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LEGAL PROTECTION OF MINORITY SHAREHOLDERS: A CASE FOR THE ADOPTION OF CUMULATIVE VOTING TECHNIQUE IN NIGERIA

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Abstract
Under the prevailing corporate governance system in Nigeria corporate decisions including the appointment of key managerial personnel like board members are based on the majority rule. This most often leads to minority shareholder oppression or sidelining in key corporate decisions like the election of the members of the board of directors. A robust minority shareholder protection engenders investor confidence in an economy and is a positive catalyst in attracting the much needed foreign investment at this critical period of Nigeria's development. Following the practice in some other jurisdictions, emerging literatures in Nigerian company law are clamoring for the adoption of cumulative voting technique in Nigeria. This research aims therefore to critically analyze whether and how cumulative voting technique will improve protection of minority shareholders in Nigeria. The research adopts the doctrinal and analytical methods of research and relies on primary and secondary sources of data. The primary sources of data include statutes and case laws while the secondary sources include textbooks, journal articles, internet sources etc. The study found among other things that the Nigerian corporate culture is peculiar and will demand a more tailored approach. This paper identifies potential drawbacks and evolves practical strategies for implementing cumulative voting technique in Nigeria. It is recommended among others that enhancing minority shareholder activism and improving the existing corporate culture in Nigeria through sustained shareholder education and other measures will make the adoption of cumulative voting technique effective in improving minority shareholder protection in Nigeria.

Keywords: Majority rule, Minority shareholder protection, Cumulative voting, Corporate governance.

1 Introduction

In the corporate governance framework, Nigeria like most other common law countries, practices the majority rule. This means that in the process of corporate decision making whether at the level of board of directors or the members in general meeting, it is the position of the majority that becomes the decision of the company. This most often than not is expressed in the aphorism that the minority will have their say while the majority will have their way.[1] Hence, the majority carries the vote principle applies in company management.[2]

However, notwithstanding this majority rule principle, it is recognized the world over that the protection of minority shareholders is good corporate governance practice. Corporate governance plays a vital role in protecting the interests of all shareholders including minority shareholders. It recognizes that if the principle of majority rule is permitted to hold sway in absolute terms the minority shareholders will be at the mercy of the majority with the risk of exploitation and abuse of

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[1] R A Akande & A G Akiri, 'Safeguarding Minority Rights Within The Scope of Corporate Management under The Nigerian Company Law' (2024)5 *African Customary and Religious Law Review* 148

[2] O M Atoyebi SAN, 'Minority Protection in the Corporate Sector' available at <https://omaplex.com.ng/minority-protection-in-the-corporate-sector/> assessed on February 7, 2025

the minority by the majority. Those who are in control of the company whether they are directors, managers or controlling shareholders might divert corporate wealth to themselves rather than sharing it with other investors particularly the minority shareholders.[3] The minority shareholders are often vulnerable to oppression and marginalization due to their limited voting power and lack of influence over the board of directors. Hence the need to put in place effective legal and regulatory framework to guard against unfair corporate practices. This will ensure that corporate actions align with the interests of all shareholders irrespective of the size of their shareholding.

The Companies and Allied Matters Act 2020 contain provisions in various forms in its various sections providing safeguards and protections to minority shareholders. This is most especially when the minority shareholders have to contend with the voting power of the majority. These notwithstanding, the minority protection provisions have been criticized as being inadequate.[4] It has been argued that the ostensible minority protection measures are in fact meant to protect the company from multiplicity of suits by disgruntled minority shareholders.[5] The argument draws from the apparent legal hurdles to enforcement of minority rights[6].

It therefore becomes imperative to grant some control rights to minority shareholders as a credible method to check opportunism by the controlling majority before the event.[7] This will enable minority shareholders take their destiny in their own hands. Some emerging literature in Nigerian company law has recommended the adoption of cumulative voting technique as a solution to the given problem. The existing literature draws on practice in other jurisdictions particularly the U.S.A. where cumulative voting has been adopted. This paper builds on the existing literature and identifies potential drawbacks and proffers solutions typical for a country like Nigeria. This is against the backdrop of the peculiarities of Nigerian corporate environment which is characterized by corruption, high handedness, lack of corporate democracy, political interference and minority shareholder apathy.

2. Conceptual Clarification

2.1 What is Cumulative Voting?

The Black's Law Dictionary defines cumulative voting generally as a system in which each voter may cast more than one vote for same candidate. As pertains to corporate elections cumulative voting becomes a method of election of the members of the board of directors used by corporations whereby a stockholder may cast as many votes for directors to be elected as he or she has shares multiplied by the number of directors to be elected.[8] Cumulative voting may also be defined as the procedure of voting for a company's director where each shareholder is entitled to one vote per share multiplied by the number of directors to be elected[9]. In relation to corporations cumulative voting has also been defined as a system of voting by shareholders for directors in which each shareholder can multiply his voting shares by the number of candidates and vote them all for one

[3] World Bank, 'Improving the Legal Framework for Protecting Minority Shareholders and Corporate Governance in St. Lucia' (*Final Legal Gap Analysis Presented to the Working Group*) page 2

[4] O C Aduma & C S Ibekwe, 'Protection of Minority Shareholders Under Nigerian Company Law' (2017) 8 (2) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 98

[5] J Hardman, 'An Institutional Analysis of UK Ostensible Minority Shareholder Protection Mechanism' (2023) *Journal of Corporate Studies*, 401

[6] Ibid

[7] S.E. Ojogbo and N.V. Ezechukwu, 'Shareholder Protection: A Comparative Review of the Corporate Legal/Regulatory Regimes in the UK and Nigeria' available at <https://www.open-access.bcu.ac.uk/9882/1/Shareholder%20Protection-%20A%20Comparative%20Review.pdf> assessed on February 15 2025.

[8] J Chen, 'What is Cumulative Voting?' Available at <https://www.investopedia.com/terms/c/cumulativevoting.asp> assessed on February 14 2025

[9] C Claire, 'Cumulative Voting' cited in O C Aduma & I K Oraegbunam, 'Adoption of Cumulative Voting Technique in Corporate Governance in Nigeria: Prospects and Challenges' available at <https://www.academia.edu> assessed on August 13 2024

person for director.[10] This is intended to give minority shareholders a chance to elect at least one director.[11]The importance of cumulative voting is that each shareholder does not just have one vote per a share but his votes is equals to the number of shares he owns multiplied by the number of directors to be elected at a shareholder meetings. Its significance lies in its ability to strengthen the ability of minority shareholders to elect members of the board of directors hence ensuring proportional representation at the board.

This is how cumulative voting works in practice according to Dan Byrne of the Corporate Governance Institute

- Every shareholder gets a number of votes equal to the number of shares they have multiplied by the number of positions available.
- Shareholders are free to use those votes for as many or as few candidates/options as they like.
- For example, if a shareholder has 100 shares in a vote to fill three board seats, they will have 300 votes. They can use all 300 votes to back one candidate or they can split their 300 votes across two or three candidates ensuring that they have a say in the race for each board seat.[12]

Accordingly, the technique allows shareholders to either cast all of their cumulated votes for a single candidate or split them among different candidates depending on their strategy. This technique thus allows minority shareholders to elect a candidate to the board of directors thereby guaranteeing proportional representation at the board.

3. A preview of the Voting Techniques in the Nigerian Company Law

Voting is a process of collating the views of the members of the company to determine the appropriate majority required to act upon an issue. It is through voting that members express their views on a resolution put to vote. Without voting it is almost impossible for resolutions to be passed at the company meetings. Whether it is ordinary or special resolution, it is voting that determines that the resolution has garnered the appropriate majority strength needed to pass the resolution. The CAMA 2020 recognizes two types of voting. Voting on a show of hands and voting by poll.[13]

3.1 Voting on a Show of Hands

This is the default method of voting under Nigerian company law. In other words, except where a poll is demanded voting should always be by show of hands. Section 248 of the CAMA 2020 provides that at any general meeting, a resolution put to vote shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded. This type of voting takes account of only the numerical strength of members present and voting either in person or by proxy without regard to shareholding of individual members. As the name implies members are usually asked to raise their hands and the raised hands are counted for or against a particular resolution. The number of raised hands with the appropriate majority wins the vote either in support of or against the proposed resolution.

According to section 248(2) of CAMA 2020, unless a poll is demanded a declaration by the chairman that a resolution has on a show of hands been carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of the proceedings of the company is a conclusive evidence of the fact. It may not be necessary to prove the number or

[10]<https//dictionary.law.com/Default.aspx?letter=C>
[11]*Ibid*
[12] D Byrne, 'What is Cumulative Voting?' available at <https://www.thecorporategovernanceinstitute.com/insights/lexicons/what-is-cumulative-voting/> assessed 20 March 2025
[13] CAMA 2020, s 248(1)

proportion of the votes recorded in favour of or against the resolution.[14] It must be observed that this type of voting is usually used in passing non contentious or innocuous resolution.[15] In more serious issues, shareholders with substantial shareholding will always demand a poll especially where they have some personal or pecuniary interest to protect.[16] In the election of the members of the board of directors, majority shareholders will always exert their influence by demanding a poll. This is because majority shareholders always have vested interest in such election.

3.2 Voting By Poll

Before this type of voting is adopted it must be demanded otherwise the voting will be by show of hands.[17] This is voting according to the aggregate of shareholding owned by each shareholder entitled to vote. In other words, the voting power of each shareholder will depend on the aggregate of his investment in the company. It is no longer 'one man one vote' but 'one share one vote'. This is to say that each ordinary share carries a right to one vote per share.[18] Non -voting or weighted shares is outlawed by CAMA with certain exceptions.[19] Weighted shares are shares that carry more than one vote per share. Section 168 of CAMA 2020 creates an exception where a company may issue preference shares with more than one vote. Where this is the case a preference shareholder may have more votes than an ordinary shareholder with the same number of shareholding. A few ordinary shareholders also may have more votes than a greater number of other shareholders because their investment is greater. This is the significance of poll voting.

The following persons or group of persons has the right to demand a poll

a) The chairman where he is a shareholder or proxy;
b) At least three members present in person or by proxy;
c) A member or members present in person or by proxy and representing at least one tenth of the total voting rights of all the members having the right to vote at the meeting; or
d) Any member or members holding shares in the company. Such shares must confer a right to vote at the meeting of the company. Such shares must be shares on which an aggregate sum has been paid up equal to at least one-tenth of the total sum paid up on all the shares conferring that right.

The right to demand a poll cannot be taken away by the articles except on the question of the election of the chairman of the meeting or adjournment of the meeting otherwise such a provision is void.[20] Proxies also have the power to demand a poll or join in demanding a poll.[21] However, there is no right to demand a poll on the election of the members of the audit committee which is usually decided on a show of hands.[22] Where a poll is demanded it is taken in such a manner as the chairman may direct.[23] The result of the poll is taken to be the resolution of the meeting at which the poll was demanded.[24] Where the poll is not taken immediately other business may be proceeded with pending the taking of the poll but a poll demanded on the question of the election of the chairman of the meeting or adjournment of the meeting is taken immediately.[25] In the case of equality of votes whether on a show of hands or by poll the chairman of the meeting shall be entitled to a second or

[14] CAMA 2020, s 248(2)
[15] O C Aduma & I K Oraegbunam, 'Adoption of Cumulative Voting Technique in Corporate Governance in Nigeria: Propects and Challenges' available at <https://www.academia.edu> assessed on August 20, 2024
[16] Ibid
[17] CAMA 2020 s 248(1)
[18] ibid s 140
[19] ibid
[20] CAMA 2020 s 249(1)
[21] ibid s 249(2)
[22] ibid s 249(3)
[23] ibid s 250(2)
[24] ibid
[25] ibid s 250(4)

casting vote.[26] A member entitled to more than one vote, if he votes, need not use all his votes or cast all the votes he uses in the same way.[27]

4. A Review of the Traditional Voting Techniques

As already discussed, the traditional voting technique allowed by CAMA 2020 is either voting on a show of hands or voting by poll. Under voting on a show of hands each shareholder irrespective of the number of his shareholding is entitled to one vote. Hence under this system all shareholders are treated equally and minority shareholder issues do not arise. However, the problem with this technique is that it is seldom used on serious issues like the election of the members of the board of directors as majority shareholders usually demand a poll. Under poll voting majority shareholders due to their majority shareholding has the ability to elect all the members of the board and minority elects none. It therefore does not guarantee proportional representation at the board by both the majority and minority shareholders. The implication is that in companies where poll voting is employed to elect the members of the board of directors minority shareholders are mere onlookers and lacks effective means of influencing company policy that will protect their interests. The injustice inherent in such a system was highlighted by John Stuart Mill in his 'Representative Government' when he stated:

> *...because the majority ought to prevail over the minority, must the majority have all the votes, the minority none? Is it necessary that the minority should not even be heard? Nothing but habit and old association can reconcile any reasonable being to the needless injustice. In a really equal democracy, every, or any section would be represented, not disproportionately but proportionately. A majority of the electors would always have a majority of the representative; but a minority of the electors would always have a minority of the representatives. Man for man, they would be as fully represented as the majority. Unless they are, there is not equal government, but a government of inequality and privilege: one part of the people rule over the rest: there is a part whose fair and equal share of influence in the representation is withheld from them; contrary to all just government, but above all, contrary to the principle of democracy, which professes equality as its very root and foundation.*[28]

Although the above excerpts were written with regard to minority representation in political settings, the sentiments expressed apply with equal force to corporate elections. It is for this reason that cumulative voting was proposed for corporate elections to allow minority shareholders elect a representative to the board of directors. This voting technique instead of allowing one vote per share as in poll voting allows minority shareholders to cumulate their votes according to the number of directors to be elected. They may cast all of their votes for one nominee or divide them across different positions. This system strengthens the ability of the minority shareholders to elect representative to the board of directors thereby ensuring proportional representation at the board.

Cumulative voting was proposed as a result of the injustices to the minority shareholders inherent in the poll voting. This is especially in the election of the members of the board of directors. Under the traditional system, when poll is demanded the shareholder with majority stake elects all the directors and the minority shareholder elects none. An illustration will suffice. Where the entire shareholding in the company for instance is 100, shareholder A has 60 shares and shareholder B has 40 shares and there are three directors to be elected, shareholder A using his 60 shares under the poll voting will elect all three directors. Shareholder B using his 40 shares will not have the chance to elect any. When all the members of the board are directors elected by only the majority

[26] ibid s 250(3)
[27] ibid s 250(1)
[28] Quoted in E A Stephan, 'Cumulative Voting and Classified Boards: Some Reflections on Wolfson v. Avery' (1956) 31(3) Notre Dame Law Review 352

shareholders, minority shareholder protection issues arises. Hence there is the potentiality of discrimination or oppression of the minority shareholders by the majority. This is more so as the majority shareholder has the opportunity of determining the direction of the company policy even to the detriment of the minority shareholders.

However, under cumulative voting shareholder B can multiply his 40 shares by 3 which is the number of directors to be elected and cast the cumulated votes for one candidate thus strengthening his chance of electing a director. It is for this reason that cumulative voting is considered as increasing shareholder rights in most corporate governance index.[29]

5. The Challenges of Cumulative Voting

Cumulative voting is not without its challenges. However, with the simultaneous implementation of effective strategies the challenges can be overcome. Some of the identified challenges of cumulative voting technique includes:-

5.1 Lack of Popularity among Company Management

Though cumulative voting is known to improve minority shareholder protection it is not popular among company management and majority shareholders. In jurisdictions where cumulative voting is not mandatory or not provided by statutes companies rarely adopt it. This is because the majority shareholders with their voting power will always defeat any attempt to amend the company's articles to provide for cumulative voting. In India only one company is known to have adopted cumulative voting notwithstanding that it is provided in the Companies Act of India albeit not mandatorily. The adoption of cumulative voting is also declining in the USA where it is not made mandatory.[30] The only exception is China where there seems to be a marked increase in the adoption of cumulative voting due to the activities of regulatory agencies.[31]

5.2 Use of Schemes and Devises to Circumvent the Effectiveness of Cumulative Voting

Due to the fact that cumulative voting is not popular among majority shareholders and management various schemes and devises are employed by them to render cumulative voting ineffective. This mostly applies where cumulative voting is made mandatory by statute. Firstly, since directors elected by the minority shareholders through cumulative voting are in the minority in the board the majority directors can turn board meetings into a platform for informal discussions while committees without minority representation are appointed to perform acts of management.[32] In India management sought to improve their shareholder grievance resolution mechanisms as an alternative to cumulative voting.[33] In Taiwan where cumulative voting is mandatory controlling shareholders used extensive proxy solicitations to regain control of the board.[34]

5.3 Classified Boards

Classified board of directors has been described as one in which only a part usually one third of the directors are elected annually.[35] Classified boards make it difficult for minority shareholders to cumulate enough votes to elect a director. The significance of the cumulative voting technique is that minority shareholders are given the opportunity to multiply their shares by the number of directors to be elected. If a fewer number of directors are elected then the number of cumulated

[29] Y H Lin and Y Chang, 'Does Mandating Cumulative Voting Weaken Controlling Shareholders? A Difference-in-Difference Approach' (2017) 52 *International Review of Law and Economics* 112

[30] Y Wenjia, 'Cumulative Voting: In the US (Declining), in China (Rising) and the EU (Not-Adopted)' (2015) 12(1) *European Company and Financial Law Review,* 86

[31] Ibid*,* 98-99

[32] O C Aduma & I K Oraegbunam (n 15).

[33] M Vyas, 'Retail Investors, IGFs bank on Cumulative Voting Rights for Bigger Say in Firms' available on https://m.economictimes.com/news/company-trends/retail-investors-igfs-bank-on-cumulative-voting-rights-for-bigger-say-in-firms/articleshow/42013701.cms assessed on April 18, 2025

[34] Y H Lin & Y Chang, 'Does Mandating Cumulative Voting Weaken Controlling Shareholders? A Difference-in-Difference Approach' (2017) 52 *International Review of Law and Economics*, p 113

[35] O.C. Aduma & I. K. Oraegbunam, (n 15) p 10

votes available to minority shareholders are considerably reduced. This in turn reduces the chances of minority shareholders to elect a director as the percentage number of votes needed to elect a director is increased. In the two United States cases of *Wolfson v Avery*[36] and *Wright v Central Colony Water Co*[37] it was severally held that classified boards are inconsistent with and violates the principle of cumulative voting.

It is observed that most Nigerian companies adopt classified board structure. In other words, a fraction of their directors are elected or re-elected each year. This is notwithstanding that the cumulative voting technique is not adopted in corporate elections in Nigeria. The moral argument in favour of classified boards is that it ensures continuity in the board of directors. However, the opportunity for re-election of directors whittles down this argument. It is not conceivable that all the members of a competent board will be changed in one fell swoop. Shareholders should retain the right to determine those who run the affairs of the companies in which they have invested. Technically, classified boards do not take away the right of cumulative voting but in practical sense it can render the right nugatory for minority shareholders.[38]

5.4 No Platform for Vetting of a Potential Board Nominee

The company directorship is not an all comer's affairs. There is a positive relationship between board composition and firm performance.[39] A director of a company must be competent and qualified possessing requisite skill and expertise to contribute meaningfully to the business goals and objectives of the company. It is for this reason that most companies have standard recruitment process that ensures that candidates to the board of directors are properly screened to ensure that they meet the present needs and requirements of the company. Minority shareholders may not have a platform for such screening. Accordingly, unqualified persons may through the guise of minority shareholder protection gain board seats.

5.5 Distracting Activism at the Board

Every director of a company has a duty to exercise the powers and discharge the duties of his office honestly, in good faith and in the best interest of the company and shall exercise that degree of care, diligence and skill which a reasonably prudent director would exercise in comparable circumstance.[40] This duty of care imposed on company directors by CAMA is a duty to the company and not to the shareholders.[41] In *Artra Industries Nig Ltd v Nigerian Bank for Commerce and Industry,*[42] the Supreme Court of Nigeria held that the directors of a company must adhere strictly to the statutory provisions which enjoin them to consider the interest of the company as paramount. The director elected by the minority shareholders might lose sight of this duty and start unnecessary activism at the board of directors in order to please the minority shareholders who elected him. This thereby reduces the board to a platform for unhealthy activism instead of transacting the more serious business of the company. It might also lead to divisiveness at the board preventing the board from acting collectively as one body.

5.6 Corruption

Corruption in its varied forms is one of the major problem plaguing the Nigerian society in general and corporate governance in Nigeria in particular. Corruption was implicated in the failure of 5 banks in the banking crisis of 2008/2009. Where the minority shareholders elect a director that lacks integrity using cumulative voting, a corrupt management might lure him with monetary gifts and

[36] 126 NE2d 701
[37] (1885) 67 Cal. 532
[38] C M Williams, 'Cumulative Voting for Directors', (1955) 22(3) *The University of Chicago Law Review* 751-759
[39] M Tanko & O O Kolawole, 'Corporate Governance and Firm's Performance in Nigeria' available at https://ssrn.com/abstract=1578002 assessed on August 23, 2025
[40] CAMA 2020, s 308(1)
[41] *Percival v Wright* (1902) 2 Ch. 421
[42] (1998) 4 NWLR (Pt 546) 375

pecks of office to abandon the interest of the minority shareholders that elected him. This in effect undermines and strikes at the root of the very purpose of cumulative voting which is protection of the interests of minority shareholders. In this sense the minority shareholders are at a disadvantage since they may not have the financial power and clout to sustain the loyalty of their board nominee.

5.7 Removal of Minority Shareholder Board Nominee

Where the director elected by the minority shareholder using cumulative voting proves headstrong and unbendable the majority shareholders who can muster the votes may remove him using their voting power. The minority shareholders may not be able save their director because of their limited voting power. Hence through the process of removal the majority shareholders can undermine the effectiveness of cumulative voting. It has been recommended that minority shareholders should be given the statutory right to prevent the removal of their director if they do not consent to the removal.[43] It remains to be added that such statutory power should be in form of judicial remedy to apply to the court to have the removal cancelled.

6. The Benefits of Cumulative Voting

There is no doubt that cumulative voting provides lots of benefits to the minority shareholders in particular and corporate governance in general. Below are some of the identified benefits of cumulative voting technique which for all intents and purposes are not exhaustive.

6.1 Equity and Fairness

Cumulative voting technique promotes equity and fairness in company administration by giving minority shareholders a voice at the board of directors. It is a winner takes it all under poll voting with minority shareholders becoming passive onlookers in the whole process. The majority shareholders therefore have the sole opportunity to determine the direction of company policy without any input from the minority shareholders. Cumulative voting does not take away the right of majority rule from the majority shareholders but ensures that the minority shareholders are proportionately represented at the board. The majority shareholders with their majority shareholding will still control majority of the board seats while the minority shareholders controls some seats proportionately to their shareholding. This ensures equity and fairness in company management.

6.2 Promoting Minority Shareholder Activism

Minority shareholder apathy is recognized as one of the problems of corporate governance in Nigeria. This applies when minority shareholders neglect to engage management on issues pertaining to the management of the company and the interests of minority shareholders. Some rational justification has been proposed for this shareholder behavior. It is believed that since the minority shareholders lacked the capacity to influence decisions at the company meetings it makes common sense to stay away since their efforts will not yield any fruit. Cumulative voting takes the power back to minority shareholders by increasing their capacity to elect a director and ultimately influence company policy. This solves the problem of apathy and provides incentives for minority shareholder activism.

6.3 A Stable Platform for Minority Shareholder Engagement

The relationship between minority shareholders and company management has always been frosty with minority shareholders accusing management of attempt to shortchange them and the management laying claim to promoting the best interest of the company as a going concern. Cumulative voting provides a platform for electing directors with the trust of minority shareholders. This minority shareholder director serves as a link between minority shareholders and management diffusing the crisis of confidence between them.

[43] O C Aduma & I K Oraegbunam, (n 15) p 12

6.4 Promoting Information Access for Minority Shareholders

Experience has shown that most times information passing through the company's formal channel is not reliable. An audit conducted by the Central Bank of Nigeria (CBN) on 24 banks revealed that five banks were filling their financial positions with forged figures, distorted profits declarations and discrepancies in asset and liabilities.[44]Access to the right information facilitate investment decision and provide a potent tool for the minority shareholders to police the company management. With an insider director at the board the right of the minority shareholders to the right information both through the formal and informal channels are guaranteed. It gives minority shareholders direct contact with the business of the company and its management.[45]

6.5 Enhancing Corporate Governance

By providing minority shareholders with a greater voice, cumulative voting can promote more effective corporate governance and decision making. This is in the overall interest of the company and minority shareholder protection. Research findings suggests that the adoption of cumulative voting led to the election of directors with better personal attributes, academic qualification and professional development in some listed firms in China.[46] The election of such directors, research also found, led to an improved corporate performance in firms that adopted the cumulative voting technique in China.[47]

6.6 Attracting Foreign Investment

The adoption of cumulative voting in Nigeria could contribute to attracting the much needed foreign investment at this critical period of economic downturn. This is by demonstrating commitment to best practices in corporate governance and minority shareholder protection. This will have the effect of engendering investor confidence in the Nigerian economy.

7. Making a Case for the Adoption of Cumulative Voting Technique in Nigeria

The protection of minority shareholders' rights is a critical aspect of corporate governance particularly in emerging economies like Nigeria, where concentrated ownership structures and potential expropriation by majority shareholders pose significant risks. The imperative of safeguarding minority shareholder interests lies in fostering a fair and equitable corporate environment that encourages investment, promotes transparency and enhances overall market confidence. The concentration of ownership and control in the hands of majority shareholders can lead to the marginalization of minority interests potentially resulting in decisions that prioritize the interests of the controlling group over those of minority shareholders.

In this context, the adoption of cumulative voting technique could serve as a vital mechanism for empowering minority shareholders, enabling them to secure representation on the board and thereby ensuring that their voices are heard in the strategic decision-making processes of the company. This will checkmate any malfeasance before they occur reducing the reliance on the legal and institutional remedies. The cumulative voting technique offers a proportional representation mechanism that can help mitigate the dominance of majority shareholders, thereby providing the minority shareholders with a more effective means of participating in corporate governance. By allowing shareholders to concentrate their votes on specific candidates, cumulative voting increases the likelihood of minority shareholder representation on the board. This in turn can lead to more balanced decision making, improved oversight and enhanced accountability.

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[44] O.B.Akande, 'Corporate Governance Issues in the Nigerian Banking Industry', (June 2016) *Doctoral Study, Walden University* page 47

[45] O C Aduma & I K Oraegbunam (n 15) *p* 13

[46] Y Chen & J Du, 'Regulatory Reform of Cumulative Voting in Corporate China: Who Were Elected and Its Impacts' (January 2015) Asian Finance Association (AsianFA) 2015 Conference Paper, available at SSRN: https://ssrn.com/abstract=2556157 assessed on May 1, 2025

[47] ibid

The cumulative voting technique is not without its challenges. However, the benefits outweigh the challenges. More so, with the simultaneous implementation of effective strategies, the challenges of cumulative voting technique can be surmounted. It is for these reasons that we believe that a case has been made for the adoption of mandatory cumulative voting technique in Nigerian corporate governance landscape.

8. Conclusion

Minority shareholder protection is a critical aspect of corporate governance. In most corporate governance codes and corporate regulatory frameworks around the world efforts are being made to develop a robust minority shareholder protection framework. This among others shows commitment to international best practices in corporate governance and minority shareholder protection and sustains the confidence of investors in an economy. Efforts have been made in this paper to demonstrate how the adoption of cumulative voting will improve minority shareholder protection in Nigeria. Potential challenges have been identified together with the immense benefits. It is believed that the implementation of the recommendations of this paper will mitigate the challenges while maximizing the benefits.

9. Recommendations

1. The cumulative voting technique should be adopted and made mandatory for all companies in Nigeria. Although the Companies and Allied Matters Act was re-enacted in 2020 there is no provision for cumulative voting. This is a serious lacuna. Amendment should be effected to the CAMA providing for a mandatory cumulative voting technique.
2. Classified boards should be modified such that at least one half or three fourth of the directors should be elected annually. In such way, chances of minority shareholders to elect a director are not unduly whittled down while balancing the need to ensure continuity at the board.
3. Nigerian regulatory framework should be strengthened to support the effective implementation of cumulative voting. The courts particularly the Federal High Court should be repositioned for a prompt and efficient disposal of cases. It makes no sense to create a right when such right cannot be enforced in fast and efficient means. The Corporate Affairs Commission (CAC) and the Securities and Exchange Commission (SEC) should be strengthened to sanction any company that violates the cumulative voting provisions.
4. A comprehensive guideline to govern cumulative voting should be developed by the CAC which will include safeguards to ensure director independence.
5. Minority shareholders should establish formal criteria for vetting and nominating board candidates emphasizing integrity, independence and strategic understanding.
6. Shareholders and management should adopt proxy solicitations and proxy campaigns as a more civil approach to influencing company policy and effecting change as against the more prevalent practice of corporate bullying and corrupt inducements.
7. The CAC and SEC should implement a robust investor education programs focusing on long term value creation, governance principles and constructive engagement.
8. Minority shareholder activism in a constructive manner should be encouraged by making it easier and cheaper to attend and vote at company meetings. Virtual meetings where feasible is encouraged. It does not make sense that minority shareholders will outsource their statutory powers and duties to the leadership of their shareholders' association. They must be active and participate.