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SHAREHOLDERS ASSOCIATIONS AND CORPORATE GOVERNANCE IN NIGERIA

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ABSTRACT: The first major issue to be considered by promoters seeking to incorporate a company in Nigeria is the decision as to who will contribute money towards the company's incorporation and towards the running of the company upon its incorporation. After getting these individuals who will provide the initial capital for the running of the company, in Nigeria they constitute the shareholders of the company. Although the Companies and Allied Matters Act 2020 (CAMA) empower a single individual to incorporate a company, that very person is always ready to set out money for the running of the company upon its incorporation. However, upon incorporation, the incorporated company becomes a legal personality distinct from the said shareholder(s) thereby leaving decisions regarding the running of the incorporated company be it private limited company or public liability company to rest on the management of the firm, the Board. The puzzle of this separate entity mixes as a result of the artificial personality that a firm acquires upon its incorporation most often possesses a great deal in understanding. While the shareholders on one hand belief as owners of funds used in setting up and running the incorporated entities, that by leaving the day-to-day management of the company to distinct individuals, that they have lost their right of controlling, guiding and protecting their investment as to ensure adequate and optimal return on their investments. The management team and the Board, on the other hand, who are charged with the

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responsibility of day-to-day management of the firms, see the actions of shareholders in the care of the use of their investments, as interference to their right to manage the resources of the firms. This mix has caused many downfalls of incorporated firms. The objective of this research effort therefore is to find out how these shareholders can harmoniously play prominent roles jointly with the management team in an incorporated company so as to safely guide the shareholders' investments without interfering with the corporate personality nature of an incorporated firm. The writer believes that doing this, will ensure optimal return on investment for the Shareholders while allowing the Board with their functions. This work will use doctrinal research method which entails examining available literatures regarding shareholders and corporate Governance in Nigeria, most especially the public limited liability companies, in order to establish how these two divides can work together harmoniously to ensure that the essence of the shareholders' investments are not defeated as a result of the distinct legal personality of an incorporated firm. This work upon its finding of how important the roles of shareholders are in corporate governance in Nigeria in the overall performance of incorporated companies, recommended both can effective work together and that the National Assembly should urgently enact an Act that will streamline the activities of shareholders associations, acceptable to both the public corporations and the private sectors.

1.0 INTRODUCTION

One of the foremost decisions taken by promoters of companies is the decision of who should constitute and contribute to the share capital of a company upon incorporation. This is because the capital of a newly incorporated firm is expressed in units called shares. As such a company share is one of the equal parts into which a company's capital is divided into, which entitles the holder to a proportion of the profits of the company. These holders of company shares are people referred to as the shareholders of the company. Upon incorporation the newly incorporated firm becomes an artificial personality distinct from such holders of the share capital and can sue and be sued in its name. Agreeing with this the Supreme Court in the case of *Isoko Community Bank Ltd V. Edofren (Nig.) Ltd & Ors* while explaining the effect of incorporation or registration of a company, held that under the Companies and Allied Matters Act the company must be regarded and sustained

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as a separate legal entity distinct from each and every shareholder, no matter how many shares one holds in the company.

This distinct and artificial nature of a company upon its incorporation make it imperative for there to be directing minds that will take decisions and carryout the day to day running of the business of the company as distinct from its shareholders. These directing minds are the directors and members of the management of the company.

As will be seen in the course of our discussions in this paper, the shareholders being apparent owners of the companies, notwithstanding the distinct nature of companies upon its incorporation from their shareholders, always will not like to sit back and watch those who are charged with the day to day running of their businesses take all the decisions being that they are the persons to bear the utmost risk in the event that the company runs aground. This mix has caused many downfalls of incorporated firms as most often the Board sees whatever step the shareholders take as interference to their day-to-day duties. It is this differing opinion between the Board and management team of incorporated firms and their shareholders that forms the nexus of this research effort. The objective of this research therefore, is to find out how these shareholders can harmoniously play their roles in their bid to safe guide their investments without interfering with the corporate personality nature of an incorporated firm. It is the believe of the writer that this, will ensure optimal return on investment for the Shareholders while allowing the Board with their day-to-day functions. In doing this, the work shall use doctrinal research method which entails examining available literatures regarding shareholders and corporate Governance in Nigeria. Emphasis will especially be on the public limited liability companies. This is deliberately done in order to establish how these two divides can work together harmoniously to ensure that the essence of the shareholders' investments is not defeated as a result of the distinct legal personality of an incorporated firm. The work upon its findings made a recommendation on how both can work together and that the Nigerian National Assembly should urgently enact an Act that will streamline the activities of shareholders associations that will serve both public corporations and the private sectors in order to assert shareholders' relevance in company's operations.

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2.0 SHARES

According to Section 868 of the Act share "means the interests in a company's share capital of a member who is entitled to share in the capital or income of such company; and except where a distinction between stock and shares is expressed or implied, includes stock." Ogbaegbe in his view opined that:

> Share is defined as the interests of members of a body corporate who are entitled to share in the capital or income of such body corporate. It is the interest of a shareholder in the company measured by a sum of money for the purpose of liability and interest, but also consisting of a serried of mutual covenants entered into by all the shareholders *inter-se* in accordance with the Act.

In the view of Bhadmus a share of a company is a security and is an expression of proprietary relationship between the company and the holder. It represents the totality of rights and liabilities that the shareholder has in that company as provided in the terms of issue and the Articles of Association. It includes right to attend and vote at meetings.

Adding his own view, Osamolu said that shares constitute an integral part of company securities with very profound implications. That share is a legal choice in action which constitutes the holder as a member of such company. In the case of *Borland's Trustee V. Steel Brothers and Co. Ltd* the Court held that a share is the interest of a shareholder in a company measured by a sum of money, for the purpose of liability in the first place and of interest in the second but also consisting of a series of mutual covenants entered into by all the shareholders. Giving his own view, Orojo defined shares when he said "A share in a company is the expression of a proprietary relationship, the shareholder is the proportionate owner of the company, but he does not own the company's assets which belong to the company as a separate and independent legal entity." Nnyeruka in his contribution opined that shares are combination of contractual and statutory rights and interests which the shareholder has against and in the company. Drawn from the foregoing views of learned authors, shares can be said to mean a proportionate holding of an interest in a company measured in monetary value which make the holder a member of such

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company first to accruing interest in the event of making profit and the second to liability in the event of making a loss by the company.

2.1 WHO IS A SHAREHOLDER?

The Court of Appeal in the case of *Agu v. Duru & Ors* held that "A shareholder as defined in the Black's Law Dictionary is one who owns or holds a share or shares in a company, especially corporation". According to CFI "A shareholder can be a person, company, or organization that holds stock(s) in a given company. A shareholder must own a minimum of one share in a company's stock or mutual fund to make them a partial owner. Shareholders typically receive declared dividends if the company does well and succeeds. A shareholder, therefore, is one who owns a share of a company which entitles him to be a member of such company among other benefits.

2.2 POWERS OF SHAREHOLDERS

The shareholders of companies have the following enumerated powers which they exercise in exclusion of other stakeholders in the company. Their powers include:

a. Their power to appoint or remove directors by way of a resolution.

b. Notwithstanding that the board of directors of a company is empowered to appoint new directors to fill casual vacancies created by death, resignation, retirement or removal, however, such appointments are subject to ratification by the shareholders in a general meeting.

c. Though when directors are acting within the powers ascribed to them by CAMA, they are not bound to obey the directions or instructions of the shareholders, unless the articles of association provide otherwise, yet the shareholders may make recommendations to the board regarding actions to be taken by the board and may ratify or confirm such actions taken by the board.

d. A shareholder can bring a court action to restrain the directors from entering into an illegal or *ultra vires* transaction or perpetuating fraud.

e. Members holding 5 per cent of the total voting rights in the company could circulate a resolution to be voted upon at a general meeting, indicating a course of action that

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should be adopted by the directors of the company. The votes required to elect a director are a simple majority of the votes cast by shareholders of a company either in person or by proxy at a general meeting. This is a veritable tool in the hands of the shareholders.

f. Shareholders acting in a General Meeting, have powers to determine directors' remuneration, appoint auditors and approve their remuneration, alter the company's share capital, alter the memorandum and articles of association of the company, approve the conversion of the company from a private to a public company and vice versa, and from a limited company to an unlimited company and *vice versa*, change the company's name and declare a dividend on the recommendation of the board.

g. The shareholders have power to bring an action on behalf of the company in an issue where the board fails to institute or defend an action on behalf of the company either where the board is wrong by itself or when there is a deadlock on the board.

h. Although where the articles of association of a company expressly vest the board with certain powers, they cannot be bound to obey the instructions of the shareholders especially when it acts in good faith and with diligence. However, their decisions can still be influenced by the shareholders amending the articles of association of the company to enable the Shareholders exercise such powers in a general meeting which will preclude board of directors from exercising such powers.

2.3 RIGHTS OF SHAREHOLDERS IN NIGERIA

Shareholders in Nigeria among other rights have the right as expressed in *Section 142* as follows:

1) A company shall not in any event have a lot of newly issued shares unless they are offered in the first instance to all existing shareholders of the class being issued in proportion as nearly as may be to their existing holdings.

2) The offer to existing shareholders shall be by notice specifying –

    a. The number of shares to which the shareholder is entitled to subscribe;

    b. The price; and

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c. A reasonable time period after the expiration of which the offer, if not accepted, will be deemed to be declined.

Furthermore, *Section 392* of the Act also provides that:

1) Any member of a company, whether or not entitled to have copies of the company's financial statements sent to him and any holder of the company's debentures (whether or not so entitled) is entitled to be furnished on demand and without charge a copy of the company's last financial statements.

2) If, when a person makes a demand for a document with which he is entitled by this section to be furnished, default is made in complying with the demand within seven days after its making, the company and each officer are liable to a penalty as the Commission shall specify in its regulations, unless it is proved that the person has already made a demand for and been furnished with a copy of the documents.

According to Yerokun "Members holding shares are members of the company. They have certain rights which include rights to attend meetings, to receive notices of such meetings, vote at general meetings and can appoint proxy in their stead. *In Saraki v. Kotoye*, the Supreme Court held that a registered holder of shares in a company is entitled to certain rights, benefits and privileges except otherwise provided by the law and provisions of the Memorandum and Articles of Association. He has the right to sell, mortgage or dispose of the shares and is entitled to receive dividends on the shares. In summary, Nelson observed that shareholders have rights under both common and corporate law to participate in key corporate governance decisions, including the right to nominate, appoint and remove directors and external auditors, and the right to approve major corporate decisions.

What the foregoing views seek to express, is that shareholders of companies have various rights created under the enabling laws to take active part in the governance of the organizations they invested in.

2.4 LEGAL STATUS OF SHAREHOLDERS IN NIGERIA

Just as Companies and Corporations in Nigeria are products of Statutes, shareholders are also creation of Statutes. Shareholders derived their power and legal statutes from the enabling Companies and Allied Matters Act which also created and regulates the

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companies and corporations. Considering the provisions of *Section 105* of the Companies and Allied Matters Act that the subscribers of the memorandum of the company shall be deemed to have agreed to become members of the company. This provision gave birth to shareholders as people considered as members of a company are shareholders of that company. Included in this category are people who subscribe in writing to become a member of a company and whose name is entered in the company's register of members, shall be a member or the shareholder of the company.

Furthermore, *Section 107* of the Act also provides that every member has a right to attend any general meetings of the company and to speak and vote on any resolution.

The practical effect of these statutory provisions is that whatever position directors and the other employees occupy or whatever power they wield, they are not members of the company unless they own shares.

3.0 SHAREHOLDERS' ASSOCIATIONS AND THEIR BRIEF HISTORY IN NIGERIA

In Nigeria, especially at the capital market, it is common to see some groups of shareholders coming together under one or more ideology to form an association.

The sole aim of this is to push an agenda and also fight for their members in companies they have interests in and also to come under one voice to influence the implementation or stoppage of a policy or decision by regulators or companies at the capital market.

Tracing the history of shareholders' association in Nigeria, Pam opined that:

> Apart from the government established shareholder associations, there are also independent shareholder associations. Independent shareholder groups were a rarity in the capital market until 1985 when the late Otunba Akintunde Asalu formed the Nigerian Shareholders Solidarity Association (NISSA) – one of the seven duly registered with the CAC. Taking a cue from NISSA, other shareholder associations began to spring up. Some emerged as a function of location, others as a function of focus but, in the main, others emerged to partake in the economic cum commercial benefits that came the way of a 'group' with so much leverage and relevance.

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Citing the work of Obinna Chima and Meshack Idehen, Eboh opined that “not a few corporate organisations felt he (Akintunde Asalu) was wasting his time trying to form an association of shareholders that would put managements of companies to task about their operations and bookkeeping. It was virtually unheard of that shareholders would query the management of a quoted company on the use of funds available to it in a particular year. Shareholders’ acceptance always had it”.

Although some shareholders’ associations had existed earlier in some parts of the country, NISSA became much more vocal. It subjected the annual reports of companies to serious scrutiny; forcing managements to explain how they arrived at the figures they paraded. This led to the prominent status, respect and recognition accorded shareholders which ultimately led to the membership of audit committees of listed companies long before the fad of corporate governance made it such an imperative. With NISSA, it became obvious that managements of companies had a lot to answer if they mismanaged shareholders’ funds.

Taking a cue from NISSA, other shareholders’ associations began to spring up. Some emerged as a function of location, others as a function of focus but in the main, others emerged to partake in the economic cum commercial benefits that some came the way of a ‘group’ with so much leverage and relevance. The proliferation of these associations, in the absence of measures to regulate them, became its very undoing. Soon, it emerged that these groups, like all power blocs, became victims of their own success. Though there arose problems associated with emergence of the private shareholder associations, their emergence shows that Nigerian investors were no longer solely interested in the economic value of their shares but also in the right that share ownership gives them to influence corporate strategy and management.

Although shareholders’ associations emerged during the Federal Government privatisation policy in the 70’s, the emergence of NISSA brought in its wake the emergence of an era of shareholders’ activism and influence on the corporate existence of companies and as more public enterprises became privately owned, shareholders of such companies sought explanations on the activities of their managements.

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From the database of Securities and Exchange Commission (SEC) there are presently 111 registered Shareholders Associations in Nigeria. The list is attached to this seminar paper for ready reference.

3.1 CODE OF CONDUCT FOR SHAREHOLDERS' ASSOCIATION IN NIGERIA

Seeing the indispensability of shareholders associations in corporate governance in Nigeria and especially in the capital market, with its attendant issues, SEC pursuant to *Section 8 (y)* which empowered her to make provisions for the conduct of members of shareholders' associations during general meetings of public companies and their relationship with public companies outside the general meetings and for other purpose connected therewith, made the code of conduct for shareholders associations in 2007 . The code of conduct is intended to ensure the highest standard of conduct amongst association members and the companies with whom they interact as *bona fide* shareholders.

Making reference to this code, The DLSL Blog said "Indeed, there is a SEC Code of Conduct for shareholders made pursuant to *Section 8 (y)* of the Investments and Securities Act (ISA) 1999 that seeks to guide the conduct of members of Shareholders' Associations during general meetings of public companies and their relationship with public companies outside the general meetings. The Code is intended to ensure the highest standard of conduct amongst members of Shareholder Association and to ensure that shareholders 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 essence was to identify various leaderships of the associations, their membership and to be able to register them. It was on this premise that SEC consequently inaugurated in 2007 the Code of Conduct for Shareholders' Association. The Code highlighted four major areas as follows:

i. Establishment and membership of the shareholders' association. The Code provides that membership of a shareholders' group must not be less than 50 shareholders of public companies and such group must be duly registered with the Corporate Affairs Commission. Membership of a Shareholders Association shall be open to all shareholders on a voluntary basis. The Association shall have a constitution or byelaws which shall. The Association shall have an Executive Committee of not more than 10 officers constituted through an electoral process. The officers of the Association shall

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be elected for not more than two terms of three years, and such a shareholder shall not be eligible for election until the expiration of three years after his six-year term;

ii. Attendance to annual or extraordinary general meetings. In the call for attendance of the said meetings, it was restricted to meetings where such member of the association is a member of the company and not on the basis of a shareholder association unless such nonmember is a proxy; and

iii. Membership of audit committee. An important recommendation of the Code is that shareholders should ensure that members who are elected to the audit committee of their company have knowledge of accounting and internal control processes.

Adding further on the provisions of the SEC Code for shareholders' association, Michael observed that "certain Sections of the code mandate shareholders' associations to maintain books of accounts which shall be subject to annual audit by a qualified auditor, file annual returns to the Corporate Affairs Commission and also file an annual report of its activities with the Securities and Exchange Commission." He further added that the Code employs Shareholders to conduct themselves with decorum during AGM or EGM of their companies, promote good governance of public companies and strive to influence corporate and government policies that seek to encourage investment and advance the interest of shareholders and optimize shareholders value, while not allowing themselves to be manipulated.

Another very important provision on membership of Audit Committee is that shareholders through the shareholders' association should ensure that the internal control systems of the companies in which they are shareholders are effective. It is important to point out that all Shareholders' Associations shall adopt the code of conduct in their constitution and SEC will only recognize Shareholders' Associations which comply with the provisions of this Code.

4.0 CORPORATE GOVERNANCE

Corporate governance is the system of rules and responsibilities delegated to several groups within a corporation as well as procedures on handling corporate matters. According to Investopedea.com "Corporate governance is the system of rules, practices, and processes by which a firm is directed and controlled. Corporate governance essentially

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involves balancing the interests of a company's many stakeholders, such as shareholders, senior management executives, customers, suppliers, financiers, the government, and the community. To Corporate Finance Institute "Corporate governance is something altogether different from the daily operational management activities enacted by a company's executives. It is a *system* of direction and control that dictates how a board of directors governs and oversees a company". It provides the framework for attaining a company's objectives, it encompasses practically every sphere of management, from action plans and internal controls to performance measurement and corporate disclosure.

Making her own contribution Chartered Governance Institute UK and Ireland said "Corporate Governance refers to the way in which companies are governed and to what purpose. It identifies who has power and accountability, and who makes decisions. It is, in essence, a toolkit that enables management and the board to deal more effectively with the challenges of running a company. Corporate governance ensures that businesses have appropriate decision-making processes and controls in place so that the interests of all stakeholders (shareholders, employees, suppliers, customers and the community) are balanced." Simply put by SpriggHR "Corporate governance refers to all laws, regulations, codes, and practices that define how a company is administrated. It determines the rights and responsibilities of all active agents within an organization, attracting talent and financial capital, boosting internal efficiency, and providing economic value to stakeholders long-term."

Corporate governance has two perspectives the narrow perspective and the broad perspective. The narrow view of corporate governance, according to the authors, deals with how structures within a corporate entity or enterprises receive their basic orientation and direction while the broad perspective is the centre-point of both market economy and democratic society. It takes a holistic view of corporate governance to mean that issues of institutional, legal and capacity building as well as the rule of law in a given society are at the very heart of corporate governance.

Corporate governance is intended to regulate the conduct of directors, accountability to shareholders, recognition of the interest of other stakeholders and the need to encourage investment to flow where it could be most productive by raising in this case, the Nigerian corporate governance standards to best international practices in comparable jurisdictions.

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In the words of Bamidele Adebayo, "corporate governance embodies the integrity of an organization. It represents what the organization stands for in the conduct of its business dealings, which directly reflects the person of the individual member of the board as any act of these individuals is deemed to be that of the organization when such act can be viewed as bad or good." He goes further to say that effective corporate governance anchors ultimately on "meeting the demands" of all participating stakeholders in the fortune (or otherwise of every corporate entity. The greatest of the stakeholders are the owners – shareholders, who submit their governance authority to the Board of Directors (BOD) on behalf of the company.

United Kingdom (UK) defines corporate governance as "the system by which companies are directed and controlled." Corporate governance essentially involves balancing the interests of the many stakeholders in a company. These include its shareholders, management, customers, suppliers, financiers, government and the community.

The Organization for Economic Co-operation and Development (OECD) defines corporate governance as:

> The system by which business corporations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as the board, managers, shareholders and other stakeholders and spells out the rules and procedures for making decisions on corporate affairs. By doing this it also provides the structure through which the company objectives are set, and the means of attaining those objectives and monitoring performance

It encompasses practically every sphere of management, from action plans and internal controls to performance measurement and corporate disclosure. It is the process by which corporate entities particularly limited liability companies are governed. It is the exercise of power over the enterprise direction, supervision, management and control of enterprise actions, with the concern for the effect of enterprise actions, with the concern for the effect of enterprise on other parties, particularly the stakeholders and accountability of corporate administrators. It is an important concept that relates to the way and manner in which

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financial, material and human resources available to an organisation are judiciously used to achieve the overall corporate objective of an organisation. It keeps the organisation in business and creates greater prospects for future opportunities.

To me, when we say corporate governance, two things come to the fore, which are: corporations and governance. It follows therefore that corporate governance refers to all laws, regulations, codes, and practices that define how a company is administrated. It simply refers to the way an organisation handles or governs itself. It is the determination of the rights and responsibilities of all active agents within an organization, attracting talent and financial capital, boosting internal efficiency, and providing economic value to stakeholders' long-term expectations. It essentially involves balancing the interest of the many stakeholders in a company.

4.1 KEY ISSUES IN CORPORATE GOVERNANCE

In discussing Corporate Governance, some issues are very key as they set the undertone of the various discussions involved in Corporate Governance. These issues which are derived from the definition of Corporate Governance are outline below:

a. Corporate governance is the structure of rules, practices, and processes used to direct and manage a company.

b. A company's board of directors is the primary force influencing corporate governance.

c. Bad corporate governance can cast doubt on a company's operations and its ultimate profitability.

d. Corporate governance entails the areas of environmental awareness, ethical behavior, corporate strategy, compensation, and risk management.

e. The basic principles of corporate governance are accountability, transparency, fairness, and responsibility.

Summarising key issues in corporate governance, Wigwe opined that:

> No company incorporated can operate successfully in the business world without having a formidable management team, i.e., some key

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players who ensure the day-to-day administration of the company. Hence, there is growing need for effective corporate governance. Again, as the number of shareholders in a company increases, it is obviously impossible for all to be involved in the management and control of the company's affairs and so a separation commonly develops between those who collectively own the company (the shareholders) and those who manage it (the directors). This develops with a view or aim is to ensure the day-to-day administration of the company. As a result, some key players are appointed for an effective corporate governance of the company.

4.2 BRIEF HISTORY OF CORPORATE GOVERNANCE IN NIGERIA

The idea of corporate governance is not a new concept in Nigeria and cannot be separated from company law in general. The emergence of corporate governance principle in Nigeria can be traced to the Companies and Allied Matters Act (CAMA) 1990, which replaced the Companies Act of 1968. Over centuries, corporate governance system has evolved. Thus, it is crucial to discuss the evolution of corporate governance in Nigeria.

In the year 1960, after Nigeria attained her independence, the Companies Ordinance of 1922 was repealed and replaced by the Companies Act of 1968, which was modelled after the English Companies Act of 1948. The Act became the principal legislation regulating companies in Nigeria. It contained comprehensive provisions concerning the running of the affairs of companies particularly in relation to the roles of the board of directors and that of members in general meetings. However, the Companies Act of 1968 failed to appreciate the economic realities and settings of Nigeria. It was only a little more than the putting together of some of the sections of the replaced Companies Act and some sections of the English Companies Act, 1948 instead of taking the bold step of enacting both statute and case law on companies. The preparation of such statue, as it was contended, would have provided an opportunity for full consultation for the review and reform of the law. Then upon the review of the Companies Act of 1968, it was repealed and replaced by the Companies and Allied Matters Act. The Act then being primary law regulating companies in Nigeria made provisions which are fundamental to corporate governance practice in Nigeria. The provisions included; required accounting and auditing standards, equity

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ownership disclosure, minority shareholders' rights and equality of members, and oversight management function where Corporate Affairs Commission (CAC) and other regulators are expected to regulate the activities of the companies. Another significant feature of CAMA was the codification of directors' duties.

Apart from the CAMA, Nigeria also had other legislations which applied to different sectors of the economy that companies in the respective sectors were obligated to comply with; such as the Central Bank of Nigeria Act, Banks and other Financial Institutions Act, National Insurance Commission Act, Pension Commission Act, Financial Reporting Council Act, Nigerian Deposit Insurance Corporation Act, Nigerian Communications Act and Investment and Securities Act among others.

However, soon after the promulgation of CAMA, the corporate challenges around the world brought the fore issue of corporate governance, as a result of which different countries across the globe started reviewing their corporate governance practices. This made certain countries issue corporate governance codes of practices to address new issues that were not adequately and specifically covered by the company legislation. Nigeria happened to be one of them. In August 2003, the Code of Corporate Governance for Banks and other Financial Institutions in Nigeria was issued by the Bankers' Committee. It was deliberated and compiled by the Bankers' Committee's Sub-Committee on corporate governance. The code was applicable to all banks and other financial institutions operating in Nigeria when it was issued. Although the code was comprehensive, it had little or no impact in the end because of the issuance of Code of Best Practices on Corporate Governance in Nigeria in October 2003 by Security and Exchange Commission. However, Banks and Other Financial Institutions Act by the provisions of its 67(1)(a) empowers the Central Bank Governor to make regulations and guidelines with respect to corporate governance including the appointment of principal officers of the bank.

The code issued by the SEC made an impact at the corporate scene in Nigeria being the first corporate governance code to be issued by any regulator in Nigeria. It was however, replaced with the Code of Corporate Governance in Nigeria made in April 2011 by SEC. In 2006 the CBN came up with a mandatory code of corporate governance (Code of

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Corporate Governance for Banks in Nigeria Post-Consolidation) applicable to all banks licensed in Nigeria.

The National Pension Commission issued its own code in 2008, known as the 2008 PENCOM Code. Subsequently, the National Insurance Commission issued its Code of Corporate Governance for the Insurance Industry in 2009. These three industry-specific codes were meant to address the issues that were not addressed in the SEC 2003 legislation. However, in 2011, SEC released the Code of Corporate Governance for Public Companies in Nigeria, which served as a replacement for its 2003 legislation. This Code was adjudged the most comprehensive code on corporate governance in Nigeria being anchored on five main principles, which include: leadership, effectiveness, accountability, remuneration and relations with shareholders.

In 2014, the Code of Corporate Governance for Banks and Discounts Houses in Nigeria and Guidelines for Whistle Blowing in the Nigerian Banking Industry was issued. In the same year, the Code of Corporate Governance for Telecommunication Industry was issued by the NCC. The NCC code sought to foster good corporate governance practices in the Nigerian Telecommunications Industry, which provisions are based on the international best practices. In 2018, the Financial Reporting Council of Nigeria (FRCN) by virtue of its powers in *Sections 50 and 51(1)* issued the Nigerian Code of Corporate Governance 2018 on the 15th of January 2019. The objective of the code is to institutionalise corporate governance best practices in Nigerian companies particularly those who are not already by sectoral regulation. Furthermore, the Code is the first national code of corporate governance that cuts across all sectors.

It is, however, important to take note of an earlier attempt by the FRCN to include a Private Sector Code (PSC) in its National Corporate Governance Code that was challenged and defeated in court. In the case of *Eko Hotels Limited v. Financial Reporting Council of Nigeria*, Justice Abang, held that the Financial Reporting Council of Nigeria's power, as stated in its enabling Act, covers only public interest entities and that this does not extend to regulation of private companies. Since this judgment has not been upturned by any superior court, this is the present position of the corporate governance code.

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5.0 ROLE OF SHAREHOLDERS' ASSOCIATIONS IN CORPORATE GOVERNANCE IN NIGERIA

Though Shareholders do not normally have rights to be involved directly in day-to- day company management, their connection to company management is typically via the Board of Directors. However, shareholders being people who are investors to the company, all about corporate governance revolves round them as the benefit of corporate governance seek to improve their lots. Agreeing with this view, Sulaimon and others, posited that:

> Corporate governance, according to Craig (2005) is practiced differently across the world, contingent upon the comparative control of owners, managers and providers of capital. From this point of view, corporate governance entails responsibility and accountability, transparent disclosure, investor participation and other ethical issues. On this note, it is obvious that no matter the perspective from which corporate governance is observed, there is continuously a collective consensus that corporate governance is related and centered on improving stakeholders' worth, and that management should strive to jointly reinforce the ideas and approach in the direction of achieving those lofty objectives.

Shareholders associations on the other hand are group of shareholders with common industrial interest. They come together to champion collectively their individual goals with respect to their stakes in an organisation. They play aggregate roles the individual shareholders could have played in an organisation. The difference is that by their coming together they are able to influence decisions as a body other than standing alone. Though the Companies and Allied Matters Act (CAMA) did not expressly provide the powers to be exercised by shareholders association in corporate governance, the association expresses their role in corporate governance as shareholders acting through a common front. These roles can be summarised as follows:

a. As association they brainstorm and decide the powers they will bestow upon the company's directors, including appointing and removing them from office;

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b. As association they decide on how much the directors receive as their salaries by comparing how much other directors from other associations receive;

c. The shareholders' association who are dissatisfied with how the directors are running the corporation may remove the directors or refuse to re-elect them pursuant to Section 273(1);

d. The shareholders in general meetings are at liberty to recommend to the board actions to be taken by the board. In other words, the members in general meetings can by special resolution give 'directions' whether such directions formally alter the Memorandum and Articles or not. In other words, the members in general meetings can curtail further powers of the directors to act, even on matters expressly reserved by the Articles for the directors; and

e. The shareholders in a general meeting can effectively intervene in the management of the company by a special resolution and also thereby altering the company Articles.

This work will now examine the provisions of CAMA that permit shareholders' association the power to carry out some corporate governance functions through their powers as shareholders of their various corporations:

Section 87(1): A company shall act through its members in general meeting or its board of directors or through officers and agents appointed by the or under authority derived from the members in general meeting or the board of directors.

Section 87(2): Subject to the provisions of this Act, the respective powers of the members in general meeting and the board of directors shall be determined by the company's Articles.

Section 87(3): Except as otherwise provided in the company's Articles, the business of the company shall be managed by the board of directors who may exercise such powers of the company as are not by this Act or the Articles required to be exercised by the members in general meeting.

Section 87(4): Unless the Articles shall otherwise provide, the board of directors when acting with the powers conferred upon them by the Act or Articles shall not be bound to

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obey the directions or instructions of the members in general meeting, provided that the directors acted in good faith and with due diligence.

Section 87(5): Notwithstanding the provisions in Subsection (3) of this Section, the members in general meeting may:

a. Act in any matter if the members of the boards of directors are disqualified or unable to act because of the deadlock on the board or otherwise;

b. Institute legal proceedings in the name and on behalf of the company, if the board refuse or neglect to do so;

c. Ratify or confirm any action taken by the board;

d. Make recommendation to the board of directors regarding action to be taken by the board.

Section 87(6): No alteration of the Articles shall invalidate any prior act of the board of directors, which would have been valid if that alteration had not been made.

From the foregoing review of the Sections of the CAMA dealing with the distribution of powers between the board and the general meeting, it is no longer doubt that the CAMA enhanced the position of the members in general meetings. It is therefore obvious that the shareholders wield supreme power over the board. One could ask, who makes the Articles but the general meeting? The CAMA also made the Articles the final determinant and arbiter of who performs what function and who allocates powers, or whom to allocate powers to. It is very important to note that the board and the general meeting are organs of the company. The company acts through these organs. The acts of these organs bind the company. In exercising company powers as provided in the relevant Sections of the CAMA as was outlined above, these organs are the tools, hands and eyes of the company. They are also the mind of the company with which the company thinks and formulates policies, thereby implementing same. These organs exercise the company's powers allocated to them by the Articles. While the board of directors is charged with the primary responsibility of managing the affairs of the company on behalf of the shareholders, the shareholders are to ensure that the boards of directors formulate proper policies. They ensure that the boards of directors properly manage the company as they are supposed to.

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The shareholders' association acting as an aggregate unit of shareholders of a company can, through the instrumentality of general meeting, get involved in corporate governance by acting a check on the excesses of the board. In addition, the shareholders in general meetings are the supreme organ of the company since they are the actual investors of capital and resources. In other words, they are the owners of the company. The shareholders in general meetings can overreach the board whenever the need arises. This, therefore, is supposed to show that the general meeting should ensure that company's affairs are not left to the whims and caprices of the board of directors. However, the board is not bound to obey the directions and instructions of the members in general meetings where it is obvious that the board is not acting in bad faith or without due diligence to do what is in the best interest of the company as earlier stated in *Section 87(4)*.

Finally, the members in general meeting may by Special Resolution alter the Articles to remove any powers conferred on the board by the Articles as in *Section 53(1)* and (2) although due consideration need be made to the provisions of *Section 87(6)* to the effect of not invalidating actions taken before the alteration of the Articles.

6.0 SHAREHOLDERS/BOARD RELATIONSHIP

Having seen the indispensable roles that both the shareholders and boards of corporations play towards their organizational growth and survival, the following is an attempt to outline ways they can work together seamlessly without each party expressing the fear and apprehension of each other which always breed discordant relationship and industrial inharmony.

i. Both parties need to recognize and comprehend the concepts, procedures and complications of corporate governance by seeing themselves as necessary parties towards their organizational overall performance. They are major players as such should be able to appreciate and effectively unite all the stakeholders by their actions so as to avail themselves of the opportunities corporate governance brings to bear;

ii. The board in carrying out their day-to-day operations should realise that transparency and adequate disclosure of information are key attributes of good corporate governance and must be cultivated in order to provide stakeholders with basic information to judge whether their interests are being taken care of. This will assist in

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building capacity and strategy to address identified challenges before they become uncontrollable;

iii. Corporate bodies should develop good, efficient and reliable internal control systems that will not only curb and control fraudulent practices but align with the interest of the shareholders and other stakeholders.

iv. Directors of companies should take note that shareholders' interest is a major part of corporate governance. Shareholders may reach out to the members of the community who don't necessarily hold an interest in the company, but who can nonetheless benefit from its goods or services. Reaching out to the members of the community encourages lines of communication that promote company transparency. Transparency here means that anyone, whether inside or outside the company, can choose to review and verify the company's actions. This fosters trust and is likely to encourage more individuals to patronize the company and possibly become shareholders as well; and

v. Lastly, is the rising issue of information security in corporate governance. Shareholders and customers/clients need to feel confident that their personal information is not being leaked or accessed by unauthorized users. It is equally important to ensure that the company's proprietary processes and trade secrets are secure. A data breach is not just very expensive. It also weakens public trust in the company, which can have a devastating negative effect on its stock price. Losing investor trust means losing access to capital that is necessary for corporate growth. This advice should well be taken by the board of corporations in their day-to-day practice.

7.0 SUMMARY, CONCLUSION AND RECOMMENDATIONS

7.1 SUMMARY

In summary, Shareholders and Shareholders Associations in Nigeria do as owners and investors in companies, play very strong role in corporate governance in Nigeria. Their roles are principally more pronounced through their voting power in their various meetings. The symbiotic relationship between Shareholders Associations and Corporate Governance in Nigeria can be summarised as incapsulated by Rod when he outlined the roles of shareholders in corporate governance to include:

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A. Voting: During annual meetings of corporations, shareholders exercise their rights to vote on company decisions. They vote on a variety of corporate matters including voting in officers, company acquisitions and mergers or liquidations of company assets. This is one of the strongest tools the shareholders have in controlling the affairs of the corporation.

B. Inspecting: Inspecting the financial records of the corporation is another tool that the shareholders have in viewing their corporation's financial information performance, though they can also see the information from the financial records submitted to the Securities and Exchange Commission by the corporation. Through the inspection, the shareholders take critical decisions regarding their corporation.

C. Dividend Entitlement: Shareholders are entitled to dividends when declared by the corporations and no shareholder is victimized in sharing the dividends when declared.

D. Rights to Sue: The shareholders have right when wronged by their corporations to sue in order to address the wrong against them. It can also be when they did not receive their dividends.

E. Unfair Considerations: One of the objectives of corporate governance is to be fair to all shareholders. However, some corporations issue dual stocks that challenge the fairness and equality of all shareholders which the corporate governance is trying to protect. In some corporations, they issue dual stocks which are not available to all investors and there are different levels of rights associated with each one. Although, Companies and Allied Matters Act 2020 has abrogated the issuance of weighted and non-voting shares.

These roles make the shareholders an indispensable part of the organizational success story, however, do not in any way remove the very important roles played by the respective boards of each corporation which are evident in their day-to-day roles in their organisations. It is towards this end that shareholder-board relationship has been discussed.

7.2 CONCLUSION

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There are many Shareholders Associations in Nigeria. These shareholders play significate roles in corporate governance in Nigeria. Their roles in corporate governance stem from the fact that they are really the business owners notwithstanding that the day-to-day corporate management of the organisations are in the hands of selected firms, called the Board. This is done to ensure that investors in incorporated firms (Private or Public) do not entirely lose control of the management of their investments due to the legal personality of the incorporated firms but maintain some form of control at the rear to ensure maximum return on their investments.

Though attempts have been made to regulate their activities by various sectors of the economy, for instance, the Securities and Exchange Commission, the Bankers Committee, Financial Reporting Council of Nigeria, including the Nigerian Code of Corporate Governance, 2018, there has not been any code of conduct regulating both the public and private shareholders association in Nigeria in view of the unreported Federal High Court of Nigeria's decision in *Eko Hotels Limited v. Financial Reporting Council of Nigeria* which is till subsisting as it has not been upturned by a superior Court.

In conclusion, though the roles of shareholders in corporate governance is a creation of status and cannot be wished away but the roles of the board in corporate governance as a result of the independent personality of corporations are also indespensible and based on statutes creating the corporation. Therefore, there must be a meeting ground of how these two can work together for the utmost good of the corporations.

6.3 RECOMMENDATIONS

Due to the important roles that shareholders and shareholders' associations play in corporate governance in Nigeria and the need for them to be properly organized vice a vice the indispensable roles the boards of corporations play towards the success of every corporation, this work recommends as follows:

i. That the shareholders/board relationship outlined in this work should be adopted; and

ii. That in a bid to reorganize more shareholders and their associations to enable them to play their roles more effectively, the National Assembly should urgently enact an Act that will streamline the activities of shareholders associations, acceptable to both the

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public corporations and the private sectors. This is because, the Nigerian Code of Corporate Governance, 2018 that sought to provide guidelines for corporations has been held not applicable to the private companies.

When this is done, it will help institutionalize corporate governance best practices in Nigerian companies and boost the integrity quotient of the Nigerian business environment. It will further facilitate increased trade and investment.

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