journals.unizik.edu.ng/jcpl/index ISSN: 2736-0342
NNAMDI AZIKIWE UNIVERSITY, AWKA
JOURNAL OF COMMERCIAL AND PROPERTY LAW

Legal Regime of Corporate Governance and Shareholders' Rights in Nigeria

Shajobi-Ibikunle, Gloria*
Shajobi-Oseghale, D. Oluwadamilola**

Abstract
The regulatory environment of corporations in Nigeria has gradually skewed towards an imbalance in the powers of the Shareholders vis-à-vis that of the Directors. This has led to the marginalization of the shareholders. A better understanding of the roles and rights of Shareholders is required to make informed and responsible investment decisions. This requires reasonable and timely access to sufficient information about issues affecting their investments and an understanding of the engagement customs and legal framework of the market in which they invest. This paper analyzed the existing Corporate Governance regulatory framework on the rights of Shareholders. The doctrinal methodology was used in in demonstrating the importance of shareholder rights to the development of the Nigerian Stock Exchange, drawing extensively from the provisions of the Nigerian Code of Corporate Governance, 2018 as well as other relevant legislation, primary data from cases, and secondary data sources. The research found that regulatory dysfunction is a major barrier to the exercise of shareholder rights and recommends more effective mechanisms to ensure the implementation and enforceability of the principles of the Code.

Keywords: Shareholder rights, governance code, Netting, corporate governance

1. Introduction

The importance of an effective regulatory body in a growing economy cannot be overemphasized. The key issue in corporate regulation is ensuring that management performs its duties to meet the legitimate expectations of the shareholders and other stakeholders. This paper examines the Legal Regime of Corporate Governance for Corporations in Nigeria as a tool for protecting the rights of shareholders. The Nigerian corporate governance regime is characterized by a combination of a statutory framework and subsidiary legislation enacted by the relevant regulatory authorities. While the general laws govern every entity incorporated in Nigeria, the sector-specific laws govern only companies that operate within their specific sector or industry. This research will focus on the general statutory framework and briefly touch on specific guidelines released by regulatory authorities.

2. Legal Framework on Corporate Governance

2.1 The Constitution of the Federal Republic of Nigeria, 1999

The Constitution provides the basis for shareholders to exercise their rights in any business entity. Section 16 (1) (b) [1] provides that the State shall 'control the national economy in such manner as to secure the maximum welfare, freedom and happiness of every citizen on the basis of social justice and equality of status and opportunity.' Section 16 (1) (b)[2] also protects the rights of persons to participate in areas of the economy as well as the right of every citizen to engage in any economic activities outside the major sectors of the economy.

These provisions are the bedrock and starting point of the exercise of shareholder rights in Nigeria and impose a duty on the State through its regulations and regulatory bodies to ensure that those rights are provided and protected.

***Shajobi-Ibikunle, Gloria,** PhD, FCIA. Associate Professor of Criminal Law & Ag Director, Center for Gender Security studies & Youth Advancement, University of Abuja. Email: gloria.shjaobi-ibikunle@uniabuja.edu.ng. Tel: +234 80 3422 5918.
****Shajobi-Oseghale, D. Oluwadamilola,** PhD. Email: derebipi@gmail.com. Tel: +234 80 0607 4124
[1] The Constitution of the Federal Republic of Nigeria, 1999
[2] Ibid

2.2. Companies and Allied Matters Act, 2020

Companies and Allied Matters Act 2020[3], has provisions to ensure efficient, accountable, and transparent management of companies in Nigeria with the introduction of new provisions concerning Directors, secretaries, external audit and auditors, meetings, and corporate finance to strengthen corporate governance policies, practices, and regulations in the Country.

To codify salient common law principles and in recognition of the strategic role that Directors play in the practice of corporate governance, Section 305 of CAMA provides that 'A director of a company stands in a fiduciary relationship towards the company and shall observe utmost good faith towards the company in any transaction with it or on its behalf.'[4] CAMA also provides that a director is a person duly appointed by the Company to direct and manage the affairs of the Company[5]. This presupposes that the director must possess the requisite skill, experience, and time to perform such a function.[6]

CAMA further provides other duties of a director viz; Duty to act in the company's best interest at all times,[7] Duty to exercise his powers for the specified purpose and not for a collateral purpose.[8] Furthermore, the duties of a director should not conflict with his interests[9] and a director must discharge his duties honestly and in good faith, with all degree of skill and care that a reasonable and prudent director will exercise in comparable circumstances.[10]

The Act imposes a duty on Directors to disclose multiple Directorships as well as age as both matters are germane to the effective Management of a Corporation. The Act further restricts the number of Companies in which a public company director can serve to five.[11] The members of the audit committee of a public company shall now be 5 (five) with 3 (three) shareholders and 2 (two) non-executive Directors. All members are required to be financially literate with at least one of the members belonging to a professional accounting body in Nigeria established by an Act of the National Assembly.[12] Additionally, public companies are now required to always maintain a minimum of three (3) independent Directors.[13] The Act[14]also provides for the qualifications of an independent director. These provisions are quite loose compared with Principle 7 of the Nigerian Code of Corporate Governance, 2018. Section 275 (3) of the Act provides for who is so qualified.[15]

2.3. Investment and Securities Act, 2007

The Investment and Securities Act, 2007[16] is the substantive law that governs and regulates the Nigerian capital market and oversees the activities of public and regulated private Companies in Nigeria. The Act is established to promote investment and provide protection for such investment in the Nigerian capital market. This protection is important because investment in the capital market goes beyond profitability. Dissemination of adequate and accurate information is necessary to enable investors to make value judgments as to whether to invest their money or not. The issue of transparency is one of the fundamental principles of corporate governance. The most crucial issue remains how to repair the damaged corporate integrity caused by corporate scandals without undermining the principles upon which the success of

[3] Hereinafter referred to as CAMA.
[4] Ibid, 305 (1) and (2)
[5] Ibid, s 269
[6] Ibid, s 278.
[7] Ibid, s 305 (3) and (4)
[8]Ibid, s 305 (5).
[9] Ibid, s 306
[10] Ibid, s 308
[11]Ibid, s 307 (2).
[12] CAMA, s 404 (3) and (5).
[13] Ibid, s 275 (1)
[14] Ibid, s 275 (3) a-d
[15] An independent director is one whose relatives either separately or together with him or one another, for two years preceding his appointment, was not an employee of the Company; did not make or receive payments of more than 20,000,000 from the Company; did not own more than 30% share or other ownership interests directly or indirectly in the Company; and was not engaged directly or indirectly as an auditor of the Company.
[16] Hereinafter referred to as ISA.

the modern capitalist economy is based. The role of government in corporate governance is very important and highly delicate.[17]

The provisions of ISA make it compulsory for all securities exchange and/or capital trade points to be registered with the Securities and Exchange Commission (SEC)[18]. It also requires all capital market operators to be registered by the Securities and Exchange Commission (SEC).[19] The fundamental reason behind the requirement for registration is to enable SEC to regulate, supervise, monitor, and protect the interest of investors.

ISA further states conditions for the registration of securities exchanges, capital trade points, and other self-regulatory organizations and provides for the roles and powers of SEC to issue directives to them. The law further empowered SEC to regulate the activities of capital market operators, which includes the requirement by the capital market operators to maintain accounts and SEC to appoint an officer for supervision of capital market operators.[20] SEC is further empowered under the law to make routine and special examinations and reports on capital market operators.[21] Section 36 further empowers SEC to prohibit trading in particular securities, where it believes it is important for the protection of the public. ISA also provides for the filing of annual and periodic reports with SEC and requires a public company to establish a system of internal control over its financial reporting and security of its assets. It places responsibility for ensuring the integrity of the company's financial control reporting on the Board of Directors.[22] The Board is also required to report on the effectiveness of the company's internal control system in its annual report.[23] Auditors to public companies must be registered with SEC and are mandated to provide in their audit report to the company a statement as to the existence, adequacy, and effectiveness or otherwise of the internal control system of the public company.[24] Section 67 of ISA controls invitations to the public for public offers and sale of securities and sections 68 and 69 provide the requirements for the public offer and sale of securities are contained. These requirements largely protect investors and the public from any form of fraud and misrepresentation by companies in their dealings with the public. To ensure transparent and accountable transactions in securities dealings, ISA also made stringent provisions concerning fraud and other securities manipulations and prohibits false trading and market rigging transactions[25] along with securities market manipulation and false or misleading statements in respect of securities transactions.[26]

The Act further prohibits the inducement of persons to deal in securities of a company fraudulently and the dissemination of illegal information.[27] Its provisions guarantee the protection of outsiders against the use of insider information to secure an undue advantage in the purchase or sale of corporate securities[28] and prohibit abuse of information obtained in an official capacity.[29]

ISA places an obligation on employees of a capital market operator or public company to disclose information connected with activities of their workplace which tend to show that a criminal offence has been, is being, or is likely to be committed and that a person has failed, is failing, is likely to fail or otherwise omitted to comply with any legal obligation to which he is subject.[30] These provisions are

[17] E Adegbite, 'The Determinants of Good Corporate Governance: The Case of Nigeria', (PhD Thesis, City University London, UK, 2010).
[18] ISA, s 28
[19] ISA, s 38.
[20] Ibid, s 39 and 45
[21] Ibid, s. 46 and 47
[22] Ibid,s 60, 61 and 62
[23] Ibid
[24] Ibid, s 63. Section 65 of ISA also provides sanctions for contravention of the above provisions both for the company and the auditors.
[25] ISA, s 105
[26] Ibid,s 106 and 107
[27] Ibid, s 108 and 109
[28] Ibid, s 117
[29] Ibid, s 118
[30] Ibid, s 306

intended to be akin to Whistleblower provisions and Section 306 (5) – (12) seems to provide stronger protection than the provisions of the Companies and Allied Matters Act, 2020.[31]

2.4. Financial Reporting Council of Nigeria Act, 2011

The Act establishes the Financial Reporting Council of Nigeria which is charged with ensuring good corporate governance, reliability of Financial Statements issued and protection of investors and stakeholders, among other things.32 Sections 11c and 51c of the Financial Reporting Council of Nigeria Act confer upon the Council to issue the code of corporate governance and guidelines. It is in furtherance of these powers that the Nigerian Code of Corporate Governance 2018 was approved by the Council.

The Council is further empowered to adopt and monitor accounting, auditing and financial reporting standards and ensure consistency between standards issued under the International Financial Reporting Standards (IFRS)33and the International Auditing and Assurance Standards Board respectively.34

2.5 Financial Reporting Council of Nigeria (Amendment) Act, 2023

The Financial Reporting Council of Nigeria (Amendment) Act, 2023 (Amendment Act) did not repeal the Financial Reporting Council of Nigeria Act, 2011 (the Act), instead, it introduced key innovations to align the Act with normative standards for operational efficiency and effectiveness of financial reporting and corporate governance regulations in Nigeria. Among the amendments made are:

The Amendment Act35 substitutes section 77 of the Act, expanding the definition of "Public Interest Entities." This has had the effect of inadvertently expanding the scope of the application of the Nigerian Code of Corporate Governance, 2018. The Amendment Act[36] reviews Section 8 of the Act by requiring the Council to maintain a national repository for electronic submission of General-Purpose Financial Statements by Public interest Entities.

Under the amendment act, the Council has been charged with an additional duty of ensuring compliance with the adopted standards issued by the International Financial Reporting Standards Foundation (IFRS), and the International Public Sector Accounting Standards Board (IPSASB) in relation to financial reporting, auditing, and corporate governance of public interest entities[37.]

In addition to the council's authority to issue rules and guidelines for the purpose of implementing auditing and accounting standards, the amendment act has gone further to expand the scope of the Council's authority. Under the act, the Council is charged with the authority to issue rules and guidelines for the purpose of implementing not only accounting and auditing standards, but also financial reports and corporate governance.[38]This gives the Council a more obvious role in ensuring that finances are clearer and that organizations adopt more efficient corporate governance practices. The Financial Reporting Council of Nigeria (Amendment) Act 2023 is a significant step forward for Nigeria's financial regulatory landscape. These amendments are aimed at promoting transparency, adherence to international standards, and accountability.

2.6 Securities and Exchange Commission's Guidelines on Corporate Governance

In line with the major duty of SEC of protecting investors and ensuring the growth and development of a transparent and efficient capital market, SEC adopts several regulatory tools to affirm sound corporate governance in the Capital Market. Sequel to the enactment of the Nigerian Code of Corporate Governance, 2018 by the Financial Reporting Council of Nigeria (FRCN) SEC issued its Corporate

[31] CAMA, s 357. Provision is made for an employee to lodge a complaint with the Commission-under section 306 (6) and (7); for reinstatement, where dismissal or termination has occurred under section 306 (8); compensation, and a penalty not exceeding N5,000,000 in addition to compensation for companies that contravene the provisions of section 306 (9) & (10).
[32] Financial Reporting Council of Nigeria Act 2011 s 11
[33] Ibid, s 52 (1)
[34] Ibid, s 53
[35] Financial Reporting Council of Nigeria (Amendment) Act 2023 s 24
[36] Ibid, s 3.
[37] Ibid,s 8 (h)
[38] Ibid, s 8 (2)

Governance Guidelines in 2020 in the form of additional recommended practices, largely obtained from the 2011 SEC Code of Corporate Governance for Public Companies in Nigeria.[39] These guidelines are expected to improve the standards of transparency, accountability, and good corporate governance of companies, without unduly inhibiting enterprise and innovation.

The Guidelines restrict the membership of the Board to a minimum of five (5) members.[40] Also, where cross membership on the Boards of two or more companies will lead to a conflict-of-interest situation then it shall be disallowed. This is to safeguard the independence and transparency of the Board.[41]

The Guidelines require a minimum of one independent director on its Board and an independent director requires that he/she shall not be a partner or an executive of the company's statutory audit firm, internal audit firm, legal or other consulting companies that have a material association with the company for three financial years preceding his/her appointment.[42]

Guideline 8 provides that Shareholders should be provided with any real or potential conflict of interest of potential Shareholders, including whether a proposed appointee is an interlocking director. Guideline 10.2 provides that the Board shall approve the remuneration of each Executive Director including the CEO, individually taking into consideration the direct relevance of skill and experience to the company at that time as part of the controls in place for Executive remuneration as shareholders are weary of executives over compensation to the detriment of the company and by extension, the shareholders. The Code thus, provides for a risk-based internal audit process and places an obligation on the internal audit function to identify priority areas or areas of greatest risk or threat to the organization as well as mitigants for such.[43] The Internal Audit function has become a veritable tool for checkmating the excesses of the executive in public and regulated companies.

Guidelines 13 and 14 impose a duty to ensure zero tolerance for corruption and corrupt practices and engage in disclosure beyond the statutory requirements of the Companies and Allied Matters Act, 2020. While the intent of these provisions may be to ensure a reduction of cases of information asymmetry between shareholders and management, it does appear to be rather abstract. It is submitted that there needs to be clear standards and requirements placed on companies in terms of disclosure.

2.7 Nigerian Code of Corporate Governance, 2018

Until 2016, there has been no codified, generally applicable corporate governance regime in Nigeria. However, the void that the absence of a generally applicable national code created was to a certain degree mitigated by a few sector-specific corporate governance codes issued by regulators to address the governance challenges in their sectors. Subsequently, to consolidate the corporate governance requirements of various sectors and establish a codified corporate governance regime applicable across the Board, the FRCN released the National Code of Corporate Governance 2016, sequel to which the reviewed Code of 2018 was released.

Code Philosophy

The philosophy contained in the code requires companies to adopt the 'Apply and Explain' approach in implementing and monitoring compliance with the Code.[44] This approach relies on the legal and regulatory bodies for enforcement, while the apply-or-explain approach relies on shareholders for its enforcement. Unlike Rules, principles have a broader perspective of governance regulation. Regulators state the general governance guidelines and objectives that companies should seek to attain. The responsibility of achieving these goals is then placed on the set of people who oversee the company's activities with a substantial amount of discretion. The company uses the guidelines to create internal

[39] SEC Corporate Governance Guidelines and Revised Form 01 Available <https://sec.gov.ng/sec-corporate-governance-guideline-and-revised-form-01/>
[40] Securities and Exchange Commission's Guidelines on Corporate Governance p 1
[41] Ibid p 2
[42] Ibid,p 4
[43] Ibid, p 11
[44] Nigerian Code of Corporate Governance 2018. Introduction. Paragraph C.

processes and business practices to attain regulatory objectives.[45] A deviation may be allowed in some cases of variation, so long as it is justifiable,[46] and in such instances, the company is required to make these reasons for non-compliance known to the appropriate regulatory body and its shareholders.

The authority of FRCN to issue a National Code of Corporate Governance derives from Section 7(2) (a) Financial Reporting Council Act, 2011[47] which provides that it is 'to enforce and approve enforcement of compliance with accounting, auditing, corporate governance, and financial reporting standards in Nigeria'. Section 50(d)[48] also provides that, on behalf of the Council, the Directorate of Corporate Governance shall act as the national coordinating body responsible for all matters of corporate governance. The Code, which is aimed at regulating companies of varying sizes across different industries, seeks to institutionalize corporate governance best practices and promote public awareness of essential corporate values and ethical practices that will enhance the integrity of the business environment under 28 broad principles.[49]

Highlights of the Code

I. Board Structure and Composition

Principle 250 of the code provides for:

The effective discharge of the responsibilities of the Board and its committees is assured by an appropriate balance of skills and diversity (including experience and gender) without compromising competence, independence, and integrity. The code enjoins the Board to assume responsibility for its composition by setting the direction and approving the processes for it to attain the appropriate balance of knowledge, skills, experience, diversity, and independence to objectively and effectively discharge its governance role and responsibilities. Principle 2.3 of the Code also requires the Board, in determining its number, to consider certain factors such as the appropriate mix of knowledge, skills, and experience.

2. Meetings of the Board

Principle 10[50] provides that 'Meetings are the principal vehicle for conducting the business of the Board and successfully fulfilling the strategic objectives of the Company.' The Code retains the requirement contained in the 2016 Code on the holding of Board meetings at least once every quarter. However, the Code omits the requirement for Directors to attend at least two-thirds of all Board meetings and simply provides that every director shall endeavor to attend all Board meetings.[51] In addition, it is recommended that minutes of meetings of the Board and its committees be prepared and sent to Directors on a timely basis and be formally reviewed and approved by the members of the Board or relevant Board committee at its next meeting.

3. Committee responsible for Risk Management

Principle 11[52] provides that 'to ensure efficiency and effectiveness, the Board delegates some of its functions, duties, and responsibilities to well-structured committees, without abdicating its responsibilities. The Code provides that the Risk Management Committee shall meet at least twice every financial year and delve deeper into the extent of its functions as regard information technology. In this regard, the committee is required to review and recommend for approval of the Board, at least annually, the company's information technology (IT) data governance framework. This would hopefully reduce or prevent cases like the recently settled Oando dispute, wherein 2017 the Securities and Exchange

[45] Ibid.
[46] Financial Reporting Council, The UK Corporate Governance Code (2018).
[47] Financial Reporting Council Act 2011
[48] Ibid.
[49] The Code, which is aimed at regulating companies of varying sizes across different industries, seeks to institutionalize corporate governance best practices and promote public awareness of essential corporate values and ethical practices that will enhance the integrity of the business environment. There are twenty-eight (28) broad principles laid down by the Code, sixteen (16) of which relate to the Board of Directors and Officers of the Board addressing diverse Board-related issues including composition, key functions, meeting, induction, delegation of duties, and evaluation under the Nigerian Code of Corporate Governance 2018 p 1-14.
[50] Nigerian Code of Corporate Governance, 2018
[51] Ibid, p 10.2
[52]Nigerian Code of Corporate Governance 2018

Commission received petitions from two shareholders of the Company alleging, inter alia, corporate Governance Lapses, Mismanagement of Finances, Inadequate internal control mechanisms.

4. Evaluation of the Board

Principle 14[53] provides that the 'Annual Board evaluation assesses how each Director, the committees of the Board and the Board are committed to their roles, work together and continue to contribute effectively to the achievement of the Company's objectives.' The Code recommends that the Board establish a system to undertake a formal and rigorous annual evaluation of its performance, that of its committees, the Chairman, and individual Directors. The process is to be facilitated by an independent external consultant at least once in three years. The result of the Board performance evaluation is to be communicated to the Board and discussed by it as a whole, while those of individual Directors are to be communicated to and discussed with them individually by the Chairman. Where the performance of a director is considered unsatisfactory, the Board is to provide appropriate training to address the identified gaps.[54]

5. Corporate Governance Evaluation

Principle 15[55] provides for institutionalizing a system for evaluating the Company's corporate governance practices to ensure that governance standards, practices, and processes are adequate and effective. The Code recommends that the Board ensures that an annual corporate governance evaluation, including the extent of application of the Code, is carried out by an independent external consultant at least once in three years. The summary of the report of the evaluation is to be included in the company's annual report and on the investors' portal of the company, if applicable.[56]

6. General Meetings

Principle 21[57] provides that General Meetings are important platforms for the Board to engage shareholders to facilitate a greater understanding of the Company's business, governance, and performance. They provide shareholders with an opportunity to exercise their ownership rights and express their views to the Board on any areas of interest. The Code further recommends that the chairmen of all Board committees and the statutory audit committee, be present at general meetings to respond to shareholders' inquiries.[58]

2.8 SEC's Code of Conduct for Shareholders' Associations

In a bid to promote good governance and give a clear understanding of the principles of business conduct and ethics that are expected of shareholders during general meetings of public companies as well as their relationships with the companies outside general meetings, a code of conduct for shareholders' association was released in 2016 by SEC. The code of conduct was to ensure that association members uphold high ethical standards and make positive contributions to ensuring that the affairs of public companies are run ethically and transparently. The code contains provisions that the associations must abide by. These include having.

3. Regulatory Guidelines on Corporate Governance

Sequel to the NCCG, 2018, several regulatory bodies have issued regulations or circulars on corporate governance which amplifies the provisions of the code as well as details specific principles as it relates to the particular industry viz;

3.1 National Pension Commission's Circular on Corporate Governance.[59]

The Circular provides specific provisions on the Board's role and tenure, remuneration, and disclosure. Reference is made to the provisions of the Code on the issues of Shareholder rights.[60] A significant

[53] Ibid,
[54] Ibid, p 14
[55] Nigerian Code of Corporate Governance 2018
[56] Nigerian Code of Corporate Governance 2018 p 16
[57] Nigerian Code of Corporate Governance 2018
[58] Ibid,p 21
[59] PenCom Circular on Corporate Governance 2019
[60] PenCom Circular on Corporate Governance; Principle 28, Nigerian Code of Corporate Governance 2028 p 7.2

lacunae is that the circular has no provisions for sanctions on failure to comply with the provisions of the Code.

3.2 National Insurance Commission Corporate Governance Guidelines.[61]

The Circular provides specific provisions on Board role and tenure, remuneration, and disclosure. Guideline 11.0 protects the rights of a whistle-blower by giving such a person the opportunity to present a complaint to NAICOM if he or she has been subjected to any detriment[62]. This encourages individuals to take steps to report any shady activities in the insurance industry. The Guidelines make provision for the compliance threshold required of an insurance institution. Finally, the guidelines provide that failure to comply with the NCCG 2018 and the Guidelines will be deemed a violation of section 49(1) (b) of the NAICOM Act[63]. Corporate Governance Guidelines for Commercial, Merchant, Non-Interest and Payment Service Banks in Nigeria.[64] The Guidelines provide for the general accessibility and possible rotation of general meeting venue and encourages virtual meetings where physical meetings are not possible. The guidelines vests responsibility on the Board to ensure that institutional investors carry out their responsibilities as provided in the Code,[65] that banks and shareholder associations are in strict adherence with the Code of Conduct for Shareholders' Associations issued by SEC (for publicly listed banks), and are transparent and in line with best practice (for non-publicly listed banks).[66] Guideline 20.2 provides that except where prior approval of the CBN is granted, no individual, group of individuals, their proxies or corporate entities shall own controlling interest in more than one bank. CBN's prior approval and 'No Objection' shall be sought and obtained before any acquisition of shares of a bank (including through the capital market), that would result in equity holding of five per cent (5%) and above, by any investor.

3.3 Nigerian Communication Commission's Guidelines on Corporate Governance

The Nigerian Communication Commission, in December 2023, issued the Guidelines on Corporate Governance for the Communication Sector 2023. The Guidelines seek to facilitate the pursuit of good corporate governance in the interest of Licensees, shareholders, and other stakeholders and ensure that the highest industry transparency standard, due process, accountability, and ethics are maintained without hindering enterprise or innovation. Essentially, the Guidelines intend to guarantee an improvement in the way and manner corporate governance is observed in the communications sector.[67] In addition, the Guidelines also set out principles for the applicable entities to comply with in the composition and structuring of their Board of Directors to enhance the transparency, diversity, and efficiency of the Board.

4. **Protection of Shareholder Interests**

To ensure the protection of Shareholders' interests, the Act prohibits the Chairman of Public Companies from acting as Managing Director and Chief Executive Officer of such Companies, further re-iterating the best practice of restricting the Chairman from interfering in the day-to-day running of the Company.[68]

To forestall the abuse of domination of majority over minority shareholders, the Act empowers shareholders to bring derivative actions against the Company and its affiliates.[69] It also empowers the Courts to make orders such as directing that any amount payable by a defendant in action, is payable to the applicant, and requires the Company to pay reasonable legal fees incurred by the applicant.[70] Furthermore, the Act imposes a duty on shareholders holding shares in trust for another person to

[61] National Insurance Commission Corporate Governance Guidelines, 2021
[62] Ibid, p 1
[63] National Insurance Commission Act, Laws of the Federation, 1997. Such a person or insurance institution will be guilty of an offence and liable on conviction to a fine not less than NGN250,000 (Two Hundred and Fifty Thousand Naira) or more than NGN500,000 (Five Hundred Thousand Naira) or imprisonment for a term not exceeding three (3) years or to both such fine and imprisonment.(National Insurance Commission Corporate Governance Guidelines 2021 p 12.0)
[64] Corporate Governance Guidelines for Commercial, Merchant, Non-Interest and Payment Service Banks in Nigeria 2023
[65] Ibid, p 20.1
[66] Corporate Governance Guidelines for Commercial, Merchant, Non-Interest and Payment Service Banks in Nigeria 2023 p 20.0
[67] Paragraph 3 of the Nigerian Communication Commission's Guidelines on Corporate Governance, 2023
[68] CAMA, s 265 (6)
[69] Ibid, 343-346
[70] Ibid, s 347

disclose the identity of the beneficial owner of the Shares.[71] It also places a duty on private Companies to disclose and share particulars of their substantial shareholders (persons with significant control).[72] This disclosure encourages transparency in Companies. Previously, this obligation applied only to public companies. This is no longer the case, as shareholders with a majority's stake in any type of company are now required to make such disclosures. Notably, however, the Act makes no definition of what constitutes significant control. This is critical because both private and public companies are required to disclose significant controlling interests. The term "significant shareholder" as defined in Section 120 (2) of CAMA, 2020, applies only to public companies. Regardless, it is reasonable to assume that the same would apply to private companies. Additionally, the Act redefines a shareholder's percentage interest to qualify as a substantial shareholder if the shareholder holds at least 5% of total voting rights.

Additionally, private companies are now required to obtain the consent of all their members before making any sale that exceeds 50% of the total value of the company's assets.[73] This provision may however be varied by the Articles of association. Following the realities imposed by the outbreak of the global pandemic Covid 19, the Act now permits the use of electronic means for general meetings so far as such meetings are conducted per the Articles of the company. This is to facilitate the attendance of members in a meeting at a minimal cost. However, this concession is limited to private companies, public companies must seek the permission of the Commission before virtual meetings are held.[74] The Business Facilitation Act, 202375, passed as part of efforts to promote the ease of doing business in Nigeria and eliminate bottlenecks companies amended section 240 (2) of CAMA by deleting the word 'private', thus empowering public quoted companies to hold their general meetings electronically.

The ordinary business of a company's Annual General Meeting (AGM) has been expanded to include the remuneration of its managers.[76] However, Section 242 of CAMA 2020 appears to create a lacuna with Section 238 of CAMA 2020, as it doesn't include the "disclosure of remuneration of managers of a company" as part of the business to be transacted as ordinary business at an AGM where the notice of such an AGM indicates that a statement that the purpose is to transact the ordinary business of an annual general meeting.

Principle 22[77] provides that 'The establishment of a system of regular dialogue with shareholders balances their needs, interests, and expectations with the objectives of the Company.' Principle 23[78] provides for the equitable treatment of shareholders and the protection of their statutory and general rights, particularly the interest of minority shareholders, and promotes good governance. The Code emphasizes that the company must ensure that shareholders understand the ownership structure of the company. It also requires the Directors to always act honestly in their management of the company.[79]

By the nature of their operations and the additional need to protect the investing public, public companies and private regulated Companies are required to comply with the provisions of the NCCG. It is believed that these guidelines would add to the standards of transparency, accountability, and good corporate governance of companies, without unduly inhibiting enterprise and innovation.

[71] Ibid, s 120 (2)
[72] Ibid, s 119
[73] CAMA,s 22 (2) (c)
[74] Ibid,s 240
[75] The Business Facilitation (Miscellaneous Provisions) Act 2023
[76] Companies and Allied Matters Act 2020 s 257. The Corporate Affairs Commission Company Regulations 2021 define "manager" to include any person by whatever name called occupying a position in senior management and who is vested with significant autonomy, discretion, and authority in the administration and management of the affairs of a company. Additionally, Section 257 of CAMA 2020 also provides that the compensation of managers of a company shall be disclosed to members of the company at the Annual General Meeting.
[77] Ibid
[78] *Ibid*
[79] Ibid, p 23.

Netting

The introduction of Netting, which is a method of reducing risks in financial contracts by combining or aggregating multiple financial obligations to arrive at a net obligation amount, is one of the most notable additions to CAMA 2020's financial contract provisions which represents a marked improvement in terms of corporate governance in Nigeria, as it is consistent with international best practices. Netting agreements can now be concluded and enforced against an insolvent party, guarantor, or other person providing security under the provisions of the CAMA 2020.[80]

5. Conclusion

Good corporate governance practice is essential in the effective corporate administration of business in Nigeria. It has huge benefits to companies, its shareholders, and other stakeholders. The challenge therefore is to ensure that the regulatory and institutional framework is constantly adaptive to ensure the continuous protection of investors. In furtherance of the above, the following are recommended:

1. The Corporate Affairs Commission should improve its regulatory financial oversight. This is particularly important about the filling of annual returns with the Commission which has a revenue-generating function for the Commission. The contents of the financial statement should be reviewed for inconsistencies. This means the Commission needs to invest more in the training and development of its employees in this function.
2. The provisions of the CAMA and ISA should be amended to project stronger protection for whistleblowers' anonymity in cases where information is released to either regulators and/or shareholders. Regulatory institutions will then have to promote a culture of whistle-blowing. This means there should be a shift from the letter of the law to conscious and deliberate action by regulators.
3. There should be a statutory institution of complaints monitoring and enforcement units in CAMA, SEC, and FRCN Act. The EFCC and the ICPC have adopted this strategy and CAC, FRC, and SEC should collaborate with the anti-corruption agencies in facilitation of this. This will help boost investors' confidence and public trust and reduce shareholder apathy.
4. Corporate and regulatory institutions in western jurisdictions which are anchored on self-regulation and faith in the capacity of its participants to regulate themselves should not be copied hook, line, and sinker into our *corpus juris*, but rather a legal regime that protects shareholders' supremacy and the right to subject directors' action to review at any time will better serve as a formidable pedestal in the improvement of corporate governance in Nigeria. To this end, the provisions and principles of the Code should be amended to the previous 'Comply or Explain' with a regime of sanctions spelled out.
5. Government should establish a special corporate affairs tribunal where violators of the CAMA are tried promptly and speedily. The present situation where violators are simply fined and allowed to remain in operations does not serve as enough deterrence to the violators.

[80]CAMA, s 718