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CONSTITUTIONAL PROTECTION OF SHAREHOLDERS AND MINIORITY INTERESTS UNDER NIGERIAN COMPANY LAW.

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Abstract

The protection of shareholders, particularly minority interests, is a cornerstone of effective corporate governance and investor confidence in Nigeria. This article examines the constitutional and statutory framework that safeguard shareholder rights, analysing how the Nigerian Constitution, Companies and Allied Matters Act (CAMA) 2020, and the Nigerian Code of Corporate Governance 2018 provide legal and institutional mechanisms for protecting minority shareholders. Employing the doctrinal legal methodology, the study explores constitutional provisions on property, equality, fair hearing, and economic governance as the normative foundation for shareholder protection. It also evaluates statutory remedies, including derivative actions, oppression petitions, and fiduciary duties of directors, alongside the roles of such regulatory institutions as SEC, CAC, and FRC. The article finds comparative perspectives from the United Kingdom and South Africa that highlight best practices in minority shareholder protection and offer lessons for strengthening Nigeria's corporate governance framework. It also finds that while Nigeria has developed a comprehensive legal structure for protecting shareholders, challenges such as weak enforcement, limited regulatory capacity, and inconsistent corporate compliance persist. Accordingly, recommendations reached include enhancing regulatory oversight, fostering a culture of ethical corporate governance, adopting "comply or explain" reporting framework, and improving access to legal remedies. The article concludes that measures are essential for promoting transparency, accountability, and sustainable economic growth.

Keywords: Minority Shareholders; Shareholder Protection; Nigerian Company Law; Corporate Governance; CAMA 2020; Regulatory Compliance

1. Introduction

Shareholders are the cornerstone of corporate ownership, representing the individuals or entities that contribute capital and exercise control over corporate decision-making through voting rights.[2] Within this group, minority shareholders those holding a small proportion of a company's shares often face challenges in influencing corporate decisions and safeguarding their investments against potential abuses by majority stakeholders.[3] Protecting the rights and interests of

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[2] B R Cheffins, *Company Law: Theory, Structure and Operation* (OUP 1997) 145

[3] M O Akanbi, 'Corporate Regulation and Governance in Nigeria' (2018) 6 *Commercial Law Review* 41

shareholders, particularly minority shareholders, is therefore a critical component of corporate governance and economic development in Nigeria.[4]

The Nigerian Constitution provides the supreme legal framework within which corporate activities operate. Although it does not directly regulate shareholder rights, constitutional provisions relating to property, equality, fair hearing, and economic governance establish the normative environment that underpins corporate law and shareholder protection.[5] Statutory instruments such as the Companies and Allied Matters Act (CAMA), 2020 and the Nigerian Code of Corporate Governance 2018 operationalise these constitutional principles, providing mechanisms for protecting shareholders, resolving disputes, and ensuring accountability in corporate decision-making.[6]

This article examines the constitutional and statutory protections afforded to shareholders and minority interests under Nigerian company law. It analyses the strengths and limitations of these framework, evaluates the effectiveness of legal and institutional safeguards, and draws comparative insights from other jurisdictions to propose reforms aimed at strengthening shareholder protection. The study adopts the doctrinal legal methodology, reviewing constitutional provisions, company legislation, governance codes, and relevant judicial and scholarly sources.

In other word, the objective of the article is to demonstrate that while Nigeria has established a comprehensive legal architecture for shareholder protection, gaps in enforcement, regulatory oversight, and corporate ethical culture continue to challenge the full realisation of minority shareholders' rights. By situating shareholder protection within both constitutional and statutory contexts, the article seeks to provide guidance for policymakers, regulators, and corporate actors on promoting transparency, accountability, and investor confidence.

2. Conceptual Clarification

Understanding the protections of shareholders and minority interests requires clarity on key concepts, the nature of shareholder rights, and the rationale for safeguarding minority interests.

2.1 Meaning of Shareholders and Minority Shareholders

A shareholder is an individual or entity that holds equity in a company, conferring the right to participate in corporate governance, receive dividends, and benefit from the company's financial performance.[7] Shareholders may be classified as **majority** or **minority**, depending on the proportion of shares held.

[4] K O Olatunji, 'Corporate Governance and Minority Shareholder Protection in Nigeria' (2017) 11 *Journal of African Law and Policy* 72

[5] SS 36-37 and SS 43-44 of the Constitution of the Federal Republic of Nigeria 1999 (hereinafter simply referred to as The Constitution or CFRN)

[6] Companies and Allied Matters Act 2020 SS 305–306; Financial Reporting Council of Nigeria, *Nigerian Code of Corporate Governance* (2018) 24

[7] Cheffins (n 1) 146

Minority shareholders are typically those holding a smaller percentage of shares, often insufficient to influence corporate decisions independently.[8] Their limited voting power exposes them to potential oppression by majority shareholders, particularly in matters involving corporate governance, dividend distribution, and strategic decision-making.[9]

2.2 Shareholder Rights and Interests

Shareholders possess a range of rights, including:

1. **Voting Rights:** The ability to vote on key corporate matters, such as appointment of directors, mergers, or amendments to company constitutions.[10]
2. **Right to Dividends:** Entitlement to a proportionate share of company profits.[11]
3. **Right to Information:** Access to corporate records, financial statements, and reports to ensure transparency and informed decision-making.[12]
4. **Pre-emptive Rights:** Protection against dilution of shareholding through new share issues.[13]
5. **Right to Seek Redress:** Mechanisms to challenge oppression, mismanagement, or breach of fiduciary duties by directors or majority shareholders.[14]

These rights are essential for promoting accountability, protecting investments, and ensuring equitable treatment of all shareholders, particularly those with limited ownership stakes.

2.3 Rationale for Protecting Minority Interests

Protecting minority shareholders serves several objectives:

- **Preventing Abuse of Power:** Ensures that majority shareholders or directors cannot exploit their control at the expense of smaller shareholders.[15]
- **Enhancing Investor Confidence:** Legal protections encourage investment by assuring minority shareholders that their rights and interests are safeguarded.[16]
- **Promoting Corporate Governance:** Safeguards for minority shareholders reinforce transparency, accountability, and adherence to fiduciary duties by corporate managers.[17]

[8] Akanbi (n 2) 42.

[9] Olatunji (n 3) 75

[10] Companies and Allied Matters Act 2020 ss 285–287

[11] *ibid* s 338

[12] *ibid* s 341

[13] *ibid* s 286

[14] *ibid* ss 305–306; Olatunji (n 3) 76

[15] Cheffins (n 2) 149.

[16] K O Olatunji (n 4) 77

[17] J Solomon, *Corporate Governance and Accountability* (4th edn, Wiley 2017) 51

- **Contributing to Economic Development:** By fostering trust and stability in corporate operations, minority protection facilitates a healthy investment climate that supports national economic growth.[18]

In sum, minority shareholder protection is integral to the Nigerian corporate legal framework, reinforcing the principles of fairness, accountability, and investor protection embedded in both constitutional and statutory provisions.

3. Constitutional Foundations of Shareholder Protection

The protection of shareholders, particularly minority interests, is underpinned by both constitutional principles and statutory frameworks in Nigeria. While the Constitution does not expressly regulate shareholder rights, it establishes a legal and normative environment that guides corporate law, corporate governance, and the protection of investors.[19] By ensuring property rights, equality, and fair legal processes, the Constitution creates a foundation on which company law and regulatory safeguards rest.[20]

3.1 The Nigerian Constitution as the Supreme Legal Framework

The Constitution of the Federal Republic of Nigeria 1999 (as amended**)** is the supreme law of the land.[21] Section 1 establishes that any law inconsistent with the Constitution is void, ensuring that shareholder rights and corporate conduct operate within its parameters.[22]

Although corporate law is largely regulated by statutes such as the Companies and Allied Matters Act (CAMA) 2020, the Constitution provides the overarching principles of legality, accountability, and governance that indirectly influence shareholder protection. Corporate decision-making, especially in matters affecting property, dividends, and corporate control, must respect constitutional norms.[23]

3.2 Fundamental Rights Relevant to Shareholders

Several **fundamental rights** directly support the protection of shareholders:

1. **Right to Property:** The Constitution guarantees that no person shall be deprived of property except in accordance with the law and with appropriate compensation.[24] This protects shareholders from arbitrary expropriation of their shares or corporate assets by majority stakeholders.

[18] Akanbi (n 3) 44

[19] B R Cheffins, *Company Law: Theory, Structure and Operation* (OUP 1997) 145

[20] M O Akanbi, 'Corporate Regulation and Governance in Nigeria' (2018) 6 *Commercial Law Review* 41

[21] Constitution of the Federal Republic of Nigeria 1999 (as amended) s 1

[22] *ibid* s 1(1)

[23] Cheffins (n 19) 148

[24] Constitution of the Federal Republic of Nigeria 1999 (as amended) s 43

2. **Right to Fair Hearing:** The Constitution ensures that all parties, including shareholders, have access to fair legal processes in disputes, including oppression claims, derivative actions, or challenges to corporate resolutions.[25]
3. **Right to Equality:** It also prohibits discrimination on various grounds, ensuring that all shareholders, regardless of the size of their holdings, are treated fairly and equitably in corporate governance matters.[26]

These fundamental rights provide legal leverage for minority shareholders to seek redress and ensure that corporate decisions do not unjustly prejudice their interests.[27]

3.3 Directive Principles and Economic Governance Supporting Shareholder Protection

Chapter II of the Constitution sets out Fundamental Objectives and Directive Principles of State Policy (FODPSP), which, although largely non-justiciable, establish societal expectations relevant to corporate governance.[28] Sections 16 and 17, for example, mandate the state to regulate economic activity to promote social welfare, equitable distribution of wealth, and sound corporate governance.[29]

These provisions provide a constitutional rationale for laws and regulatory measures that protect shareholders and minority interests. By aligning corporate law with national economic governance objectives, these directives underpin statutory requirements for transparency, accountability, and equitable treatment of shareholders.[30]

4. Statutory and Regulatory Safeguards under Nigerian Company Law

Statutory law operationalises the constitutional principles discussed above, providing concrete protections for shareholders and minority interests. The following are the primary legal instruments and regulatory frameworks:

4.1 Companies and Allied Matters Act (CAMA) 2020 – Minority Rights Provisions

CAMA 2020 contains several provisions specifically aimed at protecting minority shareholders:

- **Fiduciary Duties of Directors:** CAMA requires directors to act in the best interest of the company, which includes safeguarding the interests of minority shareholders.[31]
- **Derivative Actions:** The Act also allows minority shareholders to bring derivative suits on behalf of the company where wrongs have been committed against it.[32]

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[25] *ibid* ss 36–37

[26] *ibid* s 42

[27] K. O Olatunji, 'Corporate Governance and Minority Shareholder Protection in Nigeria' (2017) 11 *Journal of African Law and Policy* 75

[28] Constitution of the Federal Republic of Nigeria 1999 (as amended) ch II

[29] *ibid* ss 16–17

[30] Akanbi (n 20) 44

[31] Companies and Allied Matters Act 2020 ss 305–306

[32] *ibid* ss 307–308

- **Oppression Remedies:** It also provides avenues for minority shareholders to petition courts where company affairs are conducted in a manner oppressive to their interests.[33]

4.2 Nigerian Code of Corporate Governance 2018 – Shareholder Protections

The Nigerian Code of Corporate Governance 2018 reinforces statutory protections by prescribing best practices for shareholder engagement and minority protection particularly in the following areas:

- Encourages transparent disclosure and communication with shareholders.[34]
- Requires boards to ensure that corporate decisions consider the interests of all shareholders, including minority stakeholders.[35]
- Promotes mechanisms for dispute resolution, enhancing corporate accountability and investor confidence.[36]

4.3 Role of Regulatory Bodies in Protecting Shareholders

The following examples show how regulatory agencies play critical roles in enforcing shareholder rights:

1. **Securities and Exchange Commission (SEC):** Monitors compliance by publicly listed companies, ensuring that shareholder rights are protected and that corporate disclosures are accurate and timely.[37]
2. **Corporate Affairs Commission (CAC):** Oversees corporate registration, filings, and compliance with statutory obligations, including reporting that impacts shareholder interests.[38]
3. **Financial Reporting Council (FRC):** Provides guidelines for integrated reporting, ensuring transparency and accountability to shareholders.[39]

4.4 Remedies Available to Shareholders under Statutory Law

Minority shareholders have access to multiple remedies under Nigerian law, including:

- **Derivative suits** to enforce corporate rights.[40]
- **Oppression petitions** under CAMA to challenge majority abuse.[41]
- **Winding-up petitions** in cases of serious mismanagement or deadlock.[42]

[33] *ibid* ss 310–312

[34] Financial Reporting Council of Nigeria, *Nigerian Code of Corporate Governance* (2018) 24

[35] *ibid* 26

[36] *ibid* 28

[37] Investments and Securities Act 2007 ss 48–50

[38] Companies and Allied Matters Act 2020 s 341

[39] Financial Reporting Council of Nigeria Act 2011

[40] Companies and Allied Matters Act 2020 ss 307–308

[41] *ibid* ss 310–312

- **Civil actions for breach of fiduciary duties** by directors.[43]

These remedies, coupled with constitutional and regulatory safeguards, create a legal ecosystem designed to protect shareholders and maintain confidence in the corporate sector.

5. Appraisal of Shareholder and Minority Protection

An appraisal of shareholder and minority protections in Nigeria requires a careful examination of the constitutional and statutory frameworks, their effectiveness in practice, and the broader impact on corporate governance and investor confidence.

5.1 Strengths of the Constitutional and Legal Framework

Nigeria has established a robust legal foundation for shareholder protection. The Constitution of the Federal Republic of Nigeria 1999 enshrines property rights, equality, and fair hearing, providing normative guidance that underpins corporate law.[44] Statutory provisions in CAMA 2020 and the Nigerian Code of Corporate Governance 2018 operationalise these principles, ensuring that minority shareholders have legal remedies, access to information, and avenues to challenge oppressive conduct.[45]

The framework provides multiple remedies for minority shareholders, including derivative actions, oppression petitions, and civil suits against directors for breaches of fiduciary duty.[46] These measures promote accountability, transparency, and fairness in corporate governance.

Regulatory institutions such as the SEC, CAC, and FRC enhance these protections through monitoring, reporting requirements, and enforcement mechanisms.[47] Collectively, these structures create a formal legal environment that encourages equitable treatment of shareholders and mitigates potential abuse by majority stakeholders.

5.2 Challenges and Weaknesses in Protecting Minority Shareholders

Despite these strengths, challenges persist as the following areas demonstrate:

1. **Enforcement Limitations:** Regulatory agencies often lack sufficient resources, capacity, and independence to enforce shareholder protections fully.[48]

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[42] *ibid* ss 335–337

[43] Cheffins (n 19) 149

[44] Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 36–44

[45] Companies and Allied Matters Act 2020 ss 305–312; Financial Reporting Council of Nigeria, *Nigerian Code of Corporate Governance* (2018) 24–28

[46] Companies and Allied Matters Act 2020 ss 307–312

[47] Investments and Securities Act 2007 ss 48–50; Companies and Allied Matters Act 2020 s 341; Financial Reporting Council of Nigeria Act 2011.

[48] M. O Akanbi, 'Corporate Regulation and Governance in Nigeria' (2018) 6 *Commercial Law Review* 42

2. **Voluntary Compliance and Weak Corporate Culture:** Many companies do not fully comply with governance codes or statutory obligations, and some minority rights protections remain underutilised.[49]
3. **Fragmented Legal and Regulatory Oversight:** Overlapping roles of SEC, CAC, and sector-specific regulators can create confusion, delays, and inefficiencies in protecting minority interests.[50]
4. **Judicial Delays and Cost:** Litigation to protect minority shareholders can be protracted and expensive, reducing the effectiveness of legal remedies.[51]

These challenges highlight the gap between legal provisions and practical enforcement, affecting the overall protection of minority interests in Nigerian companies.

5.3 Impact on Corporate Governance and Investment Climate

Effective shareholder protection enhances **corporate governance** by ensuring that directors and majority stakeholders are accountable to all shareholders.[52] Transparent mechanisms for information disclosure, dispute resolution, and minority rights enforcement foster **investor confidence**, which is critical for attracting both domestic and foreign investment.[53]

Conversely, weaknesses in enforcement and corporate compliance can undermine investor trust, reduce market participation, and limit the effectiveness of corporate governance reforms. Ensuring consistent protection of minority shareholders is therefore essential for a healthy investment climate and the stability of Nigeria's corporate sector.[54]

6. Comparative Perspectives

Examining minority shareholder protections in other jurisdictions provides valuable lessons for Nigeria:

6.1.United Kingdom:

- The Companies Act 2006 establishes minority shareholder protections, including unfair prejudice remedies and derivative actions.[55]
- UK corporate governance codes emphasise transparency, board accountability, and stakeholder engagement. The "comply or explain" principle encourages disclosure and responsible corporate behaviour.[56]

[49] K. O Olatunji, 'Corporate Governance and Minority Shareholder Protection in Nigeria' (2017) 11 *Journal of African Law and Policy* 78

[50] *ibid* 79

[51] *ibid* 80

[52] J Solomon, *Corporate Governance and Accountability* (4th edn, Wiley 2017) 51.

[53] Cheffins,(n 1) 149

[54] Akanbi (n 48) 44

[55] Companies Act 2006 (UK) ss 260–263

6.2.South Africa:

- The Companies Act 71 of 2008 provides statutory remedies for oppressive conduct and strengthens minority rights.[57]
- The King IV Report on Corporate Governance promotes ethical leadership, stakeholder inclusivity, and protection of all shareholders' interests.[58]

Lessons for Nigeria:

1. Strengthening the enforceability of statutory protections can bridge the gap between law and practice.
2. Adoption of "comply or explain" reporting frameworks encourages transparency and accountability while allowing flexibility.
3. Effective stakeholder engagement and corporate ethics culture enhances minority shareholder protection.
4. Regulatory institutions should have adequate resources and independence to monitor compliance and enforce minority rights.[59]

7. Recommendations

To strengthen the protection of shareholders, particularly minority interests, under Nigerian company law, several reforms and strategic measures are necessary:

- **Strengthen Enforcement and Regulatory Capacity:**
  Although, some writers have made the point[60], it is worth emphasising and adding to it that regulatory institutions such as the **SEC, CAC, and FRC** should be adequately funded, staffed, and given operational independence to monitor corporate compliance effectively. This would ensure that statutory provisions protecting minority shareholders are consistently enforced.
- **Promote a Culture of Compliance and Corporate Ethics:**
  Companies should integrate minority shareholder protection into their corporate governance practices, fostering ethical leadership, transparency, and accountability. The adoption of mechanisms such as ethics committees, whistleblower protections, and board-level oversight can strengthen adherence to shareholder rights, mitigate the risk of abuse or neglect, and ensure that all stakeholders are treated fairly within the corporate framework.
- **Adoption of "Comply or Explain" Framework:**
  Drawing on best practices from jurisdictions such as the United Kingdom, Nigeria should encourage companies to adopt a "comply or explain" approach for minority shareholder protection. This framework promotes transparency and

[56] Financial Reporting Council (UK), *UK Corporate Governance Code* (2018)

[57] Companies Act 71 of 2008 (South Africa) ss 163–166

[58] Institute of Directors Southern Africa, *King IV Report on Corporate Governance* (2016)

[59] *ibid*

[60] Akanbi (n 3) 42.

accountability by requiring companies to report on their governance practices while allowing them the flexibility to provide reasoned explanations for any deviations, thereby balancing regulatory oversight with operational discretion.

- **Enhance Access to Remedies:**
  Courts should ensure that remedies such as derivative actions, oppression petitions, and other mechanisms for minority shareholder protection are accessible, affordable, and expeditious. By reducing procedural and financial barriers, the judiciary can empower minority shareholders to seek redress effectively, thereby reinforcing accountability, fairness, and confidence in corporate governance.
- **Standardise Corporate Governance Reporting:**
  Regulatory codes should mandate consistent disclosure of measures protecting minority shareholders, board decisions that impact minority interests, and the outcomes of any related disputes. Standardized and transparent reporting enhances accountability, allows stakeholders to assess corporate governance practices effectively, and strengthens investor confidence in the fairness and integrity of the corporate framework.
- **Periodic Review of Legal Frameworks:**
  Statutory and regulatory provisions governing shareholder protection should be **periodically reviewed and updated** to reflect evolving corporate practices, international standards, and emerging governance challenges.

8. Conclusion

Minority shareholder protection is central to corporate governance, investor confidence, and the overall stability of Nigeria's corporate sector. Constitutional provisions particularly those on property, fair hearing, equality, and economic governance provide a normative foundation, while statutory instruments such as CAMA 2020 and the Nigerian Code of Corporate Governance 2018 operationalise these protections.

Despite these frameworks, practical challenges such as weak enforcement, limited regulatory capacity, judicial delays, and inconsistent corporate compliance continue to undermine effective protection of minority shareholders. Comparative insights from the UK and South Africa illustrate the benefits of transparent, enforceable, and ethically embedded governance frameworks that Nigeria can adapt.

Strengthening regulatory capacity, integrating minority protection into corporate strategy, adopting "comply or explain" approaches, and improving access to legal remedies are essential measures for promoting shareholder accountability and confidence. Ultimately, effective minority shareholder protection enhances corporate governance, encourages investment, and supports sustainable economic growth in Nigeria.