

## DILEMMA OF MINORITY SHAREHOLDERS IN NIGERIA COMPANY LAW\*\*\*

### Abstract

*The Nigerian company law framework is designed to provide a legal structure that governs the rights, obligations, and relationships between various stakeholders in companies. Among these stakeholders, shareholders play a crucial role in the governance and decision-making processes. However, the Nigerian company law presents a series of dilemmas for shareholders, posing challenges to their rights, protection, and effective participation in corporate affairs. Shareholders often face challenges in accessing accurate and timely information about corporate affairs, financial performance, and risk factors. This lack of transparency undermines shareholders' ability to make informed decisions, hindering their capacity to hold management accountable and protect their investments. Moreover, the limited enforcement mechanisms within the Nigerian company law contribute to the shareholders' dilemma. Weak regulatory oversight and the slow judicial process make it difficult for shareholders to seek redress for violations of their rights or for instances of corporate misconduct. The absence of efficient dispute resolution mechanisms adds to the shareholders' predicament, discouraging their active participation in corporate governance and eroding investor confidence to address the shareholders' dilemma in Nigerian company law. Thus, the dilemmas faced by minority shareholders in Nigerian company are explored and equally shed light on their implications for corporate governance and investor confidence. It was found that the dominance of majority shareholders is a primary dilemma in Nigerian company law, as it allows controlling shareholders to exert undue influence and prioritize their interests over minority shareholders. This raises concerns regarding fair treatment, equitable distribution of dividends, and access to relevant information for effective decision-making. The absence of comprehensive protections for minority shareholders further exacerbates this dilemma, leaving them vulnerable to exploitation and dilution of their rights. Therefore, it is recommended that there is need to enhance the minority shareholder protections by strengthening disclosure requirements, improving regulatory oversight, and streamlining the legal framework for efficient dispute resolution.*

**Key Words:** Shareholders, Minority Shares, Companies, Dilemma, Proxy Rights, Dispute

### 1. Introduction

It is not unusual to find majority shareholders running company in an illegal or oppressive mode irrespective of provisions of the laws regulating the operation of companies in Nigeria or managing the company in an oppressive manner detrimental to the rights of the minority shareholders. In most cases, the saying that ‘majority will always have their way while the minority will have their say’ holds true in most cases when decisions are made by the company. Minority shareholder(s) can be referred to person(s) who holds such number of shares or interest which does not confer control over the company or shareholder(s).<sup>1</sup>

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<sup>1</sup> U T Ndukwe, ‘Protection of Minority Shareholders under the Nigerian Company Law’ < <https://www.oakwoodlegalng.com/assets/files/Minority-Protection.pdf> > accessed on 16th April 2023.

It is trite that once a company has gone through the process of incorporation as stipulated under the law, it becomes an entity distinct from the co-operators or what we may choose to call the shareholders.<sup>2</sup> Thus, it is obvious that there are many stakeholders involved with the issue of corporate management, the shareholders being in the forefront, others include creditors, directors, managers, employees, government and the general public. Therefore, for a company's legislation to be effective, it must strike a balance between various often conflicting interests.<sup>3</sup>

The protection of the minority shareholders within the domain of corporate activity constitutes one of the most difficult problems or dilemma facing modern company law<sup>4</sup>. The reason for this is not far-fetched, due to the fundamental attribute of corporate personality conferred on a company as a distinct personality different from its members. A company is an 'artificial person' hence, its affairs is managed by natural persons<sup>5</sup>. Such natural persons are the members or directors of the company who are tasked with the daily management and operation of the company and are required to act in the best interests of the company.<sup>6</sup> Accordingly, decision making in a company though meant to be reached in a democratic manner is often lopsided due to the fact that majority get to have their suggestions adopted. Although, Company and Allied Matters Act, 2020<sup>7</sup> while affording protection to such minority shareholders by providing some remedies, such remedies seem to be inadequate given the current realities and complexities in the power game for control of company affairs.

## **2. Dilemma of Shareholders in Nigeria Legal System**

### **2.1 Examining the Role of Shareholders**

Minority shareholders in Nigeria, as in other countries, hold a smaller portion of a company's shares compared to the majority shareholders. While they may lack significant influence, their role includes participating in general meetings, voting on important matters, receiving dividends, and having legal rights to protect their interests. However, in most cases, minority shareholders face challenges in asserting their rights and ensuring fair treatment due to potential power imbalances and corporate governance issues. Some of these rights will be discussed below;

### **2.2 Locus Standi**

A major obstacle in the way of a minority shareholder is the *locus standi*, that is whether a minority shareholder has any standing in law to bring an action in court in respect of wrongs done to a company, of particular significance is breach of duty by directors which is a major source of injury to the company and consequently the minority.

The protection of minority shareholders in a company cannot be answered in the affirmative, although from the provisions of CAMA<sup>8</sup>, it is almost clear that a minority shareholder has *locus standi* to sue either personally or in a representative capacity.<sup>9</sup> It will, however, appear that any ground that does not come under the provisions will not entitle the minority shareholder to sue. This does not totally remove the judicial obstacle of *locus standi* against the minority shareholders. The enlargement of the class of

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<sup>2</sup> E M Asomugha, *Company Law in Nigeria under the Companies and Allied Matters Act* (Toma Macro Publisher, Lagos, 1994) 119.

<sup>3</sup> (n 1).

<sup>4</sup> (n 1).

<sup>5</sup> (n 1).

<sup>6</sup> (n 1).

<sup>7</sup> Hereinafter referred to as CAMA, 2020.

<sup>8</sup> CAMA, 2020, s 344.

<sup>9</sup> KD Barnes, *Cases and Materials on Company Laws* (Ile-Ife: OAU Press Ltd, 1992).

those who can seek remedy under section 353 of the new Act<sup>10</sup> is, however, commendable. The provisions of the Act extends that those who can seek remedy now include the personal representative of a deceased member and any person to whom shares have been transferred by operation of law.

Furthermore, a minority shareholder wishing to ventilate his grievance in a derivative action before the court under CAMA<sup>11</sup> must comply with the requisite procedural steps as a condition precedent to the hearing of his case, otherwise the proceedings will be declared a nullity, Supreme Court in *Agip (Nigeria) Limited v Agip Petroli International & Ors.*<sup>12</sup> Re-echoed this provisions of the law. However, the combined effect of some of the provisions of the Act<sup>13</sup> guarantees the individual member's rights. The entrenchment of the decision in *Edokpolor's case*<sup>14</sup> which could be termed an omnibus 'minority protection clause' in the new company legislation is applaudable. What will qualify as being in the interest of justice will depend, however, on the peculiar circumstances of each case, 'there are no closed criteria for what is in the interest of justice'. This was evident in *Edokpolor's case* where liberal interpretation of the words dismantled the *locus standi* barrier in its entirety when read in conjunction with s. 408(a) of the Companies Act, 1968.

In *Edokpolor and Co. Ltd. v Sam Edo Wire Industries Ltd & Ors.*<sup>15</sup> the plaintiff applied to the court to have the allotment of shares made by the company's directors set aside on the ground that there was collusion between the company and the allottees to his own detriment. The defendants contended that the plaintiff had no right to bring the action because he was barred by the rule in *Foss v Harbottle*<sup>16</sup>. Moreover, the defendants contended further that the cause of action did not accrue because he was barred by the rule in *Foss v Harbottle*<sup>17</sup> and that the cause of action arose before the company was incorporated. The Federal High Court overruled the defence and granted the plaintiff's claim. The judgment of the Supreme Court led by Nnamani, JSC was most elucidating. He said, listing the four exceptions, "A fifth exception appears to have developed from the cases. An individual minority shareholder can also sue where the interest of justice demands<sup>18</sup> that he be so allowed to sue".

### 2.3 Shareholders Dispute

Shareholders' dispute is closely linked with the protection of their rights. The rights conferred upon the shareholders by the legal and regulatory system would be useless if the shareholders did not have standing to bring enforcement action against a member of the company or the controllers of the company when their fundamental rights have been denied<sup>19</sup>. There is no comprehensive statutory provision on how shareholders disputes can be resolved under CAMA. The statutory provision is that an individual minority shareholder can also sue where the interest of justice demands. It is, therefore, necessary, to determine the proper forum for the resolution of shareholders' disputes. While there is a need for an institution to enforce the rights to which shareholders are entitled, such an institution does

<sup>10</sup> CAMA 2020.

<sup>11</sup> CAMA, 2020, s 346.

<sup>12</sup> (2010) 1 SC (Pt. II) 98.

<sup>13</sup> CAMA 2020, 343, 344, 353(1)(a), 346 and 354.

<sup>14</sup> *Edokpolor and co v Sam Edo Wire Ind. Ltd & ors* (1984) 15 NSC 553; (1984) 7 SC. 119.

<sup>15</sup> *Ibid.*

<sup>16</sup> (1843) 2 Hare 461, 67 ER 189.

<sup>17</sup> *Ibid.*

<sup>18</sup> CAMA, 2020, s 343 (g).

<sup>19</sup>M Nnalue, 'The Extent of Minority Shareholders' Protection in Takeovers: Right Actions' *Chukwuemeka Odumegwu Ojukwu University Journal of Commercial and Property Law (COOUJCPL)* [2019] (2) (1).

not need to be the court. Other institutions having the nature of an independent tribunal could have the same function as the traditional judiciary<sup>20</sup>.

A shareholder as a provider of capital is entitled to the right to legal action to protect his rights directly or to enforce the duty of the directors, which will indirectly protect his rights. When the law confers rights upon legal and natural persons, the standing to enforce these rights is essential to the very essence of the democratic deliberative process. If the process impinges upon these rights, the system must provide an avenue for redress. It is usually said that litigation instituted by an individual shareholder based on minor harm caused by directors should not distort a company's operation.<sup>21</sup> Simply put, an individual shareholder should not be able to bring a case against the board of directors for alleged unfair conduct towards him, which caused minimum injury. An example could be an action brought on the grounds that the shareholder was not able to ask questions at the general meeting due to time constraint. This assertion is wrong and detrimental to the minority shareholders. Therefore, there must be a balance between the interests of the company, represented by the board, and the interests of the shareholders.<sup>22</sup> According to a News report,<sup>23</sup> a Nigerian energy solutions provider, Oando released its 2019 -2020 financial statements..The statement said the three-year delay in the release of the company's results was precipitated by the Securities and Exchange Commission's (SEC) suspension of Oando's 2018 Annual General Meeting (AGM) which was due to a dispute with an indirect shareholder, Ansbury Investment Inc. The suspension of the company's 2018 AGM and attendant issues prevented shareholders from being kept abreast of business operations, a move decried on numerous occasions by Oando and her executives as not being in the best interests of the market. In July 2021, Oando entered into a settlement with the SEC on all matters subject to litigation and other issues flowing there from, thus putting an end to one part of the dispute with Ansbury.

The role of SEC here, as an arbitral body is applauded and remarkable to the corporate world; it is hoped that CAMA will be amended to include such provision.

#### **2.4 Minority Shareholders Oppression**

Tyranny occurs when majority shareholders, who are in control of the company dictate and implement their influence to run and administer the company's affairs for their individual gains in complete disregard or detrimental treatment to and in opposition to the minority shareholders or investors.<sup>24</sup> Shareholders supremacy and power is not as potent as is frequently believed,<sup>25</sup> the world over, the tyranny of the majority demonstrated by those who implement the prerogatives of ruler ship raises antagonism, hostility and insubordination to law and others. This can be suppressed for a while, but like a time bomb, they will detonate at the least occasion.<sup>26</sup> Companies, whose majority shareholders are State governments, may also suffer from some level of bureaucracy and inefficiency.<sup>27</sup>

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<sup>20</sup> *Ibid.*

<sup>21</sup> (n 12).

<sup>22</sup> (n 12).

<sup>23</sup> Agency Report, 'Oando Resolves Shareholder Dispute: Announces 2019-2020 Results' <oando-resolves-shareholder-dispute-announces-2019-2020results.html?tztc=1" <https://www.premiumtimesng.com/business/business-news/538596-oando-resolves-shareholder-dispute-announces-2019-2020-results.html?tztc=1>> accessed on 24th June, 2023.

<sup>24</sup> AWJ Sidek, *Minority Shareholders: How to Protect and Exert your Rights* (Malaysia: Minority Shareholder Watchdog Group (MSWG), 2007)1.

<sup>25</sup> *Ibid.*

<sup>26</sup> (n 17).

<sup>27</sup> O Amao, & K Amaechi, 'Galvanizing Shareholder Activism: A Prerequisite for Effective Corporate Governance and Accountability in Nigeria' *Journal of Business Ethics* [2008] (82) (1) 119-130 at 122.

The powers of directors however appear to be very extensive as it broadens to all those subjects not covered by the Companies Acts or the Articles provided that such powers are not conflicting with Acts, the Articles and powers conferred upon the shareholders.<sup>28</sup> This means that general meeting cannot get in the way with a decision of the directors unless they are acting contrary to the provisions of the Act or the article.<sup>29</sup> The Nigerian Courts have held that directors of companies owe duties only to the company and its shareholders and therefore do not have any power or competence to embark on any other duty apart from their duties to the company.<sup>30</sup> These power have however been placed in the hands of the majority shareholders, and appropriate remedies have not been granted to minority shareholders.<sup>31</sup>

To start with, the minority shareholders powers are too weak and CAMA remains inadequate in the specific procedures for the minority shareholders to exercise their rights or to seek for remedies when directors commit certain wrongs. It is extremely difficult for minority shareholders to bring personal suits and impracticable for them to bring derivative suits. The provision of CAMA that the court may award cost personally to the minority shareholders whether or not his action succeeds makes it impracticable for them to institute an action. Also, the required minimum number of applicants under section 357 (2) and evidence under sub (3), is considered very high, and this will likely impede and stifle effective utilization of the machinery of investigation. It should be realized that in Nigeria, most company shareholdings are largely held in small units. It is not easy to muster one quarter of shares or members (who are usually docile) to pursue such a public cause like corporate investigation, which they think may not confer any personal benefit on them. The minority shareholders are fraught with undue restraints and their probabilities to win such cases are unusual, if not totally impracticable.

Nevertheless, there are many safe guards that are provided in the laws to protect the interest of the minorities. The protections can be divided into three:

1. Enforcement of his private rights under the constitution of the company and provisions of CAMA.
2. Exceptions to the rules in *Foss v Harbottle*
3. Institutional intervention to protect the interest of the company, investors and the public against unconscionable acts of its management.
4. Lack of award of damages for personal action or representative action as provided in Section 344(1) (b) of CAMA can discourage aggrieved minorities to pursue remedies. The provision that an applicant is only entitled to declaration or injunction to restrain the company and/or directors, seem unbeneficial to an applicant who may have suffered financial losses as a result of the wrongful act of the directors, who may be in the majority.
5. Section 343 (d) CAMA, the expression committing "fraud" is strong and connotes commission of crime; so, by law of evidence, it requires a higher standard of proof, that is, beyond reasonable doubt. This will certainly pose serious challenge to a minority shareholder who is interested in restraining the company from committing fraud but may not have access to all the facts to prove the matter beyond reasonable doubt.

<sup>28</sup> *Ibid.*

<sup>29</sup> Shaw & Sons (Salford) Ltd v Shaw (1935)2 KB 133; D Angualia, 'Balancing the Powers of Shareholders and the Board in Corporate Governance' (M/s Madiinah & Co. Advocates, 2010) <<http://papers.ssrn.com/so13/papers.cfm?abstreactid=1612962&http://www.goggle.com.ng/>> accessed on 24<sup>th</sup> June, 2023.

<sup>30</sup> Kotoye v Saraki (1994) 7 NWLR (Pt. 357) 414 at 467.

<sup>31</sup> D Angualia, 'Balancing the Powers of Shareholders and the Board in Corporate Governance' (M/s Madiinah & Co. Advocates, 2010) <<http://papers.ssrn.com/so13/papers.cfm?abstreactid=1612962&http://www.goggle.com.ng/>> accessed on 24<sup>th</sup> June, 2023.

6. Section 344 (4) CAMA that requires the provision for security for cost by the court unnecessarily raises the standard of requirement for enforcement of rights or enjoyment of protection afforded a minority by that provision. An indigent minority shareholder will find utilization of the provision unattractive.
7. Punishment is not adequately meted out to those directors and officers of a company who have been found guilty of defrauding the company. A situation where a person found guilty is given a light sentence in the name of plea bargaining or to pay small amount of money as fine (which is incomparable to the amount looted) is to say the least, deplorable. If one knows that if he is caught, he will escape adequate punishment in the name of plea bargaining, there is nothing that will inhibit him from looting his company as far as his fancies can stretch.

## **2.5 Breach of Fiduciary Duty**

Breach of fiduciary duty mostly occur because many minority shareholders are in general ignorant of their rights and responsibilities, and even when they become aware they often adopt passive and green approach particularly due to lack of established good corporate governance practices. Even when they decide to take an action, they are not familiar with their rights, alternative and the suitable approaches to put forth their complaints.<sup>32</sup>

Nigerian courts have so far shown some degree of reluctance in recognising that the directors of company owe a fiduciary duty to the minority shareholders where it borders on change of corporate control. Although the provision of the CAMA 2020 was put in place in order to remedy the inadequate protection of minority shareholders, the judicial interpretation of this piece of legislation imposes restrictions on the rights of minority shareholders to initiate court actions.<sup>33</sup>

In Nigeria, shareholders are passive and have reduced to mere supplier of capital.<sup>34</sup> An active investor can make an accusation offer on any day of the year, and a few days later own a controlling interest in the company.<sup>35</sup> A number of managerial reasons seem to influence the scope to which institutional investors are active shareholders, they includes: issues in accounting and finance and size matters ..... Larger investment institutions have more resources available to allow them to focus on corporate governance, issues as voting.<sup>36</sup>

However, the case of *Stephen Isibor and ors v Cecilia Ibru and ors*<sup>37</sup>, marked an exodus from the past when shareholders were passive to dealings that affected their ownership stakes in companies. The shareholders of the then oceanic bank brought a suit for 'actions detrimental to the interests of shareholders.

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<sup>32</sup> Factors affecting shareholder Activism <

<http://webcache.googleusercontent.com/search?q=cache:5hIBHFrzbSoJ:>

[www.scribd.com/doc/53729872/56/Factors-affectingshareholder-ctivism+Nigeria+firm+passive+.](http://www.scribd.com/doc/53729872/56/Factors-affectingshareholder-ctivism+Nigeria+firm+passive+) > accessed on 24<sup>th</sup> June, 2023.

<sup>33</sup>M Nnalue, 'The Extent of Minority Shareholders' Protection in Takeovers: Right Actions' *Chukwuemeka Odumegwu Ojukwu University Journal of Commercial and Property Law (COUJCPL)*[2019] (2) (1).

<sup>34</sup> O Onyeaso, 'The Last Heard: A Look at Deal Communications in Nigeria' (2011) < <http://234next.com/csp/cms/sites/Next/Money/Business/5463127-147/story.csp>. +. > accessed on 24<sup>th</sup> June, 2023.

<sup>35</sup> *Ibid.*

<sup>36</sup> WK Olayiwola, 'Practice and Standard of Corporate Governance in the Nigerian Banking Industry' *International Journal of Economics and Finance* [2010] (2) (4) 181.

<sup>37</sup> Unreported Suit No. FHC/L/CS/494/2012.

## 2.6 Shareholder Derivative Suits

Derivative suit is where the minority is allowed in law to sue on behalf of the company. This is an exception to the general rule of company law where the normal organs that can maintain such actions on behalf of the company are either the board of directors or the general meeting through the majority. Being a departure from the general rule, the power is not resorted to as a matter of course. Certain circumstances must be in place to entitle a minority to be clothed with *locus standi* to present the action under the derivative action. As the name implies, the power to maintain action under this heading is derivative. It means that the power primarily resides in another person or organ. In this regard, the power normally resides in the company, which can be effectively exercised through either the board of directors or the general meeting as the primary organs of a company.

Where the power is exercised by any of the organs that are entitled to exercise it under the Act, it is not regarded as derivative because the acts of any of the organs truly represent the acts of the company. On the other hand, the minority normally is a stranger to the exercise of the powers of the company its act cannot validly represent the acts of the company. Therefore, to be able to validly present an action under this heading the minority has to show that the power does not belong to him as of right but to the company; and that he is deriving his power to maintain the action from the company. Thus, the action is not his personal action, but he is maintaining it on behalf of the company.

Orojo<sup>38</sup> in explaining the purport of derivative action puts it succinctly thus:

The action is in reality action by the company for wrong done to it but since it will not sue as plaintiff, provisions are made for a minority to sue on its behalf and not on behalf of the shareholders. Although the action is framed as a representative one on behalf of the aggrieved minority and other shareholders, it is, in fact, an action which should be properly brought by the company if it had not refused to do so and the action, is therefore derived from the right of the company to sue; hence it is described as derivative action.

From above, it is clear that the company would have refused, failed or neglected to act to redress the wrong done to it before the power to present the action will revolve on the minority. Since we have agreed that a company is an artificial personality which has no independent mind and will, or legs and hands, but relies on its human organs to carry out its powers, it means that the directors or the general meeting (the principal organs of the company) must have failed to act. The commonest situation this will happen is where the directors who are in control are the wrongdoers. They will not only fail to act but will also prevent the general meeting to act

It is therefore submitted that for the applicant to bring derivative action before the court, he must not only show that the wrongdoers are the directors and they are in control, but also that they will not take necessary step to bring, prosecute, defend or discontinue the action. The fact that the directors are the wrongdoers and are in control will raise rebuttable presumption that they will not take necessary action.<sup>39</sup>

Where all the directors are involved in the wrongdoing, there will be more likelihood that they will fail to take necessary action, but where it is only one or few directors that are the wrongdoers, the other directors may be inclined to take the action. Thus, it is suggested that this is the more reason why the

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<sup>38</sup> JO Orojo, *Company Law and Practice in Nigeria* (5th Edn, Durban: LexisNexis Butterworths, 2008) 212.

<sup>39</sup> *Daniels v Daniels* (1978) Ch. 406.

drafters included in section 346 (2) (b) to the section. The applicant should give the directors notice of his intention to apply to court to undertake the action if they fail to act. It means that the law still gives the directors the right of first refusal since it is their primary duty to take the action. The level of control the wrongdoing director or directors wield in the company has been one of the most potent considerations that sway the mind of the court in granting or refusing an application to bring derivative action<sup>40</sup>.

The application must be brought in good faith and it must appear that the granting of the application will be for the interest of the company. It thus seems that in granting or refusing the application, the court will consider the interest of the company rather than the personal interest of the applicant. This is so because a minority shareholder usually stands to gain nothing, apart from a sense of satisfaction in seeing justice done and perhaps some appreciation in the value of his shares reflecting the amount recovered from the wrongdoers.

The remedies available in the event that the court is satisfied with the application include the following<sup>41</sup>:

1. Court orders directing that the applicant or a third party control the conduct of the action;
2. Giving directions for the conduct of the action;
3. Directing any amount adjudged to be paid by the individual or company; or
4. Requiring the company to pay reasonable legal fees incurred by the applicant in connection with the proceedings.

## **2.7 Shareholders' Voting and Proxy Rights**

The company law establishes that any member entitled to attend a meeting shall be entitled to appoint another person (whether a member or not) as a proxy to attend and vote instead of him, and a proxy appointment to attend and vote instead of the member shall also have the same right to speak at the meeting<sup>42</sup>. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorized in writing, or if the appointer is a corporation, either under seal, or under the hand of an officer or an attorney duly authorized. The law also stipulates that in every notice of meetings of a company having a share capital, a prominent statement indicating that a member entitled to attend and vote is also entitled to appoint a proxy (and it is allowed two or more proxies) to attend and vote instead of him, and stating that the appointed proxy needs not be a member of the company. Besides the law stipulates that a vote in accordance with the terms of an instrument of proxy shall be valid notwithstanding the previous death or insanity of the principal or the revocation of the proxy or the authority under which the proxy was executed, or the transfer of the share in respect of which the proxy is given.<sup>43</sup>

A resolution is an ordinary resolution when it has been passed by a simple majority of votes cast by members of the company as being entitled to do so, vote in person or by proxy at a general meeting.<sup>44</sup> The problem here is that despite the voting right and proxy right accorded to shareholders, when the simple majority votes to ratify the wrong act, the minority is left without a say under this statutory provision.

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<sup>40</sup> *Ibid*; *Pavlides v Jensen* [1956] Ch. 565.

<sup>41</sup> CAMA 2020, s 347(2).

<sup>42</sup> CAMA 2020, s 254.

<sup>43</sup> CAMA 2020, s 254 (5).

<sup>44</sup> CAMA 2020, s 258.

A resolution is a special resolution when it has been passed by at least three-fourths of the votes cast by members of the company as, vote in person or by proxy at a general meeting of which 21 days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given<sup>45</sup>: provided that, if it is so agreed by majority in number of the members having the right to attend and vote at any such meeting, being a majority together holding at least 95% in nominal value of the shares giving that right or, in the case of a company not having a share capital, together representing at least 95% of the total voting rights at that meeting of all the members, a resolution. The implication of this is that minority cannot constitute three-fourth of votes cast by members of the company. In this regard the minority shareholders will seek redress in other way practicable.

In any organization where majority of citizen or members can pass laws or rules that apply, which will bind the entire group, it is necessary to distinguished prospective laws which are rational and fair from those which are oppressive because they are unnecessary, unfair, and reasonably unbearable to the minority who opposed them. There is also need to have formal mechanisms in place, where practicable, to thwart "tyrannical laws from being passed by those whose judgment in such matters might fail".<sup>46</sup>

### **2.8 Retail and Efficacy of Proxy Voting**

Retail shareholders are individual investors who buy and sell securities or other financial instruments for personal investment purposes rather than representing an institution or organization,<sup>47</sup> on the other hand proxy voting is when most shareholders are unlikely to be able to attend in person, they can vote by mail, online or by a third party. They can even vote ahead of the annual meeting. There are also situations where a shareholder refuses to vote, the broker or other acquaintance can vote on behalf of the shareholder.<sup>48</sup>

Participation of retail shareholders in the voting process limits the usefulness of vote outcomes on specific proxy items (such as auditor ratification) to boards and other decision makers. This is usually because the retail shareholders did not have much interest in the company other than to acquire and sell their shares. Retail shareholders who vote on auditor ratification are less informed in the presence of higher retail ownership. This has implications for the usefulness of the vote as a potential governance mechanism. As explicitly stated in many proxy statements, audit committees use the results of the auditor ratification vote as an input to their decision to retain or dismiss the incumbent auditor.<sup>49</sup>

### **3 Limitations and Powers of the Shareholders to Alter Article of Association**

The article of association constitutes the rules for conduct and regulation of the internal affairs and management of the company. Articles provide the rule book of association of members and have to deal with variety of situations and relations.<sup>50</sup>

<sup>45</sup> CAMA 2020, s 258 (2).

<sup>46</sup> R Garlikov, 'The Need for Formal and Informal Mechanisms to Prevent "Tyranny of the Majority" in any Democratic Governance' < <http://www.garlikov.com/philosophy/majorityrule.htm> > accessed on 24th June, 2023.

<sup>47</sup> D Vaidya, 'Retail Investors' < <https://www.wallstreetmojo.com/retailinvestors/#:~:text=Retail%20investors%20are%20individual%20investors,representing%20an%20institution%20or%20organization.> > accessed on 25<sup>th</sup> June, 2023.

<sup>48</sup> D Carlson, 'Want to be an Activist Investor? As a Shareholder, Start with Proxy Voting' < <https://www.britannica.com/money/proxy-voting-shareholder> > accessed on 25<sup>th</sup> June, 2023.

<sup>49</sup> CA Cassel and TJ Klappe, 'Retail Shareholders and the Efficacy of Proxy Voting: Evidence from Auditor Ratification' < [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3113807](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3113807) > accessed on 25<sup>th</sup> June, 2023.

<sup>50</sup> CAMA, 2020, s 32.

An important implication of the articles is that its provisions amount to a public notice, known as constructive notice, to all those who deal with the company. The articles bind the company by constituting a contract between the Company and members *inter se* it binds all the members present and future.<sup>51</sup>The content of Articles of Association is provided for under the Companies and Allied Matters Act, 2020<sup>52</sup>. Articles of association can be amended by shareholders having the mandatory majority. The articles once altered in accordance with the Act become the articles of associations of the company, and is binding on all the members.

The Articles of Association can only be altered in accordance with the provisions of the Act, and by special resolution<sup>53</sup>, particularly, under the provisions of CAMA.<sup>54</sup> Any alteration must be lawful, bona fide and not intended to give the majority an advantage over the minority shareholders.<sup>55</sup> This statement cannot always be true, because most times by majority votes, the majority alters the article of association for their own personal interest and at the detriment of the minority shareholders.

#### **4 Conclusion**

Having examined the legal protection that are available to minority shareholders in company laws of Nigeria in view of the dilemma associated with the protection of shareholders. A special focus was made on the minority shareholders due to the challenges they face enforcing their rights against, these challenges is mostly due to the democratic nature of Nigerian company law. This has led us to examine some relevant laws; laws that are primarily company law legislations, such as, Companies and Allied Matters Act, and Investments and Securities Act. We have also touched in passing some other laws especially the provisions that affect the administration of companies in Nigeria.

The question is why the need for special protection for the minority shareholders in the company? It has been noted that in every organization as in every society, the minorities are always a vulnerable group. This is more prominent in any political or economic arrangement that is based on democratic principle. Simply, in its ideal form, democracy is nothing but the rule of the majority or on behalf of the majority. Thus, where the right of the minority is at stake and the majority is unconcerned or insensitive to their plight, the minority may cry but a muted cry. This has made it necessary to offer a special protection to the minority. Thus, the principle nowadays is, while the majority will have their way, the minority must have their voices heard. It means that in the majority rule, that the rights of the minority should not be trampled with impunity. After all, democracy is said to be the rule for all it is this democratic principle to offer protection to all members concerned that has found its way to the company law regime. This is because the modern company law is predicated on the democratic principles. It thus means that the company must be run for the benefit of all the shareholders whether or not the shareholder can influence the incidents of the activities of the company.

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<sup>51</sup> N Kapur, Can Shareholders' Power to Amend the Article of Association at a Future Date be Taken Away by Amending the Articles of Association? <<http://www.algindia.com/publication3800.psd>. > accessed on 25<sup>th</sup> June, 2023.

<sup>52</sup> CAMA, 2020, s 32 (3).

<sup>53</sup> CAMA, 2020, s 53 (1) (2).

<sup>54</sup> CAMA 2020, s 27 (1) (a)-(d).

<sup>55</sup> *Re: Westbourne's Gallerie Ltd.* (1973) AC 360.