



AN ANALYSIS OF THE NIGERIAN CORPORATE  
GOVERNANCE FRAMEWORK: THE LEGAL  
RELATIONSHIP BETWEEN THE DIRECTORS  
SHAREHOLDERS AND STAKEHOLDERS

BY

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## **ABSTRACT**

This thesis analyses the adequacy of the corporate governance framework in the context of the legal relationship between the directors, shareholders and stakeholders and proffer suggestions for reform. The increasing economic power of corporations and the implications of the separation of ownership from control have thrown up a number of interrelated problems. These include the need to make the corporations fulfill the genuine expectations of shareholders and stakeholders. It was soon realized that corporate law and governance need to be better positioned in order to ensure a fair and sustainable balance between directors, shareholders and stakeholders interests. In Nigeria this is made worse by obsolete legislation, weak law enforcement mechanisms, lack of adherence to regulatory rules and weak monitoring systems. Primarily this research employed doctrinal legal research, which consist of analysis of rules, concepts and laws. The process involved primary and secondary information and knowledge gathering. The primary sources are relevant legislation and judicial decisions within and outside Nigeria. The secondary sources of information are journal articles, textbooks and learned papers. The research reveals the gaps in corporate law and governance in Nigeria in a number of areas which include: The corporate governance structure; the involvement and relationship between the directors, shareholders and stakeholders; the regulatory framework for corporate governance; the legal and practice regime for corporate governance. The study suggests that the regulatory framework in Nigeria needs to be improved upon in order to ensure that the interest of shareholders and stakeholders is protected. The study equally proffers the need for the legislature and the courts to do more to ensure that corporate law and governance in Nigeria are improved in line with global trends.

## خلاصة البحث

إن ازدياد القدرة الإقتصادية للشركات ونتائج عملية الفصل بين الملكية والإدارة قد أدت الى ظهور عدد من المشاكل المتشابهة. وهذه المشاكل تشمل الحاجة إلى حمل مديري هذه الشركات على ضرورة السعي لتحقيق التوقعات الحقيقية لأصحاب الأسهم و المستثمرين والمعنيين بأموال الشركة. هذا وقد تم- تقليديا- القيام بجهود كثيرة لتحقيق هذا الهدف عن طريق تزويد أصحاب الأسهم والمستثمرين بمزيد من المعلومات عن القضايا التي تحتاج منهم إلى المناقشة أو المصادقة عليها عند الإجماع العام. ومن ثم تم اكتشاف الحاجة الى ضرورة تطوير قانون الشركة وكيفية إدارتها لتحقيق الموازنة المناسبة والعادلة بين رغبات المديرين و أصحاب الأسهم والمستثمرين والمعنيين بأموال الشركة. إن الحواجز التي تعرقل حسن إدارة الشركات في نيجيريا تشمل ضعف آليات تطبيق القوانين وسعي المديرين وراء تحقيق الأهداف الذاتية و عدم التزامهم بالقواعد التنظيمية للشركة وضعف أنظمة المراقبة. لذا وقد قامت هذه الدراسة بتحليل النظام القانوني السائد لإدارة الشركات في نيجيريا، وخصوصا ما يتعلق منه بالعلاقات بين المديرين والمستثمرين والمعنيين بأموال الشركة، وذلك لتقديم إقتراحات الإصلاح اللازمة لتحسين قانون إدارة الشركة في نيجيريا وتطويره الى المستوى السائد في العالم. وقد اعتمد الباحث في هذه الدراسة على مصادر المعلومات الأولية والثانوية. والمصادر الأولية تشمل التشريعات المتعلقة بإدارة الشركات، كمثل قانون الشركة والمسائل ذات الصلة بنيجيريا، وقرارات المحاكم العليا ذات العلاقة في داخل نيجيريا وخارجها. أما المصادر الثانوية فتشمل المقالات العلمية والكتب والبحوث العلمية. هذا وقد اكتشف البحث عن الأخطاء الواقعة في قانون وإدارة الشركة في نيجيريا من عدة نواحي، خصوصا من ناحية العلاقة بين المديرين وبين أصحاب الأسهم والمستثمرين والمعنيين بأموال الشركة، و من ناحية الهيكل القانوني لإدارة الشركة و ناحية تطبيق النظام القانوني لإدارة الشركات وغير ذلك كثيرة. ودعى البحث الى ضرورة تطوير الهيكل القانوني لإدارة الشركة في نيجيريا لتأكد من مطابقتها للقوانين السائدة وذلك لحماية حقوق كل من أصحاب الأسهم والمستثمرين والمعنيين بأموال الشركة. وبين البحث ما يجب القيام به من خطوات كثيرة متعددة خصوصا من قبل الهيئة التشريعية والمحاكم في نيجيريا لتطوير قانون الشركة فيها بما يتماشى مع الإتجاه العالمي السائد.

## **APPROVAL PAGE**

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## DECLARATION

I hereby declare that this thesis is the result of my investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degree at IIUM or other institutions.

Abdul-Hamid Oba Yusuf

Signature-----

Date-----

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**AN ANALYSIS OF THE LEGAL RELATIONSHIP BETWEEN DIRECTORS,  
SHAREHOLDERS AND STAKEHOLDERS IN NIGERIAN CORPORATE  
GOVERNANCE FRAMEWORK**

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*Dedicated to*

*My late father, who died while I was on this program, my late mother and  
my immediate family for enduring my unprecedented long absence from home in the  
pursuit of my terminal degree*

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Supreme Court Ordinance of 1914  
Syrian Civil Law  
Value Added Tax Act of 1993



## LIST OF ABBRIVATIONS

AFEM	Autonomous foreign Exchange Market
AGM	Annual General Meeting
ASC	Australian Securities Commission
ASIC	Australian Securities and Investment Commission
Aust Jnl of Corporate Law	Australian Journal of Corporate Law
BOFIA	Banks and Other Financial Institution Act
CAC	Corporate Affairs Commission
CalPERS	California Public Employees' Retirement System
CAMAC	Corporation and Markets Advisory Committee
CCH	Commerce Clearing House
CFI	Committee for Foreign Investments
CFSC	Corporations Financial Services Commission
CJV	Contractual Joint Ventures
CLTA	Corporate Law Teachers Association
CSR	Corporate Social Responsibility
Del. J. Corp. L.	Delaware Journal of Corporate Law
DTI	Department of Trade and Industry (UK)
ECGI	European Corporate Governance Institute
EIA	Environmental Impact Assessment
EJV	Equity Joint Venture
EU	European Union
FEPA	Federal Environmental Protection Agency
FICLS	Foreign invested Companies Limited by Shares
FIRS	Federal Inland Revenue Services
ICFAI Journal of Corporate Governance	Institute of Chartered Financial Analysts of India Journal of Corporate Governance
Harv. L. Rev.	Harvard Law Review
IASs	International Accounting Standards
ICSA	Institute of Chartered Secretaries and Administrators
ICT	Information and Communication Technology
IUM	International Islamic University Malaysia
Int. J. Industrial Econ.	International Journal of Industrial Economics
IOSCO	Intentional Organization of Securities Commission
J. CORP. L.	Journal of Corporation Law
JLMCs	Joint Labor Management Committees
LLP	Limited Liability Partnerships
MAN	Manufacturing Association of Nigeria
MCCG	Malaysian Code for Corporate Governance
Mich L. Rev.	Michigan Law Review
MULR	Melbourne University <i>Law Review</i>

N.C. L. Rev.	North Carolina <i>Law Review</i>
N.U.L. Rev.	Ohio Northern University Law Review
NDRC	National Development Reform Commission
NGOs	Non-Governmental Organizations
NIPC	Nigerian Investment Promotion Commission
NNPC	Nigerian National Petroleum Corporation
OECD	Organization for Economic Cooperation and Development
Pbuh	Peace be upon him
ROSC	Report on the Observance of Standards and Codes
SAIC	State Administration for Industry and Commerce
Sarbanes Oxley Act 2002 or SOX	Public Company Accounting Reforms and Investors Protection Act 2002
SC	Malaysia Securities Commission
SEC	Securities and Exchange Commission
SPACS	Special Purpose Acquisition Companies
SRS General	Special Representative of the United Nations Secretary-
Stan L. Rev	<i>Stanford Law Review</i>
U.C. Davis L. Rev.	U. C. Davis Law Review
UCLA	University of California Los Angeles
UK	United Kingdom
UMelbLRS	University of Melbourne Legal Research Studies
WC	Works Council
WFOE	Wholly Foreign Owned Enterprise
Yale L.J	Yale Law Journal

# CHAPTER ONE

## GENERAL BACKGROUND

### 1.1 INTRODUCTION

Despite the legal fiction behind the existence of a company as a legal person, distinct and separate from its shareholders, the reality is that a company as an artificial entity, can only act through human agents or organs and mostly it acts through the directors. It is accepted that in the Anglo-Saxon governance model, a company has two major organs that manage its affairs, these are: the Board of Directors; and General Meeting of Shareholders. Theoretically, shareholders are the “owners” of the company as they provide the fund for the company and by virtue of ownership, exercise control over the company. However, in reality in most modern public companies, due to dispersed shareholding structure, control belongs to directors who have managerial powers.<sup>1</sup>

Since the twentieth century a dimension on the issues of directors and shareholders relations is the growing ascendancy of managerial over financial power in public and multinational companies which cut across countries, Nigeria inclusive. The direct consequence of this growth in managerial power has been an uneasiness felt by the company lawyers and others similarly concern at the absence of an adequate legal environment leading to increasing incidence of abuse of power by directors and holder of managerial posts.<sup>2</sup>

In the corporate management world today, the position of company directors is rather strong. It has therefore been opined that the modern company and its board of

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<sup>1</sup> G A Olawoyin, Status & Duties of Company Directors, (Ile-Ife, Nigeria: University of Ife Press, 1977), xiii

<sup>2</sup> Ibid.

directors are literally carefree, beholden least of all to their shareholders and other stakeholders.<sup>3</sup>

Shareholders do not exert any noticeable influence on the management of companies, partly because nowadays one sees mostly large concerns in which the individual is often a mere minute fraction of the total holding, except where institutional shareholders are able to exert some influence, and partly because of the general apathy, which has become prevalent amongst most shareholders.<sup>4</sup> The latter is exemplified by relatively low attendance at the Annual General Meetings (AGM) of big companies.<sup>5</sup> Directors have been faulted in some cases for fixing such meeting at a place and time not convenient for shareholders with minor interest in the company, in order for the directors to have their way at such meetings with little or no opposition from the few shareholders who are able to attend. Sometimes notices to AGM may be received by some shareholders long after the AGM might have been held.<sup>6</sup>

Aside from low attendance, the way meetings are conducted by directors generally does not engender useful and effective dialogue between management and shareholders. The problem is made worse by the low level of education of many shareholders and little understanding of corporate matters even by the majority of the educated members. While it is true that the law entitles shareholders who are dissatisfied with their directors to remove them from office, this right has often turned out to be apparent than real. Nowadays, shareholders especially in large companies are generally so widely dispersed as to make a united front against the management quite

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<sup>3</sup> These include workers, the environment and members of the public to whom the company owed its social responsibilities and who are responsible for the company's survival through their patronage.

<sup>4</sup> Olu Amao, "Galvanising Shareholder Activism: A Prerequisite for Effective Corporate Governance and Accountability in Nigeria," *Journal of Business Ethic*, Vol. 82 (2008): 119-130

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

unlikely. In addition, directors are often so entrenched in their positions as to make their removal a fairly remote possibility.<sup>7</sup>

The separation of ownership and control which has now resulted in a separation between financial interest and managerial power, especially in large companies, can hardly be reversed. Rather it seems to be the policy of law to check as far as possible, some of the more serious abuses of company management so as to at least lessen the risk that is faced not only by the investors and employees but also the creditors of companies and indeed, the public at large.<sup>8</sup>

Shareholders are no longer strong enough to exert much influence on their directors as the law stands and judicial efforts in this direction have not been exactly bold. The hope for an ideal corporate governance environment seems to lie in legislative and courageous judicial activism. The question of a legislation to control the powers of directors has always posed very difficult problems owing to the conflicting considerations involved. On the one hand, there is a need to make those responsible for the management of a company subject to a considerable degree of statutory regulations in order to minimize the risk of flagrant abuse of power by them.<sup>9</sup> On the other hand, there is the undesirability of imposing restrictions, which would seriously hamper the activities of honest businessmen in order to defeat an occasional wrongdoer.<sup>10</sup> This calls for a repositioning of the Corporate Law and Governance to meet the needs of the 21<sup>st</sup> Century Nigeria.

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<sup>7</sup> Olawoyin, n. 1, see also Berle Adolf A. Jr., and Gardiner C. Mean. *The Modern Corporation and Private Property*. (New York: Macmillan, 1932).

<sup>8</sup> Olawoyin, n. 1

<sup>9</sup> J. H. Farrar (1974). Abuse of Power by Directors. *The Cambridge Law Journal*, 33 , pp 221-225

<sup>10</sup> Olawoyin, n. 1

## **1.2 SUMMARY OF THE PROPOSED DESSERTATION**

The thesis is divided into seven chapters with each part devoted to issues within the purview of the research. Chapter one is the general background to the research, touching specifically on the introduction to the research, literature review, the hypothesis, limitations of the research, research methodology and other foundational issues. The chapter provides a foundation for what to expect in the main research. Chapter two is on the corporate governance structure in Nigeria. It provides historical background and discusses the corporate governance structure, shareholding structure, sources of the Nigerian Corporate Law, the Code for corporate governance best practices in Nigeria evaluation of directors, institutional shareholding and concluded with a discussion on market for corporate control within the context of corporate governance. This demonstrates the context within which corporate law operates in Nigeria. Chapter three analyzes the shareholder theory in corporate governance; shareholders involvement in decision making; directors' duties; the weaknesses of the CAMA 1990 in relation to its provisions on directors' duties and enforcement of directors' accountability. Chapter four is on stakeholder position in corporate law and governance, it discusses the stakeholder theory, corporate social responsibility, and environmental implications of corporate activities. Chapter five is on Regulatory framework for corporations in Nigeria. It examines Institutions which regulate corporations in Nigeria, such as the Corporate Affairs Commission (CAC); the Securities and Exchange Commission (SEC) and the Central Bank of Nigeria (CBN). Chapter six seeks to present the Islamic law perspective on the theme of the thesis as a possible alternative to the western system. In specific it touches on the concept of property under Islamic Law, corporate governance structure in Islam and corporate

social responsibility (CSR) in Islamic Law. Chapter seven is on conclusions, recommendation and suggestions.

### **1.3 STATEMENT OF PROBLEM**

The current legal framework for corporate governance in Nigeria is inadequate to provide the necessary environment which guarantees good corporate governance. Barriers to good corporate governance in Nigeria include obsolete legislation, lack of adherence to regulatory rules, weak law enforcement mechanisms and weak monitoring systems.<sup>11</sup> However, the need to make the corporations truly fulfill the legitimate expectations of the shareholders and stakeholders has continued to be of concern to everyone involved. This is made worse by lack of dynamism and consistency in legislative, judicial and regulatory activism. Statutory provisions are not infallible therefore; they require rejuvenation at regular intervals to meet the need of changing business environment. Increased transnational trade and the need to attract foreign direct investment suggest that corporate law and governance need to improve to provide an atmosphere for the realization of the legitimate aspirations of shareholders and stakeholders.

### **1.4 OBJECTIVES**

The power and influence of the shareholders have continued to be under threat especially in modern large corporations. The dwindling influence of the shareholders is due to disperse nature of shareholding in these corporations resulting in separation of ownership from control and which makes a united front by the shareholders

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<sup>11</sup> John O. Okpara, Perspectives on Corporate Governance Challenges in a Sub-Saharan African Economy, *Journal of Business & Policy Research* vol. 5. No1. (July 2010): p. 110-122

difficult. This also led to the domination of managerial power over and above financial power.

As things are, the powers of ownership hitherto exercised by the shareholders has whittled down and conversely directors' powers and influence in the company have continued to grow. This manifests in the manner in which place and time of General Meetings are selected, the conduct of the meeting itself and the barriers to adequate participation by the shareholders in the company generally.

This is exacerbated in Nigeria by obsolete corporate law which equally suffers a number of inherent defects. It appears that this trend cannot be reversed; it thus seems to be the policy of corporate law to protect shareholders' and all genuine interests involved in the corporate set up. How well the law has fared in this regard in Nigeria is the main thrust of this research. This thesis identifies the gaps in the current legal regime on corporate law and governance, especially the relationship between the directors, shareholders and stakeholders and proffer suggestions for reform in order to bring corporate law and governance in Nigeria in line with global development and expectations.

The specific objectives of this research are to:

1. Appraise the corporate governance framework in Nigeria, with a view to examining its adequacy in fulfilling the business aspirations of all categories of prospective investors. The appraisal focuses on the law in relation to the governance structure obtainable in Nigeria.
2. Examine the shareholder and stakeholder theories within the context of corporate law and governance. In looking at these related issues to theories like the suitability of current legal environment to participation of shareholders and protection of stakeholders' interest were examined.