contracting Relationship,’ *Journal of Public Administration Research and Theory*, [2006] (17) (2)

⁸¹ AA Berle, & GC Means, *The Modern Corporation and Private Property* (1932).

⁸² MC Jensen, & WH Meckling, ‘Theory of Firm: Managerial Behavior, Agency Costs and Ownership Structure’ *Journal of Financial Economics* [1976] 3(4) 305-360.

⁸³ C Huang & Ho, C. ‘Agency Problems and Corporate Governance Research,’ *Corporate Governance: An International Review*, [2011] (19) (6)

⁸⁴ HY Baek, ‘Managerial Ownership, Corporate Governance, and Firm Value,’ *Corporate Governance: An International Review*, [2009] (17) (6)

While each theory offers unique insights, they are best understood as complementary rather than contradictory. Corporate governance theory provides the broad framework within which both agency and stakeholder theories operate. Agency theory primarily addresses the internal relationship between shareholders and managers, focusing on the reduction of agency costs.

In contrast, stakeholder theory expands the horizon of governance to include broader societal and ethical considerations.

In practice, a hybrid approach that blends agency and stakeholder principles is commonly adopted. Effective governance structures, especially in jurisdictions like Nigeria, aim to ensure managerial accountability while also fostering long-term value creation for all stakeholders.⁸⁵ For the purpose of this research, Corporate Governance Theory is adopted as the primary theoretical framework, as it provides the framework for evaluating how AMCON exercises managerial authority over distressed banks in a manner that aligns with shareholder interest, by focusing on transparency, accountability, and ethical control, the theory helps assess whether AMCON's interventions uphold or undermine the corporate rights of shareholders during bank resolution processes.' the legality and fairness of its actions, and the degree to which it preserves or infringes upon shareholder rights in accordance with Nigerian corporate laws.

2.3 Review of related literature

The intervention of the Asset Management Corporation of Nigeria (AMCON) in the Nigerian banking sector has been notable, though not without significant limitations. While its impact has been acknowledged, the level of exposure and systemic risk associated with AMCON remains a matter of concern. Adeolu found that AMCON positively influenced asset quality and liquidity in

⁸⁵ Fernández-Rodríguez, E. et al., 'Board Characteristics and Firm Performance,' *Corporate Governance*, [2008] (16) (3)

the banks covered in his empirical analysis, supporting the view that AMCON played a stabilizing role in post-crisis banking reforms in Nigeria.⁸⁶

Using a blend of descriptive and explanatory survey methods, Adeolu's research further examined the role of AMCON in securitization within the banking sector. His findings corroborated those of earlier studies such as Akpan and Olatunji which affirmed AMCON's usefulness in managing distressed assets. However, a critical caveat emerged in Adeolu's work—the potential moral hazard effect arising from AMCON's operations.⁸⁷ He emphasized that banks should ultimately bear the responsibility for managing their non-performing assets to avoid future complacency and dependency on government bailouts.

Globally, literature on Asset Management Companies (AMCs) has shown divided opinions on their effectiveness in resolving financial crises. Scholars like Dong, Odimgbe, Akpan, and Olatunji have documented positive outcomes linked to AMCs in addressing financial distress.⁸⁸ In contrast, others such as Klingebiel, Fung et al, argue that the role of Asset management companies in distress resolution has been either negligible or mixed.⁸⁹

The academic debate remains unsettled not just on the direction of AMCs' effects on financial stability, but also on the magnitude of their impact. While some studies affirm that AMCs significantly contribute to the management of bad debts and the enhancement of bank profitability

⁸⁶ BA Adeolu, 'The Impact of AMCON on the Nigerian Banking Sector' *Journal of Banking and Finance*, [2015] (10) (2) 76–91.

⁸⁷ Ibid,

⁸⁸ J Dong, 'Asset Management Companies in Asia.' *Asian Economic Papers* (2004) 3(1),45–60; O. Odimgbe, An ssEvaluation of AMCON's Role in the Nigerian Financial Sector, (Enugu: University of Nigeria 2012); U. Akpan, 'Financial Reforms and Bank Efficiency in Nigeria.' *Journal of Economic Policy Reform* [2013] 16(1) 20–33; S. Olatunji, 'Bank Recapitalization and Asset Quality in Nigeria.' *African Journal of Economic and Management Studies* [2015] (6) (3), 310–325.

⁸⁹ BA. Adeolu, 'The impact of AMCON on the Nigeria Banking Sector' *Journal of Banking and Finance* [2015] (10) (2) 76-91.; D. Klingebiel, 'The Use of Asset Management Companies in the Resolution of Banking Crises: Cross-Country Experience' (World Bank Policy Research Working Paper No.3, 2004); B. Fung, J. Hohi, Ma, G. 'Public Asset Management Comparative Study-Korea, Malaysia and Thailand' (BIS Occasional Paper No. 3, 2004)

and loan performance, others argue that the sale of non-performing loans (NPLs) to AMCs, although successful in the short term, does not guarantee sustained improvements. In some instances fresh NPLs emerged, and both the banking and corporate sectors continued to experience declining profitability for years after the introduction of AMCs.⁹⁰

2.4 Summary of review/gap of knowledge

Although existing literature has examined the stabilizing role of the Asset Management Corporation of Nigeria in resolving banking crisis, improving asset quality, and providing liquidity to distressed banks, there remains a notable gap in knowledge regarding the extent to which AMCON's wide statutory powers affect shareholder rights under Nigeria's evolving legal framework. Most studies have as dilution of equity, replacement of boards, and enforcement of liabilities without judicial recourse align with constitutional guarantees of property and fair hearing, or with corporate governance principles under *CAMA 2020* and *BOFIA 2020*. This research therefore makes a distinct contribution by critically assessing the intersection between AMCON's mandate and shareholder protections through the lens of corporate governance theory, thereby offering a legal and normative analysis that balances financial stability with fairness, accountability, and transparency

⁹⁰ Ibid,

CHAPTER THREE

THE LEGAL AND INSTITUTIONAL FRAMEWORK

3.1 Legal Framework

The legal and institutional framework of any financial system plays a critical role in determining the balance between regulatory intervention and private rights. In Nigeria, the intervention of the Asset Management Corporation of Nigeria (AMCON) in banking sector was a response to systemic distress following the 2008 global financial crisis. This chapter provides a comprehensive analysis of the legal framework that enables AMCON's operations-specifically, AMCON Act, the Banks and Other Financial institutions Act, the Companies and Allied Matters Act. AMCON's primary mandate is to acquire non-performing loans (NPL's), recapitalize failing banks, and stabilize the financial system. However, in carrying out this mandate, AMCON exercises powers that often conflict with corporate governance norms and shareholder rights.

3.1.1 *The 1999 Constitution of the Federal Republic of Nigeria* (as amended) does not make direct reference to the Asset Management Corporation of Nigeria (AMCON) or its specific powers in the management of distressed banks nevertheless, it provides the overarching legal and institutional framework for the functioning of governmental agencies and for the protection of fundamental rights, both of which indirectly affects AMCON's operations. Notably the constitution guarantees rights such as the right to property and the right to fair hearing, which becomes pertinent in cases where AMCON's debt recovery or asset management actions impact individuals or corporate entities, particularly shareholders.

A. Constitutional Rights

- a. Fundamental rights: under section 36 of the constitution, every individual is entitled to fair hearing within a reasonable time before a court or tribunal when their civil rights and obligations are question. Similarly, section 44(1) prohibits the compulsory acquisition of property without just compensation. These provisions serve as a legal safeguard for shareholders and bank customers whose interests may be adversely affected by AMCON's interventions. In circumstances where AMCON seizes or disposes of collateral asset (such as land or machinery) to satisfy a non-performing loan, aggrieved parties may invoke these constitutional provisions in a court of competent jurisdiction to challenge the legality or process of such seizures.¹
- b. Economic objectives: although not justiciable, section 16 of the constitution under the Fundamental Objectives and Directive Principles of State Policy outlines Nigeria's economic goals, including ensuring the stability of the national economy. AMCON's establishment through legislation in 2010 aligns with these objectives, particularly in addressing the financial instability caused by the 2008-2009 global financial crisis.² The corporation was mandated to acquire toxic assets from commercial banks and ensure systemic financial stability.³
- c. Separation of powers: the constitution guarantees the separation of powers between the legislative, executive, and judicial arms of government. AMCON, bring a statutory body

¹ *Constitution of the Federal Republic of Nigeria 1999* (as amended), s 44(1).

² *Ibid* s 16(1).

³ *Asset Management Corporation of Nigeria Act*, Cap A1, Laws of the Federation of Nigeria 2024. (as amended)

created by an Act of the National Assembly, functions within the executive arm but remains accountable to legislative oversight. The judiciary, on the other hand, is empowered to review AMCON's actions especially where fundamental rights are at stake.⁴

B. AMCON's Statutory Powers and the AMCON Act

The Asset Management Corporation of Nigeria Act⁵ primarily governs the operation of AMCON. The Act empowers the corporation to acquire eligible bank assets recovery non-performing loans, and manage distressed institutions through legal and administrative means.⁶

- a. Acquisition and Recovery Powers: section 33-36 of the Act grant AMCON extensive powers to purchase NPLs, restructure loans, and realize security interests. The Act allows the Corporation to step into the shoes of creditor-banks and enforce collateral rights, often through asset takeovers, restructuring, and judicial proceedings.⁷
- b. Impact on Shareholders: AMCONs acquisition of banks or banking assets can lead to significant restructuring. In such cases, original shareholders may experience dilution of equity or even completion loss of shareholding, particularly if the institution is recapitalized or nationalized.⁸ While such actions are often defended on the basis of public interest and systemic stability, they nonetheless interfere with shareholders proprietary interests, raising constitutional ethical concerns.⁹

C. Intersection between AMCON's Powers and Constitutional Rights

⁴ *Constitution of the Federal Republic of Nigeria 1999* (as amended), s 4-6

⁵ *Asset Management Corporation of Nigeria Act*, Cap A1, Laws of the Federation of Nigeria 2024 (as amended)

⁶ *Ibid*, ss 33-36.

⁷ *Ibid*, ss 33 and 36.

⁸ Central Bank of Nigeria, A Report on AMCON Takeovers and Shareholder dilution, (CBN)

⁹ D Akinwale, 'Balancing Public Financial Stability and Shareholder Rights in Nigeria' *Nigerian Journal of Commercial Law* [2021] (13) (2) 57.

The intersection of AMCON's statutory mandate and the constitution's rights provisions has led to several legal debates.

- a. **Balancing Public Interest and Individual Rights:** while AMCON's actions are typically justified in the public interest, to prevent financial sector collapse or protect depositor's funds, they must also be weighed against constitutionally protected rights. Courts have had to adjudicate such tensions in a number of legal disputes involving the corporation.¹⁰
- b. **Oversight and Legal Challenges:** the judiciary serves as the ultimate arbiter in AMCON's compliance with the constitution. In cases such as *Buba v. AMCON*, the courts emphasized that even statutory bodies must operate within constitutional boundaries.¹¹ Aggrieved shareholders or bank customers are entitled to judicial review of AMCON 's decisions where rights under *sections 36 and 44 of the constitution* are alleged to have been breached.

D. Accountability and Good Governance

As a public institution managing trillions of naira in assets, AMCON is expected to adhere to principles of transparency, accountability, and good governance.¹² The Public Procurement Act, Fiscal Responsibility Act, and especially when public assets or funds are involved. The Code of Corporate Governance for Banks and Discount Houses 2014¹³ recognizes the importance of equitable treatment of shareholders and the need for financial institutions to be governed by fairness, accountability and transparency.¹⁴ However, the unique mandate of AMCON, especially during crisis management, often places systemic stability above individual shareholder rights.

¹⁰ O Ibe, 'AMCON and the Constitution: A Case of Public Interest Over Private Rights?' *University of Lagos Law Review* (2022) 18(1) 93.

¹¹ *Buba v Asset Management Corporation of Nigeria* (2015) LPELR-24524(CA).

¹² *Fiscal Responsibility Act 2007*, Cap F40, LFN 2010, s 48.

¹³ Code of Corporate Governance for Bank of Nigeria (CBN,2014)

¹⁴ Central Bank of Nigeria, Code of Corporate Governance for Banks and Discount Houses, (2014) article 4 (2)

3.1.2 *Asset Management Corporation of Nigeria (AMCON) Act, 2010* (As Amended)

The Act, enacted on July 2010, created AMCON as a statutory body tasked with purchasing distressed bank assets. According to AMCON's official summary, the corporation was designed as 'a key stabilizing and revitalizing tool...to revive the financial system by efficiently resolving the banking crisis caused by the accumulation of non-performing loans in Nigeria economy'.¹⁵ Its core functions & powers include:

- a. Acquisition of NPLs: Section 25 authorizes AMCON to purchase eligible bank assets, primary NPLs, from commercial banks.¹⁶
- b. Debt Management and Recovery: Parts IV to VI outline AMCON's powers to manage and recover debts through asset management, appointment of receivers, and litigation.
- c. Liquidity Support: AMCON may issue zero-coupon bonds in exchange for NPLs. Historical data suggests that AMCON acquired NPLs worth ₦ 4.02 trillion for ₦1.76 trillion.¹⁷
- d. Receivership and Asset Realization: section 48 allows AMCON to act as or appoint a receiver over debtor assets changed or pledged as collateral.¹⁸
- e. Expanded Surveillance and Asset Tracing: the 2019 amended permits AMCON to monitor bank accounts, access financial records, and freeze debtor accounts.¹⁹
- f. Enhanced Enforcement in 2001: the 2001 amendment empowered AMCON to take possession of properties traced to debtors, even if not pledged as security.²⁰

¹⁵ AMCON 'About AMCON' (AMCON Official Website) <<https://amcon.com.ng/about-us/accessed>> 9 July 2025.

¹⁶ *AMCON Act, 2010*, s 48.

¹⁷ Asset Management Corporation of Nigeria, Wikipedia < https://en.wikipedia.org/wiki/Asset_Management_Corporation_of_Nigeria> accessed 9 July 2025.-

¹⁸ *AMCON Act, 2010*, s 48

¹⁹ *AMCON (Amendment No.2) Act 2019*, Cap A1, LFN 2024, s 50.

²⁰ *AMCON (Amendment) Act 2021*, Cap A1, LFN 2024.

These statutory provisions facilitate AMCON's goal of financial system stability but may conflict with shareholder interests, particularly in debtor companies.

Protection and Limitation of Shareholder's Rights

The AMCON Act lacks explicit protective provisions for shareholders, and its amendments have introduced potentially adverse measures affecting shareholder interests.

- a. Personal liability of shareholders: the 2019 amendment introduced section 50B (4), which broadened the term 'debtor' to include shareholders of debtor companies. It makes such shareholders personally liable for corporate debts in bankruptcy, winding-up, and tribunal proceedings under section 51-53.²¹ This contradicts the principle of corporate personality affirmed in *Salomon v. Salomon*²² and codified in the Companies and Allied Matters Act 2020.²³

Enforcement without Judicial Recourse: Section 48(2)(b) allows AMCON to enforce the liability of directors and shareholders without court authorization. This has raised constitutional concerns, particularly about breach of fair hearing under Section 36(1) CFRN.²⁴

Impact on Property Rights: the 2021 amendment empowers AMCON to manage and sell assets traced to debtors, even when such assets are not pledged.²⁵ This can erode shareholder equity and diminish control over corporate assets. Freezing company accounts under section 50 may also impair business operations and returns.²⁶

²¹ *AMCON (Amendment No. 2) Act 2019* s 50B (4)

²² *Salomon v Salomon & Co Ltd* (1897) AC 22.

²³ *Companies and Allied Matters Act 2020*, Cap C20, LFN 2020, ss 38 & 44.

²⁴ Michaelmas Chambers, 'Understanding AMCON' (2017) <<https://michaelmaschambers.com.ng/understanding-amcon>> accessed 9 July 2025

²⁵ *AMCON (Amendment) Act 2021*, ss 2(a)

²⁶ *Ibid*

Judicial Oversight and Limited Recourse: despite the extensive powers granted to AMCON, shareholders retain access to judicial review under the 1999 constitution, particularly section 36(fair hearing) and section 44 (property rights)

Historical context and compensation: in 2011, the Federal Government considered compensating shareholders of nationalized banks (Bank PHB, Afribank, Spring Bank), demonstrating limited institutional recognition of shareholder harm, though this was not formally legislated.²⁷

Public and Shareholder Reactions: shareholders have consistently voiced concern over AMCON's powers, especially following the 2021 amendment. In a public statement, shareholders criticized the bill as 'sad and unfortunate,' warning that it would damage financial performance on the NGX. 18 Legal commentators have echoed the need for reforms to protect shareholders while preserving AMCON 's core function.²⁸

3.1.3 *Banks and Other Financial Institutions Act (BOFIA) 2020*

BOFIA was enacted to modernize Nigeria's banking regulatory landscape and address systemic risks in the financial sector.²⁹ It expands the supervisory powers of the Central Bank of Nigeria (CBN), recognizes emerging sectors such as fintech and establishes mechanisms for crisis resolution.

²⁷ FG to Compensate Shareholders of Nationalized Banks, all Arica.com (2011) <<https://allafrica.com>>accessed 9 July

²⁸ Lexology, 'Personal Liability of Directors Under AMCON Act' (2021) <<https://www.lexology.com>>accessed 9 July 2025

²⁹ *Banks and Other Financial Institutions Act 2020*, Cap B3, LFN 2024.

AMCON, established under the Asset Management Corporation of Nigeria Act 2010, was created to acquire and manage non-performing loans (NPLs) and ensure financial stability following the 2008-2009 global financial crisis.³⁰

Banks and Other Financial Institutions Act, although not expressly referring to AMCON, introduces legal mechanisms that affects AMCON's operations, section 131 defines eligible loans as credit obligations of ₦25 million and above that have remained unpaid for at least 90 days and are designed by the CBN Governor for enforcement before the Special Tribunal.³¹ This standard limit the scope of debts AMCON can legally acquire and recover through factoring.

Again, BOFIA establish Special Tribunals for the enforcement of eligible loans, with a timeline of six months for resolution.³² AMCON has sought legislative accommodation with this structure to enhance its enforcement efficiency, though commentators argue this could hinder its independent operation.³³

Likewise, section 74³⁴ provides for the creation of Banking Sector Resolution Fund, jointly administered by the CBN, NDIC, and licensed banks. Annual contributions include ₦10billion from the CBN and ₦ 4 billion from NDIC.³⁵ This fund may reduce AMCON's burden in bailing out distressed institutions.

³⁰ *Asset Management Corporation of Nigeria Act*, Cap A1, LFN 2024, s 4.

³¹ *Banks and Other Financial Institutions Act 2020*, Cap B3, LFN 2024.

³² *Asset Management Corporation of Nigeria Act*, Cap A1, LFN 2024, s 102.

³³ *BOFIA 2020*, s 131.

³⁴ *Ibid*, s 74

³⁵ *Ibid*, s 102

Alternative Asset Management Mechanisms: section 41 permits the transfer of failing bank assets to Private Asset Management Vehicles, potentially bypassing AMCON and accelerating resolution timelines.³⁶ This introduces a paradigm shift in asset resolution strategy and could relate AMCON 's role to a supplementary one.

Protection and Limits on shareholders' Rights;

The Banks and other Financial Institutions Act (BOFIA) 2020

- a. The CBN acquire controlling shares in failing banks without shareholder approval, affecting shareholder control and voting right.³⁷
- b. Section 41 allows CBN to transfer bank assets without compliance with contractual or statutory procedures, undermining the proprietary interests of shareholders.³⁸
- c. Section 19(5) restricts lending to directors and significant shareholders to a maximum of 10% of paid-up capital, limiting financial benefits.³⁹
- d. CBN-Ordered Meetings for restricting, potentially overriding the role of the federal High Court under CAMA 2020.⁴⁰
- e. Bail-in Certificates: 39 CAMA suspends all legal claims against failing banks, which may impair the enforceability of shareholder and creditor rights.⁴¹

Under the *AMCON Act*

³⁶ Africa Reinvented, 'BOFIA 2020: Legal Review' <<https://africareinvented.Org/ofia-2020>> accessed 9 July 2025.

³⁷ BOFIA 2020, s 74.

³⁸ Ibid, s 41

³⁹ Ibid, s 19 (5)

⁴⁰ Ibid, s 7(2); *Companies and Allied Matters Act 2020*, Cap C20, LFN 2020

⁴¹ BOFIA 2020, s 39.

- a. Personal Liability of Shareholders: the 2019 amendment inserted section 50B (4), redefining ‘debtors’ to include shareholders of debtor companies, thereby subjecting them to personal liability under sections 51-53.⁴²
- b. Enforcement power without court supervision: section 48(2)(b) permits AMCON to enforce shareholder liability and appoint receivers’ ex-part, raising constitutional concerns under section 36(1) and 44 of the 1999 Constitution.⁴³
- c. Ex-parts Orders for possession or Freezing of Accounts: sections 49(3) and 50(2) permit AMCON to obtain ex parts orders, which expire if recovery proceedings are not initiated within 14days, contrasting with regular civil procedure norms.⁴⁴

In *7up Bottling Co. v Abiola & Sons Ltd*, the court held interim injunctions not to violate fair hearing if temporary and reviewable.⁴⁵ Again the court in *Esai Dangabar v FRN* affirmed that temporary asset forfeiture orders do not violate constitutional rights when backed by urgency.⁴⁶

3.1.4 *The Companies and Allied Matters Act (CAMA) Laws of The Federation of Nigeria 2020.*

The Companies and Allied Matters Act 2020 repealed the old Act, and introduced significant reforms aimed at strengthening corporate governance and operational efficiency in Nigeria’s corporate sector.⁴⁷ AMCON, established under the Asset Management Corporation of Nigeria Act 2010 (as amended in 2015 and 2019), was created to address the crisis of non-performing loans

⁴² *AMCON Act*, s 50B (4)

⁴³ *Ibid*, s 48(2)(b); *Constitution of the Federal Republic of Nigeria 1999*(as amended), ss 36, and 44.

⁴⁴ *AMCON Act 2010* ss 49(3), 50(2)

⁴⁵ *7up Bottling Co. v Fabiola & sons Ltd* (2012) 8 NWLR (Pt. 1302) 1.

⁴⁶ *Esai Dangabar v FRN* (2013) 6 NWLR (Pt. 1351) 34.

⁴⁷ *Companies and Allied Matters Act*, Cap C20, Laws of the federation of Nigeria 2020.

(NPLs) in Nigeria's banking industry.⁴⁸ It is empowered to provide liquidity support, acquire distressed bank assets, and facilitate debt recovery in order to stabilize the financial system.⁴⁹ *CAMA 2020* provides the general legal framework for the incorporation, governance, and winding up of all companies in Nigeria, including banks, and thus directly regulates AMCON's intervention in banking institutions.

- a. Corporate Governance and Liquidation Procedures: under sections 573-600,625-628 *CAMA 2020* lays down procedures for winding up companies.⁵⁰ When AMCON initiates or participates in liquidation of debtor banks, it must conform to these statutory processes, which are designed to ensure procedural fairness and creditor and shareholder participation.
- b. Corporation Rescue Mechanisms: sections 717-723 *CAMA 2020* introduce corporate rescue procedures, including schemes of arrangement and moratoriums creditor actions⁵¹ these provisions align with AMCON's objective of stabilising banks without resorting to liquidation.
- c. Issued Share Capital Requirement: section 124 *CAMA 2020* replaces the previous concept of authorized share capital with minimum issued share capital.⁵² This affects how AMCON may interact with a bank's capital structure during interventions.
- d. Compliance with General Company Law: banks remain companies under *CAMA 2020* and must comply with rules concerning share transfers, directors' duties, and

⁴⁸ *Asset Management Corporation of Nigeria Act*, Cap A1, Laws of the Federation of Nigeria 2024.

⁴⁹ *Ibid*, s 4.

⁵⁰ *Companies and Allied Matter Act*, Cap C20, LFN 2020, ss 573-628

⁵¹ *Ibid*, 717-723.

⁵² *Ibid*, 124

shareholder rights. Therefore, any takeover, asset management, or restructuring initiated by AMCON must adhere to these norms.

Provisions of *CAMA 2020* which provides for both protection and limitations to shareholders rights which are also relevant to the context of AMCON interventions includes sections 42, 142, 248, 300-303 for protective rights and 48, 717,124. There has been substantial public concern regarding the tension between AMCON's expansive powers and shareholders protections under *CAMA 2020*. In recent years, particularly in cases such as the intervention in FBN Holdings, shareholder groups have expressed dissatisfaction over lack of consultation and transparency, raising concern for disenfranchisement.⁵³

3.15 *The Central Banks of Nigeria Act 2007* was enacted to consolidate and modernize the statutory authority of CBN as the apex monetary institution. It provides for the regulation of monetary policy, the maintenance of financial system stability, and the supervision of banks and other financial institutions in Nigeria.⁵⁴ AMCON, on the other hand, was established under the *Asset Management Corporation of Nigeria Act 2020* to acquire non-performing loans, recapitalize banks, and protection the financial sector from systemic collapse.⁵⁵ Although the CBN predates AMCON's establishment, it provides the supervisory and regulatory framework under which AMCON operates.

How the *CBN Act 2007* Governs AMCON 's Roles in Managing Banks

⁵³ The cable, '*CAMA 2020: WHY CBN Must Move to Protect Shareholders Rights on Treatment of Unissued Shares*' (2021) < <https://www.thecable.ng/cama-2020> > accessed 9 July 2025.

⁵⁴ *Central Bank of Nigeria Act 2007*, Cap. C4, LFN 2004(as amended) s, 2.

⁵⁵ *Asset Management Corporation of Nigeria Act 2010*, Cap. A1 LFN 2004 (As Amended), S.1

- a. The CBN Act outlines the objectives of the bank, including the promotion of a sound financial system and the supervision of banks and other financial institutions.⁵⁶ These objectives are relevant to AMCON, which operates to restore bank solvency and confidence.
- b. Section 32 of the Act empowers the CBN to issue guidelines to financial institutions. AMCON, although not a bank, is treated as a regulated financial institution under the AMCON Act.⁵⁷ Likewise, section 58 of the *AMCON Act* mandates that AMCON must comply with directives issued by CBN.⁵⁸
- c. The CBN Act authorizes the bank to intervene in distressed banks, including through revocation of licenses and appointment of interim management,⁵⁹ which laid the groundwork for AMCON's involvement in post-crisis bank resolution, such as the 2009 banking reform when CBN removed the CEOs of eight banks, prompting the eventual creation of AMCON.⁶⁰

The CBN Act primarily deals with the functions of the Bank and does not contain explicit provisions protecting shareholders' rights. Those rights are instead protected under the *Companies and Allied Matters Act 2020* and the *AMCON Act*.⁶¹ Section 4(2) of *CBN Act* further underscores that the Bank's capital is wholly owned by the Federal Government, precluding the existence of private shareholders within the Bank itself.⁶²

⁵⁶ *Central Bank of Nigeria Act 2007*, Cap. C4, LFN 2004, S. 2

⁵⁷ *Ibid*, s 32

⁵⁸ *AMCON Act*, Cap. C4 LFN 2004, S 58

⁵⁹ *CBN Act*, Cap. C4, LFN 2024, S 33-35

⁶⁰ Aluko & Oyebode, *Legal Framework for Bank Resolution in Nigeria*, 2010.

⁶¹ *Companies And Allied Matters Act 2020*, Cap. C20, LFN 2024.

⁶² *CBN Act*, Cap. C4, LFN 2024, s 4(2).

CBN intervention often indirectly affect shareholder interests such as the revocation of banking license or force management change may impair shareholder control and reduce investment value and AMCON's acquisition of NPLs and enforcement powers- enabled by CBN oversight- may result in asset forfeitures or restructuring, limiting shareholder dividends and decision-making power.⁶³ Although not directly created by the CBN Act, the AMCON sinking fund (established via the *AMCON Act* and regulated by the CBN) requires annual contributions from banks. In 2008, shareholders of several banks objected to the deduction of 0.5% of their total asset to fund AMCON, calling instead for the Corporation's dissolution.⁶⁴

3.1.6 *The Nigeria Deposit Insurance Corporation (NDIC)* was established under the *NDIC Act, Cap N102, Laws of the Federation of Nigeria (LFN) 2004* to insure depositors, supervise banks, and manage bank failures. Its statutory functions place it within the broader institutional architecture of banking regulation in Nigeria, alongside the Central Bank of Nigeria (CBN) and the Asset Management Corporation of Nigeria (AMCON). Although the NDIC does not directly create or supervise AMCON, its statutory responsibilities indirectly regulate and limit AMCON's actions in the management of distressed banks and depositors' interests.

- a. NDIC's Supervisory Role in Relation to AMCON
- b. The NDIC, in collaboration with the CBN, conducts examinations of banks to assess their solvency, asset quality, and management practices.⁶⁵ These examinations often

⁶³ *AMCON Act*, Cap. A1, LFN 2024, s 50B (4)

⁶⁴ BusinessDay, 'Bank Shareholders Call for AMCON's Dissolution,' *BusinessDay*, 3 May 2018.

⁶⁵ *Nigeria Deposit Insurance Corporation Act*, Cap N102 LFN 2004, ss 18–20.

- c. determine whether AMCON should intervene by acquiring non-performing loans (NPLs).

Thus, AMCON's intervention is preceded by NDIC's supervisory findings, ensuring that only institutions with systemic risks or high toxic assets fall under AMCON's purview.

- b. NDIC and Bank Resolution Framework

Under *the NDIC Act*, the Corporation is empowered to resolve failing banks through methods such as purchase-and-assumption transactions, bridge banks, and liquidation.⁶⁶

These same banks often become targets of AMCON intervention after NDIC has declared them insolvent. For example, in the 2009 banking crisis, NDIC's role in winding down Afribank, Intercontinental Bank, and Oceanic Bank paved the way for AMCON to step in and acquire their toxic assets.⁶⁷

Therefore, NDIC provides the first-tier resolution, while AMCON functions as a secondary mechanism, particularly in asset management and debt recovery.

- c. NDIC's Protection of Depositors vs. AMCON's Enforcement

A core distinction lies in the interests protected:

NDIC's mandate focuses on depositors, guaranteeing their funds up to the insured limit.⁶⁸

AMCON's mandate focuses on creditors and systemic stability, often at the expense of shareholders.

By prioritizing depositors, NDIC provides a regulatory counterbalance to AMCON's creditor-driven approach, ensuring that the debt-recovery process does not completely erode depositor confidence.

- d. NDIC's Indirect Limitation of AMCON's Actions

⁶⁶ Ibid, s 6.

⁶⁷ Central Bank of Nigeria, Financial Stability Report (2009).

⁶⁸ NDIC, Annual Report (2023).

Since NDIC supervises banks and monitors their risk profile, its reports and findings serve as a legal and operational framework that constrains AMCON. AMCON cannot arbitrarily take over a bank without NDIC's assessment of its distress.

Furthermore, NDIC's involvement in the liquidation of failed banks prevents AMCON overstepping into areas outside its statutory mandate. For instance, AMCON acquires NPLs, but NDIC manages depositor payouts and liquidation processes.⁶⁹

e. Current Situation and Challenges

As of 2025, NDIC remains a stabilizing framework that indirectly regulates AMCON's actions by safeguarding depositors and supervising the banks AMCON intervenes in. However, overlaps exist between NDIC, CBN, and AMCON, leading to regulatory conflicts and blurred jurisdiction. Stakeholders have called for clearer statutory harmonization to prevent AMCON's debt recovery powers from undermining NDIC's depositor-protection mandate.

3.1.7 *The Securities and Exchange Commission (SEC) Cap I24 LFN 2004, s. 13.*

The Securities and Exchange Commission (SEC) was established under the *Investment and Securities Act (ISA)*,⁷⁰ (as amended in 2007, and now repealed and re-enacted as *ISA 2007*) to regulate the Nigerian capital market. Its mandate includes protecting investors, ensuring fair market practices, and maintaining market integrity. Although AMCON was created under the AMCON Act 2010, its interventions in the banking and financial sector often overlap with the capital market—making SEC an indirect regulator of its actions.

a. SEC's Investor Protection Role:

⁶⁹ NDIC, *History of Bank Resolution in Nigeria* (2015).

⁷⁰ *Securities Act (ISA)*, Cap I24 LFN 2004

SEC's primary duty is to protect the interest of investors, particularly shareholders of publicly listed banks.⁷¹

When AMCON acquires non-performing loans (NPLs) or intervenes in failing banks, shareholders' rights such as voting rights, dividend entitlements, and share value—may be impaired.

SEC therefore acts as a framework of oversight, ensuring that AMCON's actions do not unduly prejudice the investing public, especially in cases involving publicly listed financial institutions.

b. SEC and Corporate Governance Oversight:

SEC issues a Code of Corporate Governance for Public Companies (most recently updated in 2011, now integrated into the Nigerian Code of Corporate Governance 2018).⁷²

Since AMCON often takes control of distressed banks or appoints directors/receivers, its decisions must align with corporate governance standards regulated by SEC.

This indirectly constrains AMCON by requiring that interventions do not violate the governance rights of minority shareholders or the disclosure obligations of listed companies.

c. SEC and Capital Market Stability:

AMCON's acquisition of toxic assets and restructuring of distressed banks directly affects the stock market performance of such institutions. For instance, after the 2009 banking crisis, the suspension of trading on the shares of banks under AMCON intervention required SEC's approval.⁷³

⁷¹ *Investment and Securities Act*, Cap I24 LFN 2004, s 13.

⁷² Securities and Exchange Commission, *Code of Corporate Governance for Public Companies in Nigeria* (2011).

⁷³ Central Bank of Nigeria, *Financial Stability Report* (2009).

SEC thus acts as a regulatory filter, ensuring that AMCON's intervention does not destabilize the capital market or lead to unfair trading practices.

d. SEC as a Check on AMCON's Debt Recovery Measures:

When AMCON enforces debt recovery against publicly listed debtor companies, SEC's disclosure and reporting rules apply. Companies must inform the investing public about AMCON's actions, as these materially affect share value.⁷⁴

In this way, SEC's rules require transparency in AMCON's interventions, thereby limiting any arbitrary exercise of AMCON's enforcement powers.

e. Current Situation (2025):

Today, SEC continues to serve as a regulatory balance between AMCON's aggressive debt recovery mandate and the protection of investor confidence in Nigeria's capital market.

However, challenges persist in terms of regulatory overlap. SEC protects shareholders, NDIC protects depositors, and CBN safeguards monetary stability—while AMCON operates at the intersection of all three. This sometimes results in blurred jurisdiction, requiring clearer statutory coordinatio

⁷⁴ *Investment and Securities Act*, Cap I24 LFN 2004, ss. 60–65.

CHAPTER FOUR

MANAGEMENT OF BANKS AND THE RIGHT OF SHAREHOLDER'S UNDER AMCON

This chapter provides a critical analysis of current state of affairs concerning the management of Banks by the Asset Management Corporation of Nigeria (AMCON), with particular reference to its implications for shareholder rights. It identifies existing operational frameworks, reviews interventions by AMCON in the banking sector, and highlights the legal and institutional tensions that have arisen, particularly as they affect shareholders. While AMCON was created to stabilize the financial system, its expending powers, procedural practices, and statutory privileges have triggered serious concern about due process, transparency, and the protection of investors and shareholder rights. NDIC as a Framework Regulating AMCON's Actions.

4.1 Causes of Banking Distress and the 2009 Financial Crisis (20 Years Ago)

The Nigerian banking sector has experienced repeated waves of distress, the most prominent being the 2009 financial crisis, which marked one of the most severe systemic shocks in the nation's financial history. The causes of this crisis were multidimensional:

- a. Poor Corporate Governance: Insider abuse, weak board oversight, and reckless lending practices undermined institutional stability.¹
- b. Excessive Risk-Taking: Banks were heavily exposed to the capital market through margin loans and speculative investments.²

¹ Investment and Securities Act, Cap 124 LFN 2004 s 379.

² Ibid,

- c. Liquidity and Solvency Problems: Several banks such as Oceanic, Intercontinental, and Union Bank were unable to meet their obligations to depositors.³
- d. Global Financial Downturn: The 2007–2008 global crisis worsened the fragility of Nigeria’s banking system, leading to massive loan defaults.⁴

The crisis triggered regulatory interventions by the Central Bank of Nigeria (CBN) and the Nigeria Deposit Insurance Corporation (NDIC), including the injection of ₦620 billion into distressed banks in 2009.⁵ To provide a long-term solution, the Asset Management Corporation of Nigeria (AMCON) was established in 2010 to acquire non-performing loans (NPLs) and stabilize the sector.

4.1.1 Nature and Types of Shareholders

Shareholders, as the true owners of a bank, are diverse in nature and interests. Their influence and vulnerability vary based on shareholding structure:

Majority Shareholders: Control over 50% of shares, thereby influencing management and policy.⁶

Minority Shareholders: Hold smaller stakes, often sidelined in decision-making processes.⁷

Institutional Shareholders: Include government agencies, pension funds, and insurance firms with long-term stakes in banks.⁸

Retail Shareholders: Individual investors who rely primarily on dividends and capital appreciation.

4.1.2 Legal Rights and Responsibilities of Shareholders

³ Nigeria Deposit Insurance Corporation, Annual Report (2010). Ibid, s 6.

⁴ International Monetary Fund, Nigeria: Financial Sector Stability Assessment (2009).

⁵ CBN, Communiqué on the Banking Sector Rescue Package (2009).

⁶ *Companies and Allied Matters Act*, Cap C20 LFN 2024, s 245.

⁷ Ibid, ss 300–303.

⁸ Ibid, s 118.

Under Nigerian law, shareholders are guaranteed several rights by the Companies and Allied Matters Act (*CAMA*) 2020 and the 1999 Constitution (*as amended*):

- a. Right to Vote: Section 248 *CAMA 2020* grants shareholders the right to participate in corporate governance through voting.⁹
- b. Right to Dividends: Section 379 *CAMA 2020* entitles shareholders to dividends declared by the company.¹⁰
- c. Right to Information: Section 42 *CAMA 2020* allows shareholders to access company records.¹¹
- d. Protection of Minority Interests: Sections 300–303 *CAMA 2020* empowers minority shareholders to seek judicial protection against oppressive acts.¹²
- e. Constitutional Protections: Sections 36 and 44 of the 1999 Constitution safeguard rights to fair hearing and property ownership.¹³

In return, shareholders are responsible for contributing capital, exercising voting rights responsibly, and supporting good corporate governance.

4.1.3 AMCON's Impact on Shareholders' Control and Interest

AMCON's intervention, while necessary for stabilizing the financial system, has profoundly altered shareholder dynamics:

⁹ *Ibid*, s 248.

¹⁰ *Ibid*, s 379.

¹¹ *Ibid*, s 42.

¹² *Ibid*, ss 300–303.

¹³ *Constitution of the Federal Republic of Nigeria 1999* (as amended), ss 36, 44.

Dilution of Ownership: Takeovers by AMCON often lead to existing shareholders losing effective control of their investments.¹⁴

Erosion of Value: Shareholders of rescued banks such as Afribank and Intercontinental Bank saw their investments wiped out after restructuring.¹⁵

Supersession of Rights: *AMCON Act* Sections 48 and 50B empower the corporation to override shareholder influence in order to secure debt recovery.¹⁶

Judicial Controversies: Shareholders have challenged AMCON's actions, arguing they conflict with constitutional guarantees.¹⁷

4.2 The Current Situation on Ground Today

As of 2025, the Nigerian banking sector has stabilized compared to 2009. AMCON has recovered trillions in toxic assets, merged or liquidated distressed banks, and strengthened the financial system. However, several issues remain problematic:

- a. Lingerling Shareholder Disempowerment: Minority shareholders in banks taken over by AMCON still complain of exclusion from decision-making and loss of equity value.¹⁸
- b. Unresolved Bad Debts: Despite years of intervention, AMCON continues to hold trillions of naira in unrecovered loans, many tied to politically exposed persons.¹⁹
- c. Weak Investor Confidence: Potential investors view Nigerian banks as prone to regulatory overreach, discouraging capital inflows.²⁰

¹⁴ *Asset Management Corporation of Nigeria Act*, Cap A1 LFN 2024, s. 48.

¹⁵ *Ibid*, s 50B.

¹⁶ *Ibid*, ss 48, 50B.

¹⁷ *Jumbo v AMCON & Ors* (2020) 5 NWLR (Pt. 1719) 254.

¹⁸ Punch Newspaper, 'AMCON: Shareholders cry foul over takeovers' (2023) punch< <https://punching.com>> accessed 16 August 2025

¹⁹ The Guardian, 'AMCON still owed ₦5 trillion in bad loans' (2024).

²⁰ Reuters, 'Foreign investors wary of Nigeria's Banking Sector' (2023).

- d. Over-concentration of Power: AMCON's sweeping powers under the law have raised concerns about transparency, accountability, and the rule of law.²¹
- e. Systemic Fragility: Although banking reforms have reduced risk exposure, economic shocks (such as oil price volatility and inflation) still pose threats to financial stability.²²

4.3 What is wrong with the current situation

Disproportionate Sacrifice by Shareholders: Shareholders, especially minorities, continue to shoulder the bulk of losses whenever banks fail, while executives and debtors often escape liability.

Incomplete Resolution of the AMCON Mandate: AMCON's temporary role has extended far beyond expectations, creating dependency rather than lasting systemic discipline.

Tension between Stability and Rights: The balance between safeguarding the banking system and protecting shareholders' rights remains unsettled, undermining trust in the regulatory framework.

Judicial Bottlenecks: Slow court processes frustrate AMCON's loan recovery efforts, prolonging uncertainty for both banks and shareholder.

²¹ Academic.Edu, 'AMCON and Resolution of Banking Crises: A call for new corporate ethics' (2018).

²² IMF, Nigeria Economic Outlook (2024).

CHAPTER FIVE

CONCLUSIONS

5.1 Summary of findings

The study explored the impact of the *Asset Management Corporation of Nigeria Act 2010* (as amended) on the management of banks and the rights of shareholders.

a. The analysis reveals that while AMCON plays a critical role in maintaining banking sector stability through the acquisition of non-performing loans (NPLs), its extended powers especially after the 2019 and 2021 amendments have resulted in significant tension between corporate rescue mechanisms and the protection of shareholder rights.

b. Shareholder Rights Depend on Legal Provisions; the rights of shareholders are largely dependent on corporate charters, company by-laws, and statutory provisions such as *CAMA 2020*, but these are often overridden by AMCON's statutory powers.

c. Shareholders Liability Shield is Eroded; although shareholders are generally shielded from personally liability under corporate law *AMCON's amended Act 2019* introduces provisions that can hold them personally liable for corporate debts, undermining the principle of separate legal personality *Salomon v Salomon*.

d. Conflict between stability and investors rights

AMCON's interventions prioritize financial stability but often comes at the expenses of shareholders rights, raising constitutional concerns about property rights.

e. Judicial Precedents favor stability over rights; Nigeria courts have often upheld AMCON's powers interest of systemic stability, leaving shareholders with very limited remedies.

6. Need for stronger corporate governance frameworks in Nigeria banks exacerbated the crisis, and that stricter enforcement of corporate governance principles would both protect shareholders and prevent system distress.

Specifically, AMCON's powers to assume control of debtor companies, freeze bank accounts, and enforce individual shareholder liability under sections 48 and 50 of the AMCON Act pose a risk to corporate governance principles and investor confidence. The enforcement of such powers, often without adequate procedural safeguards or judicial oversight, raises concerns over potential violations of the right to fair hearing and property rights protected under sections 36 and 44 of the *constitution of Federal Republic of Nigeria 1999(as amended)*

5.2 Recommended

To mitigate the challenges identified above, the following measures are recommended:

- a. Legislative reform of the *AMCON Act*: the Act should be amended to include robust safeguards for shareholders, including clearer procedures for intervention and stronger judicial review mechanisms.
- b. Harmonization of laws: Align the provisions of the *AMCON Act* with those of *CAMA 2020 AND BOFIA 2020* to ensure consistency in corporate governance and protection of shareholders rights.
- c. Judicial Oversight of AMCON Powers: Introduce stator checks requiring approval before AMCON exercises major intervention powers. This aligns with the principles of fair hearing enshrined in the constitution.

- d. Compensation for Innocent Shareholders: A compensation framework should be institutionalized for shareholders whose investments are negatively affected by AMCON's actions, especially in cases of no wrongdoing.
- e. Stakeholder Engagement: Establish periodic dialogue platforms between AMCON, the Central Bank of Nigeria (CBN), Nigeria Deposit Insurance Corporation (NDIC), and shareholder associations to foster trust and transparency.

5.3 Contributions to knowledge

This study has contributed significantly to legal and financial literature in the following ways:

- a. It has identified the constitutional implications of AMCON's statutory powers, an area that has received limited academic attention in Nigeria legal discourse.
- b. It highlights the conflict between financial sector recovery policies and corporate governance principles, drawing attention to legal rights of shareholders in national economic policy.
- c. The research provides a unique interdisciplinary perspective, combining insights from constitutional law, company law, and financial regulation.

5.4 Areas of Further Studies

Future studies may explore the following areas:

- a. Comparative Legal Studies: A comparative assessment of AMCON's role with similar institution in other Jurisdictions such as Ireland's NAMA or the United States TARP.

- b. Impact Evaluation: Empirical research on the socio-economic impacts of AMCON's actions on shareholders, banks and the wider financial ecosystem.
- c. Performance of AMCON Tribunal: Legal analysis of the effectiveness and fairness of AMCON's Special Tribunal in resolving enforcement disputes.
- d. Regulatory Coordination: Study on the overlapping roles of financial regulators and their interactions with AMCON in protecting the rights of shareholders.

5.5 Conclusion

The research underscores that while AMCON is a necessary instrument in addressing financial crises and recovering non-performing loans, its operations must not come at the cost of fundamental legal and constitutional rights. Shareholders, as legitimate stakeholders in the corporate structure, deserve legal protection that balances national interest with private investment. Achieving this balance requires legislative reform, procedural fairness, and stakeholder dialogue to reposition AMCON as both an effective debt recovery agency and a respectful adherent to corporate governance norms.

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