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...COMMITTED TO THE DEVELOPMENT OF CORPORATE GOVERNANCE

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STRATEGIES FOR ENFORCING SHAREHOLDER RIGHTS IN CORPORATE GOVERNANCE IN NIGERIA

Kunle Aina

ABSTRACT

In spite of the legislative provisions on shareholder participation and involvement in the management of companies in Nigeria the practice is that shareholders are generally inactive, passive and generally disinterested in the management of their companies leaving the directors to have a free day. This paper examined the shareholder role in management in a developing corporate governance context, by critically analyzing the different procedures, legislative provisions and Codes of corporate governance available in order to strengthen and enhance proper shareholder contribution in corporate governance.

INTRODUCTION

Company law has always recognize the separation of ownership and control of companies in fact it is the unavoidable and fundamental attribute of modern particularly large companies.[1] The law traditionally invested the directors with absolute and total powers of management[2] and the members do not have any power

1 Mcconvill J and Bagaric M. 2004. Towards mandatory shareholder committees in Australian companies. Melbourne University Law Review. 28.1. p. 125.

2 *Shaw & Sons (Salford) Ltd v Shaw* (1935) 2 KB. 113; *Scott v Scott.* (1943) 1 All E.R. 582, *Bamford v Bamford*

to influence in the management of the company unless under some restricted exceptions[3]. The director's powers in management must however be balanced by the shareholders power of ultimate[4] and residual[5] control of the business of the company. The directors may be removed by the shareholders at the Annual General Meeting (AGM), or they may refuse to ratify director's decisions that should under the Articles of Association be ratified. The director's are to keep the shareholders well informed about the activities of the company and should appreciate the hope and expectations of the shareholders. The responsibility of the board in keeping the shareholders informed about their activities and management decisions are well enshrined in the Corporate Governance Codes in Nigeria and almost every major jurisdictions[6]. The UK Corporate Governance Code[7] identifies two ways in which relations with shareholders should be developed; this will be through dialogue with shareholders and through constructive use of the Annual General Meeting. The Securities and Exchange Commission Code of Corporate Governance (hereinafter called SEC Code) also enjoins the Board to ensure that shareholder statutory and general rights are protected at all times.[8] The Organization for Economic Co-operation and Development Principles of Corporate Governance 2004 (hereinafter called OCED principles of Corporate Governance) also recognised the very important position of the shareholders[9] and stated in paragraph II A. thus:

Basic shareholder rights should include the right to :

(1970) Ch. 212, *Black White and Grey Cabs Ltd v Vee* (1969) N.Z.L.R. 824, *Odutola Holdings Ltd v Ladejobi* (2006) 5.S.C (Pt.1) 83.

3 Section 63, Companies and Allied Matter Act. 2004. (hereinafter called CAMA.)

4 Ultimate power of control will include the power to remove the directors, and power to alter the Articles of Association.

5 Residual power will include circumstances when the board cannot or is unable to act, the power of manage ment will therefore be exercised by the members. See section 63(5) CAMA.

6 See the UK Stewardship Code 2012. The King Code of Corporate Governance Principles king VI. South Africa, Corporate Governance Principles and Recommendations: 3rd Edition 27 March 2014 (Australia), Corporate Governance Guideline January 2013(Canada) to mention a few.

7 September 2012.

8 Section 22, SEC Code.

9 Paragraph II thereof.

1. Secure methods of ownership registration;
2. Convey or transfer shares;
3. Obtain relevant and material information on the corporation on a timely and regular basis;
4. Participate and vote in general shareholder meetings;
5. Elect and remove members of the board; and
6. Share in the profits of the corporation.

The above and some other rights we shall be discussing hereunder represent the basic and important rights which are also facilitators for active involvement of shareholders in Corporate Governance of their Companies. The denial of the rights is an indication of wrong Corporate Governance practices by the board which as in all failure of Corporate Governance practices ultimately negatively affects the wealth of the company with resultant reduction in the wealth of the shareholders themselves. Corporate Governance is the way in which companies are governed and to what purpose[10]. However, from the point of view of the shareholders, corporate governance can be defined as a process for monitoring and control to ensure that management runs the company in the interests of the shareholder.[11] This paper will examine the legal structures and strategies available in Nigeria for the enforcement of shareholder rights and how this can be properly strengthened.

REGULATORY REQUIREMENTS FOR SHAREHOLDER INVOLVEMENT IN CORPORATE GOVERNANCE

Nigerian company law like the English law gives the shareholder some responsibilities and allows them to be mandatorily involved in decision making in the company. There are a number of situations where legislation requires

10 Cadbury report on corporate governance. The Cadbury Report, titled *Financial Aspects of Corpo rate Governance*, is a report issued by "The Committee on the Financial Aspects of Corporate Gov ernance" chaired by Adrian Cadbury that sets out recommendations on the arrangement of company boards and accounting systems to mitigate corporate governance risks and failures. The report was published in draft version in May 1992. Its revised and final version was issued in December of the same year.

11 Coyle B. 2010. Corporate Governance London: ICSA Publishing

shareholder approval of the board's decision and sometimes allows the shareholder to initiate a decision.[12] Davies[13] is of the view that the main categories of such cases is where decision is likely to have an impact upon the shareholders' legal or contractual rights, even if the practical impact of that change on the member in a particular case is small. The point is that all corporate decisions invariably have an impact on the shareholders and the company whether small or not, and this is the reason why not only the board is enjoined to keep the shareholders informed but must seek and obtain their approval in the following cases,

1. Alterations to the company's memorandum[14] and articles[15]
2. Alterations of the type of company, for example from private to public or vice versa[16]
3. Increase[17] and reduction of share capital.[18]
4. Alterations to change rights attached to shares[19]
5. Adoption of schemes of arrangement[20]
6. Decisions to wind up the company voluntarily[21]
7. Approval for the appointment of auditors[22]

12 Gallion S. and Stakes L. 2000. Corporate governance and shareholder activism. The role of institutional investors. Journal of Financial Economics. 57.275-305; Institutional shareholders Committee Code on the responsibilities of institutional investors view at http//institutional shareholders committee.org accessed on 12th June, 2014, Whincop M. 2001. The role of the shareholder in corporate governance: a theoretical approach. Melbonne university law review 25. (2).418; Foccio M.and Lasfer M. 2000. Institutional share holders and corporate governance : the case of UK Pension Funds. Working Papers 11/01

13 Davies P. 2008 Gower and Davies principles of modern company law. 8th ed..London: Sweet and Maxwell. p.375

14 Section 46 CAMA.

15 Section 48 CAMA.

16 Section 50 CAMA.

17 Section 102 CAMA.

18 Section 106 CAMA.

19 Section 141 CAMA.

20 Part XII Investment and Securities Act 2007.

21 Section 457-459 CAMA, See also Section 895 Company Act 2006 U.K.

22 Section 357 CAMA. See also Section 84 Insolvency Act 1986 U.K.

8. Appointment of directors[23] and their removal[24]

The above are some of the important areas where shareholder participation is required by legislation. However, in many other circumstances where the law is silent, the codes requires that the shareholders have a right to participate in and to be sufficiently informed on, decisions concerning fundamental corporate changes.[25] It is not enough for the shareholders to be given opportunity to perform their legislative functions, but ought to be given the underlying information and requisite knowledge of the basis for the shareholder approval being sought. The problem with most companies in Nigeria is that while the board recognises the important role of shareholder in corporate governance, the requisite flow of information is never given, and the shareholders are most often than not always prevailed upon to approve of actions and decisions blindly.

MACHINERY FOR ENFORCING SHAREHOLDER RIGHTS IN CORPORATE GOVERNANCE.

We shall now examine both legislative and practical means and strategies for enforcing shareholder rights.

1. Meetings

There are three main types of meeting that may be convened by every public company in Nigeria, these are;

(1) Statutory meeting[26].

(2) General meeting[27]and

23 Section 247 and 248 CAMA.
24 Section 262 CAMA..
25 OECD Code, Section II B.
26 Section 211 of CAMA 2004.
27 Section 213 of CAMA 2004.

(2) Extra - ordinary general meeting[28].

Statutory meeting must be held by every public company within six months of its incorporation. The members must always endeavor to attend this very important meeting as all preliminary issues will not only be presented for ratification and they are likely be ratified if there is no objection. The law allows members present at the statutory meeting to discuss any matter arising relating to the formation of the company and its commencement of business.[29]

Any member is allowed to forward any resolution on any matter arising out of the statutory report, the member may give a twenty-one days notice of resolution in which case the member gives notice before the statutory meetings, the resolution may be taken or it may be adjourned further to accommodate enough notice to be given.

GENERAL MEETING

Every company must hold a general meeting called Annual General Meeting (AGM) within fifteen months of its incorporation[30]. Where the company defaults in holding the AGM. Any member may complain to the Corporate Affairs Commission (CAC) and the CAC may give directions on the calling of the meeting or consequential directions as the commission thinks expedient. The Corperate Affairs Commission may also give directions that such member should apply to the Court for necessary orders[31]. The initial penalty for default in disobeying the instructions or directions of the Commission is a fine of five hundred naira only against the officer or officers who refuse to comply. There is no provision as to who or which authority will impose the fine; can the Commission decide

28 Section 215 of CAMA 2004.
29 Section 211(8) of CAMA 2004.
30 Section 213(1) CAMA 2004. The company may apply to the Corporate Affairs Commission if unable to hold within eighteen months of its incorporation for extension of not more than three months.
31 Section 213(2) of CAMA .

to prosecute the directors for failure to hold an AGM? And if that is done, is a fine of five hundred naira adequate to reflect the seriousness of the offence? In England, section 336(6)(b) of the Companies Act 2006 UK. specifically stated that an offence had been committed and on conviction after indictment to a fine which shall not exceed the statutory maximum.[32] The Company and Allied Malters Acts (CAMA) by adding that a member may be directed to file an action in court under the section for the courts' direction seems to have gone further to assure the member of an opportunity to compel the directors through the court to call the AGM. The mere imposition of fine may not be adequate without a concomitant power to compel the calling of the Meeting.

There is no limit to the type of business that may be transacted at the AGM. The law simply states that all businesses transacted at the annual general meetings shall be deemed special business except declaration of dividend, the presentation of the financial statements and the reports of the directors, the election of the directors in the place of those retiring, the appointment, and the fixing of the remuneration of the auditors and the appointment of the members of the audit committee which shall be ordinary business[33]. The ordinary business is the usual business that are generally transacted, while we must note that there is no limitation to the type or kind of business or resolution that may be tabled for discussion. The English Combined Code encouraged all listed companies that 'boards should use the AGM to communicate with private investors and encourage their participation'[34]

EXTRAORDINARY GENERAL MEETING

The board may commence an extraordinary general meeting at any time and

32 The previous provision contained in the Companies Act 1985 to the effect that an application of any mem ber to call or direct the calling of a meeting has been removed in the 2006 Act.

33 Section 214 of the CAMA.

34 Para.D.2 the Code envisage that the relationship and dialogue between the company and institutional inves tors is a continuous one.

where there are no sufficient numbers of directors within Nigeria, a director may convene an extraordinary meeting. The individual members may also requisition an extraordinary general meeting where any member or members holding not less than one tenth of the paid up capital of the company[35] at the date of the deposit carrying the right to note makes a requisition for an extra ordinary general meeting. Upon the receipt of the requisition documents the directors must immediately convene the meeting notwithstanding anything contrary in the articles of association[36].

The requisitionists must state the general nature of the business to be dealt with at the meeting. It may include the text of the resolution intended to be moved at the meeting. This is a very important document as it will clearly state the intentions of the requisitionists and also give other members and the board opportunity to prepare adequately either to oppose or support the motion or resolution. The legislative limitations placed on the requisition of meeting are rather restrictive and hinders good and proper shareholder participation in corporate governance. The one tenth limits may not be easily achieved and has the effect of shutting out members who may have genuine and important matters to discuss, it becomes impossible for them to contribute to the progress of their company. The position is the same in England[37]. However, in Australia, section 249D of the Australian Corporations Act allows members representing only 5 percent of the votes that may be cast at the general meeting to requisition for a meeting. The Corporation Act also provided for an alternative of at least 100 members who are entitled to vote at the general meeting. The 100 member option in Australia has also been criticised as a very expensive provision and most difficult to comply with[38]. Though

35 Section 215 of the CAMA.

36 In the case of company not having a share capital the rule is that the member of the company representing not less than one tenth of the total voting rights of all members having at the said date a right to vote at the general meeting of the company. See also section 303 Companies Act 2006 UK.

37 Section 303 (3) Companies Act 2006 U.K.

38 See the report of the Companies and Securities, Advisory Committee in its final reports, shareholder pa ticipation in the modern Publicly listed Company July 2000 available at http://www.camac.gov.au/camac/camac.nsf/byHeadline/PDFFinal+Reports+2000/$file/Shareholder_final_reportJun00.pdfail able accessed on 28-06-2014.

the position in Nigeria does not include 100 member rule, but the law may be reformed by reducing the percentage of members who may bring a requisition to only one tenth and introduce the alternative provision by allowing not less than twenty members of the company to requisition for a meeting. One may argue that this may lead to proliferation of requisitions but as we shall see below, there are other obstacles to presenting the requisition which will serve as check on useless requisitions.

WHEN REQUISITION WILL NOT BE ALLOWED

The directors must on receipt of the requisition convene a meeting within twenty one days from the date of receipt of the requisition. Failure of the director to convene the meeting, the requisitionists or any one of them representing more than one-half of the total voting rights of all of them may themselves convene the meeting: except that the meeting must be held within three months from the date of requisition[39]. However, the directors may refuse to comply under the following grounds;

1. If the purpose of calling a meeting is to consider matters that are within directors exclusive powers or functions and the resolution is not framed as an amendment of article of association .The law clearly recognise the directors' power to manage the business of the company[40]. And no other person is permitted to interfere in management[41]. Lord Kilbrandon observed in **ALEXANDER WORD CO. v. SAMYANG CO.**[42] that, "the directors and no one else, are responsible for the management of the company, except in the matters specifically allotted to the company in general meeting". In order to circumvent this impasse the requisitionists

39 Section 215 (4) of the CAMA .
40 Section 637 of the CAMA .
41 See the decision of Lord Kilbrandon in *Alexander Ward & Co. v Samyong Co.*(1975)1 W.L.R 673 at 683
42 (1975)1 W.L.R 673 at 683.

many draft a resolution as one to alter the company's articles of association to require that the directors take certain matters into accounts, or to put certain limitations to the powers of the directors. They must always understand that they have the ultimate powers to amend the articles of association at any time, and in doing this if at any point in time they need to curb the excesses of the directors or wish to determine the course of events by their company, they must regularly adopt this option.

2. The directors may refuse to call a general meeting if its purpose is to consider matters which could not be lawfully effected by the company in general meeting[43]

3. Directors may refuse to call a general meeting if the requisition is for an extraneous purpose so as to constitute an abuse of the procedure, for example to harass the company and its directors[44] .

The members are however allowed to convey a meeting when the directors refuse to do so. The condition as we stated above is that according to section 215(4) of CAMA 2004, "any one or more of them representing more than one-half of the total voting rights of all of them may themselves convene a meeting," . This should be interpreted to refer to the entire number of the requisitionists and not the entire members of the company qualified to vote. The meeting convened under section 215(4) must be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors. This provision is recognition of the rights of a relatively small minority of the members to be heard, to ventilate their concerns and to play an active role in the companies' affairs. One may argue that the directors and other officers of the company may refuse to cooperate with

43 See the Australian case, *Wandser v The National Mutual life Association of Australia* (1992) of ACSR210, in this case shareholders requisition of a general meeting to secure a change of status from a company united by guarantee to a company listed by Shares was held to be listed because the Corporations Act did no permit that change of status to be reversed.

44 *Rose v McGivern* (1998) 2 B. C.L.C.593

them by ensuring that proper information is not provided for the meeting. The law is that the directors are under obligation to ensure that members are provided with full and correct information necessary to enable them to form a judgment as to the matters to be considered at the meeting. The directors must understand that the members are not their enemies but they are exercising their rights under the law and the articles of association, they must cooperate fully and ensure that the resolutions passed at such requisitioned meetings are carried out without modification or delay.

Where the requsitionist had incurred some reasonable expenses towards the holding of the meeting by reason of the failure of the directors to duly convene a meeting, such expenses must be repaid to the requisitionist by the company and any sum to repaid will be deducted from any sum due to be paid to the directors who were in default. It follows that the requisitions shareholders are acting as "quasi officials" of the company in convening the meeting and must exercise the power to do so in the interest of the company as a whole. Though the Act did not specify, where the meeting has been ordered by the court the position will remain the same.

SHAREHOLDER RESOLUTION

In recent years, there has been increasing tendency for shareholders to request that resolution drafted by them should be included in the business of a general meeting usually the AGM. Some institutional shareholders encourage the use of shareholder resolutions, one of such is the voting guidelines for West Midlands Metropolitan Authorities Pension Fund Company[45] which states as follows:-

> Shareholders resolution is an integral part of the corporate governance

45 West Midland Metropolitan Authorities Pension Fund Company Voting Guide line2004 ailable at http://wmpfonline.com/NR/rdonlyres/AE69761A-C1CD-4B3A-A1D2-FFF240735292/0/CorpGovPolicy.pdf, accessed on 28-06-2014.

process. They enable shareholders to take the initiative on issues which directors may be unwillingly to address or where directors may face a conflict of interest… Shareholders resolutions are not seen as a no-confidence vote on the board (unless that is specified) but should be adjudged on the merits of the specific issues addressed. Resolution will be supported that are evaluated as being in the medium to long-term interests of the fund.

The Companies and Malters Allied Act 2004 (CAMA) preserves and enhances the ability of shareholders under certain circumstances to propose resolutions at the AGM. Section 235 (1) provides that, 'it shall be the duty of a company on the requisition in writing of such number of members as is hereinafter specified and (unless the company otherwise resolves) at the expense of the company to ---

(a) give to the members of the company entitled to receive notice of the next annual general meeting notice of any resolution submitted by a member which may properly be moved and is intended to be moved at that meeting:

(b) circulate to members entitled to have notice of any general meeting sent to them, any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution or the business to be dealt with at that meeting , and where the statements has more than 1,000 words to circulate a summary of it.

Members representing not less than one twentieth (20%) of the total voting rights of all members with a right to vote on the resolution or not less than one hundred members holding shares in the company which is paid up an average sum of not less than five hundred naira. If the company is given notice of a resolution under the section, the resolution must be considered at the next general meeting. The copy of the requisition signed by the requistionists must be deposited at the

company's head office at least six weeks before the meeting.[46] The company must give members notice of the resolution at the same time, or as soon as practicable afterwards, and in the same way as it gives notice of a meeting.[47]

The company need not give notice of the resolution to members if it is more than 1000 words long or defamatory.[48] If the resolution is vague or that it cannot be easily implemented, the directors may refuse to circulate such resolution. Directors may also refuse to place a resolution under the section on the agenda of the general meeting if its object could not be lawfully achieved, for example if it intruded on matters exclusively vested in the directors[49]. Again this can be avoided by drafting the resolution as one to alter the company's constitution to require directors to take that object into account or to remove a director who opposes the policies which shareholder activists seek to promote. Also, where the court is satisfied that the right conferred bythe section are being abused to secure needless publicity, or is for a defamatory matter, the court may order that the cost of the application may be paid by the requisitionist. We must note that section 235(5) CAMA 2004 is so meleguntly drafted that the meaning or implication is very vague. Who makes application under the section? When should such application be made? And for what purpose? The only way to interpret this section is to assume the company directors may decide to apply to court to prevent the resolution from being taken and the ground of abuse of the process will be a valid ground for refusal to allow the resolution for being tabled at the general meeting.

Shareholders may vote for resolution of this kind in order to achieve ecological, socio, or political outcome either because they considered passage of those resolutions is favorable to the economic return on their share, or because they

46 Section 235(4) CAMA .
47 Section 235(3) CAMA .
48 Section 235(5) CAMA .
49 See also section 338 Company Act 2006 UK, on the English provision on shareholder resolution which is very similar to the Nigerian provision.

are committed to the wider ecological, socio or political objectives[50]. The use of resolution by shareholders is a simpler and more effective means by the shareholder activists to achieve their objectives. Institutional investors may also use this avenue to prefect important changes in the strategic plans of the company. It helps to make other shareholders become aware of the issues affecting their company. This also helps to improve shareholders participation in the corporate governance of the company[51].

SHAREHOLDER STATEMENT TO GENERAL MEETING

As we have seen above, it is a common practice for directors who wish to table a resolution at the AGM of a company to accompany it with a statement explaining why the members should vote in favor of their resolution. The Act also gives the shareholders opportunity in section 235(1) to also bring their own resolution and accompanying statement. This is because it is not enough for the shareholders to have their resolution circulated in advance of the AGM but in[52] it will have much more effect if it is accompanied by a statement from the proposers' setting out its merits and why it should be supported. The circulation of the statement and the resolution will be at the expense of the proposers.

The law also makes provision for circulation of only shareholder statements without any resolution. The advantage of having the company circulate the shareholders statements is that the companies will not incur any extra cost as it will only circulate the statements with its own papers and notice of meeting. The directors must ensure that the statements are also circulated if;

1. The requisitions have deposited or tendered sum reasonably sufficient to meet the company expenses in giving effect to the statement.

50 Davis P. 2008. Gower and Davies principles of modern company law. 8th ed. London;Sweet and Maxwell. 443.
51 Section 234(2) CAMA.
52 Section 234(2) CAMA .

2. The statement must have been deposited at least six weeks before the general meeting.

3. The condition of 20 per cent of the member or not less than hundred members requisitioning will still apply to statements[53].

4. The company may apply to the court for an order to refuse to circulate the statement if the statement is being abused in order to secure needless publicity or that it is defamatory.

5. The court may also apart from giving the directors backing to refuse to circulate the statement, order that the cost of the application be borne by the requisitionist[54].

It is obvious that the Nigerian law will not assist any minority shareholder to express their views in opposition to any director's proposals and resolutions. The conditions attached are so stringent that the statements are not likely to see the light of the day even if any shareholder attempts to deposit any statements contrary to these very tough conditions. We may contrast with the position in England. Section 314 of the Companies Act 2006 UK, also makes provision for the member's power to require circulation of member's statement. The English provision permits only five percent of the members to present a statement for discussion at the meeting while the Nigerian provision provided for twenty percent of the members who have "a right to vote at the meeting to which the requisitions relate". The Nigerian provisions also provided that the statement must be submitted to the company not less than six weeks before the meeting while the English provision stipulates that the statement must be received at least one week before the meeting to which its relates. Under English law[55], the requisitionists must also deposit or tender

53 Section 314(2) companies Act 2006 UK.
54 Section 314(2) companies Act 2006 UK.
55 Section 314(2) Companies Act 2006 UK.

some amount of money in respect of expenses for circulation of the statement[56]. However, the payment is only made if the requested circulation of the statement is not in respect of an annual general meeting of a public company and the request is not received before the end of the financial year preceding the meeting.[57] Like the Nigerian provision, there is opportunity for the company to file an action in court in order to avoid circulating the statements. However, while the Nigerian provision that is so badly drafted and confused, the English provisions amply stated the only condition for court intervention is only if the procedure is being abused. I hereby recommend that the Nigeria law be amended to remove every unnecessary obstacle and allow more members opportunity to take more active role in the governance of the company and also allow them to scrutinise the actions of the directors. Though, seldomly utilized, the use of section 235(4) is a veritable procedure to checkmate the excesses of the directors and management.

ADEQUACY OF INFORMATION PROVIDED TO SHAREHOLDERS

The Combined Code[58], main principle D.1 (dialogue with institutional shareholders) states that; there should be a dialogue with shareholder based on mutual understanding of objectives. The board as a whole has responsibilities for ensuring that a satisfactory dialogue with shareholders takes place. The supporting principles to that main principle states; "whilst recognising that most shareholder contact is with the chief executive and finance director, the chairman (and the senior independent director and other directors as appropriate) should maintain sufficient contact with major shareholders to understand their issues and concerns."

The Nigerian SEC Code also made some provisions along this line[59] though not as

56 Section 316 Companies Act 2006 UK.

57 Part C. Section 21 of the SEC Code.

58 THE COMBINED CODE ,PRINCIPLES OF GOOD GOVERNANCE AND CODE OF BEST PRACTICE Derived by the Committee on Corporate Governance from the Committee's Final Report and from the Cadbury and Greenbury Reports.2003. available at http://www.ecgi.org/codes/documents/combined_code.pdf accessed on 30/06/2014

59 Part C. Section 21. 3 of the SEC Code.

elaborate as the English provisions. A company's directors have a duty to disclose relevant information in relation to any proposal to be considered at a general meeting. The directors are required to make full disclosure of all facts within their knowledge which are material to enable the shareholder to determine which course of action to take. The director should provide material information as will fully and fairly inform shareholder of what is to be considered at the meeting and for which their support is sought. Vital information disclosure by the directors is the only way shareholders may judge for themselves whether to attend the meeting and vote for or against the proposal or whether to leave the matter to be determined by the majority attending and voting at the meeting.

Though the CAMA is silent on the level of information to be made available to the shareholder or the or the type of dialogue or interaction that should go on between the shareholders and the director, the Codes are quite clear, that all facets of the board ought to be involved in the dialogue and should be available at all times to allay fears and explain concerns of the shareholders.

It will be open to shareholder activist to attack the adequacy of the information provided by the directors at a general meeting concerning a resolution placed on its agenda. The shareholders may refuse to vote or approve resolutions and motions without adequate and material information to assist the shareholders form a responsible opinion as to their decision on the matter before them.

QUESTIONS AT ANNUAL GENERAL MEETING

The least instinctual form of shareholders' activities is for shareholders to exercise their right to raise question at the annual general meeting in order to highlight particular issues. The chairman must allow a reasonable opportunity for every member to ask questions about or make comments on the company management. There is no specific provision on the right of the shareholder to ask questions in

the meeting but section 211 (8) CAMA , on statutory General meeting provided that the members of the company present at the meeting shall be at the liberty to discuss any matter relating to the formations of the company, and its commencement of business or arising out of the statutory report[60].

REMOVAL OF DIRECTORS

The role, duties, functions and importance of directors to the company cannot be over emphasised. They are accountable and responsible for the performance and management of the company. The Board should define the company's strategic goals and ensure that its human and financial resources are effectively deployed towards attaining those goals.[61] The Code also re-emphasised that the most important role of the board is to ensure that the company is properly managed.[62] The board is to accordingly ensure that the company carries on its business in accordance with its articles and Memorandum of Association and in conformity with the laws of the country, observing the highest ethical standards and on an environmentally sustainable basis. Where the board or individual directors cannot live up to expectation or becomes impediment to good corporate governance practices, the only option is for such director to be removed.

Generally, the shareholder play very minimal role in the choice of directors appointment. Directors are appointed under the Articles of Association. Accountability of the Directors to shareholders would have been enhanced if the shareholders have an input in the choice and appointment of directors apart from the official role of ratifying the director's appointment. However, the Act gives power to remove the directors by ordinary resolution at any time[63] even before the expiration of his term of office notwithstanding anything in its articles or in

60 Section 21 SEC Code.
61 Section 262(1) of CAMA .
62 Section 63 CAMA.
63 *Longe v First Bank of Nigeria Plc* (2010) 2-3 S.C. (P. III) 61

any agreement between it and him.

The power of removal of directors is an important shareholder power that must be exercised by the shareholders for the proper management and progress of the company. There must be a proper notice served on the director sought to be removed, such notice must be a special notice.[64] On the receipt of the intended resolution to remove the director, the director also has a right to respond and allowed to speak in his own defense at the AGM, even if he is not a member of the company.[65] His representations must also be circulated, or if it was too late to be circulated, he has the right to read his representation before the resolution is taken. Though, the director may have been appointed for a term which generally is for four years though this depends on the Articles of Association, or fixed by contract, this does not hinder the shareholders from removing him[66]. The director may be entitled to compensation if he has a contract of employment with the company, the compensation is determined based on his rights under the contract of service.[67] The shareholders must understand that they are not mere pawns in the hands of the board, but company law has placed in their hands ultimate power of control and though it must be exercised with utmost sense of responsibility, but in order to ensure good corporate governance and good practices, it is inevitable that recalcitrant and unproductive directors need not continue to be retained in a company.

FORMS OF COMMUNICATION WITH SHAREHOLDERS

Communication and free flow of information between the shareholders and the company is vital to good corporate governance practice. As we discussed above,

64 Section 262(2) of CAMA . Special notice is one where at least 21days notice must be given before the resolution can be moved, see section 236 of CAMA .

65 Section 262 (3) CAMA.

66 Section 35.1.SEC.Code.

67 *Read v Astoria Garage (Streatham)* (1952)Ch. 357 , *Southern Foundries v Shirlaw* (1940) A.C 701, *Shindler v Northern Raincoat Ltd.* (1960) 1W.L.R. 1038.

information on the activities of the directors and the management of the company especially on resolutions and motions brought to the AGM is an underlying tool to guide the shareholders in coming to an informed view about the company. However, the forum or channel through which communication takes place is the objective of corporate governance.

The SEC Code[68]enjoins all companies to 'adopt and implement a communication policy that enables the Board and Management to communicate, interact with and disseminate information regarding the operations and management of the company to shareholders, stakeholders and the general public. The reports, papers and documents should be in language that is understandable and consistent'. The usual mode of sending out notices in Nigeria is through the postal service. It is a common knowledge that the Nigerian Postal Service is epileptic and more often than not inefficient. Apart from this, there are so much more efficient, and reliable modern means of communication today that ought to be adopted in the dissemination of information to shareholders. For instance, the SEC Code enjoins all companies in Nigeria to establish web sites and investor relations portals where the company's annual reports and other relevant information about the company should be published and made available to the public.

The SEC Code still fall short of the international standards in terms of communication and the use of technology to effectively communicate with shareholders. The Company and Allied Malters Acy (CAMA) must be amended urgently, or legislative intervention is needed to upgrade Nigerians corporate governance standard. In England[69]electronic communication of document is allowed though with the permission of the member. The member will be deemed to have agreed to website communication if the; (a) articles of the company provide for web communication

68 Section 351.1 SEC Code.
69 Smerden R. 2007. A practical guide to corporate governance. 3rd ed. London; Sweet and Maxwell p.365

for all or particular class of documents or; (b) the particular member has been asked to consent to web communication and has refused to respond within 28 days. The deemed agreement may also be revoked by the member at any time. Davies[70] identified some disadvantages of web communication, these include; (1) that the member must constantly monitor the web site for possible communication. The company must therefore constantly notify the members of the availability of the information on the website; (2) the members are put to extra expense by having to download hard copy, and if this is not done on time, the document may be removed from the site. In Nigeria, generally, due to irregular supply of power most members may never be able to open this sites on time, other problems will include widespread illiteracy, lack of access to the internet especially in the rural communities. However, we must note that these are disadvantages that may easily be surmounted. The use of technology is a very great innovation that will enhance communication between the shareholders and the company. The shareholder will not only monitor the progress of the company but also get access to information and notices quickly and without delay, more importantly, the member is given the opportunity to send e-mails and text messages, to the officials of the company and the company also have the opportunity to respond to shareholder concerns without waiting for the next AGM.

SHAREHOLDERS ASSOCIATION

Shareholders Associations[71] are now very popular and they are quite very visible in most public companies AGMs. Their role should include educating their members about their rights, as well as their enormous responsibilities to the company and their important duties to ensure good corporate governance in their company. The

70 Davies P. 2008. Gower and Davies principles of modern company law. 8th ed. London;Sweet and Maxwell. p 470.

71 Amao O, and Amaechi K .2008. Galvanising shareholder activism; a prerequisite for effective corpo rate governance and accountability in Nigeria. Journal of Business Ethics. 82.117-130.

Shareholder Association also should be a voice for the thousands of Shareholders who do not attend meetings or are generally sidelined by the majority. The Association is capable of enforcing the provisions of the Code and thereby generally advancing the fortunes of the Shareholders. However the main criticisms of the Associations are problems of corruption, in the words of a shareholder,

> Shareholders' associations should be watchdogs of companies, but companies have successfully won their conscience with bribe. For instance, most of these companies are not making enough money to pay dividend, but they make enough to be thrown around. They make enough to bribe chairmen of acclaimed shareholders' associations and sometimes some recognised individual shareholders.[72]

In order to streamline the activities of the Shareholders Associations the Nigerian SEC came out with a Code of Conduct for Shareholders' Associations and their members[73] purposely 'designed to ensure that association members uphold high ethical standards and make positive contributions in ensuring that the affairs of public companies are run in an ethical and transparent manner and also in compliance with the code of corporate governance for public companies'. The Associations must be registered with the Corporate Affairs Commission. However, we must point out that the Association must endeavour to actively fight for the rights of shareholders especially minority shareholders in the companies they operate. They need not turn the AGM into fighting arena but constructively utilise the strategies discussed in this paper to effectively and legally make their contributions and ultimately help in entrenching good corporate governance practices in their companies.

CONCLUSION

The members of a company have a great role to play in the corporate governance of every registered company in Nigeria. CAMA made provisions for their involvement

72 William J .Vanguard Newspaper. Of 11-2-.2014
73 A Code made pursuant to Section 8(y) of the Investment and Securities Act 1999.

and participation in the management of the company. As we have seen some of these provisions must be fully understood and effectively utilised by the shareholders to be of any value. Shareholders apathy is evident mainly because of the feeling of utter helplessness and frustration as they believe that the directors will always have their way notwithstanding their opposition to management decision, this is coupled with the near total lack of knowledge of the legislative provisions safeguarding their interests and avenues to exercise their powers within the company. It should be made clear that the days of inactive shareholder involvement in corporate governance should end and using some of the strategies discussed here good corporate governance will be further and better enhanced.