Chapter 4

Corporate governance and accounting ethics
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Codes Of Corporate Governance

Learning Objectives

By the end of this chapter, students should be able to:

1. Define and explain the role of shareholders in corporate governance.
2. Identify different categories of shareholders and their rights.
3. Discuss shareholder participation and voting mechanisms.
4. Explain shareholder activism and its influence on governance.
5. Analyze the legal and institutional frameworks for shareholder protection in Nigeria.
6. Examine comparative global perspectives on shareholder involvement.

4.1. Introduction

The shareholders are critical in the corporate governance since they are the real owners of the company. As long as the day-to-day activities are operated by the management, the shareholders are the ones who bring in capital and leave their resources in the hands of the directors to achieve sustainable returns. Therefore, they are very important stakeholders whose participation fosters accountability, transparency, and corporate performance.

Tricker[1] argues that corporate governance may be considered to be one that balances the interests of the shareholders (owners) and management (agents). The involvement of shareholders makes directors to operate in the best interests of the company and not to misuse their fiduciary powers.

According to the OECD[2], shareholders must be allowed to receive the right to secure means of ownership registration, transfer or convey shares, receive pertinent and timely information, and be involved in important corporate decision-making.

4.2. Concept of Shareholders

A stockholder (or shareholder) is an individual, collective or institution that possesses at least one share of a company, thus, has a fractional ownership stake. Investors put their money and, in the process, seek dividends and share value appreciation.

Shareholders are not just investors in the governance context, but active participants in the governance process, shaping the composition in the board of directors, executive compensation, and corporate strategy.

According to Fama et al.[3], the residual claimants to the firm are the shareholders, the ones who assume the risks of being a shareholder and therefore have the ultimate control rights of the firm since they have the right to vote.

4.3. Types of Shareholders

Understanding the types of shareholders will lead to the understanding of the differences in the impact of shareholders on the governance processes.

4.3.1. Majority Shareholders

They are persons or groups that possess over half of the stock in a company and therefore, they are in a position to dictate board membership and critical decisions. In Nigeria, founders, families, or institutional investors are common shareholders in majority.

4.3.2. Minority Shareholders

These possess lesser interests and can influence less. The systems of corporate governance also focus on the protection of minorities to avoid oppression or non-participation in key decision-making.

4.3.3. Institutional Shareholders

The influence of institutional investors (pension funds, insurance companies, and mutual funds) is important in terms of equity stakes and governance, as these actors are engaged in collective action and activism. They foster openness and generation of long-term value.[4]

4.3.4. Retail (Individual) Shareholders

These are small individuals who make personal investment. They are usually at the disadvantage of information and dependent on the regulatory protection and disclosure systems.

4.3.5. Government or State Shareholders

The government is allowed to own equity and be represented in the board in state-owned or privatised companies, which affects strategic and policy-level decisions.[2]

4.4. The rights and liabilities of shareholders

Corporate governance structures acknowledge the shareholders as the major agents of control and supervision. Law, regulatory codes and company constitutions contain their rights and responsibilities.

4.4.1. Fundamental Shareholder Rights

The rights of the shareholders in accordance with CAMA (2020) and FRCN Code (2018) are:

1. Right to Vote: Attend and vote at the general meetings (AGM and EGM) on matters concerning the selection of directors, mergers and auditors.
2. Right to Dividends: Share equal distribution of proclaimed profits.
3. Right to Information: Get ready, proper and full financial and governance information.
4. Right to transfer Shares: transfer ownership rights or at will.
5. Right to Major Decisions: Endorse mergers, acquisition, capital increase or dissolution.
6. Right to Fair Treatment: Encountering equal access to information and safeguarding against insider trading.

4.4.2. The Responsibilities of the Shareholder

Just as rights are important, shareholders too, have their governance obligations, the obligations are:

1. Be an active part in meetings and decision making.
2. Make prudent votes based on the performance of the company and its ethics.
3. Constructively engage boards through accountability.
4. Encourage sustainability and ethical investment actions.

According to the OECD Principles (2015), responsible shareholders can make a contribution to corporate success by actively engaging and not passively owning the company.

4.5. Meetings and Mechanisms of Voting

General Meetings and voting are the main forms through which the shareholders use their governing powers.

4.5.1. Annual General Meeting (AGM)

Held yearly to:

1. Authorize approved financial statements;
2. Declare dividends;
3. Elect or re-elect directors;
4. Appoint auditors; and
5. Talk about corporate performance.

4.5.2. Extraordinary General Meeting (EGM)

Assembled to discuss urgent or special matters like company mergers, takeovers, or the company constitution amendments.

4.5.3. Voting Rights

Voting may occur by:

1. Show of Hands (one vote each person present);
2. Poll Voting (votes based on shareholding); or
3. Proxy Voting (representation by a different shareholder).

In Nigeria, the use of electronic and hybrid AGMs is increasing as remote participation is allowed by the Companies and Allied Matters Act (CAMA, 2020).[5]

4.6. Shareholder Activism

Shareholder activism is a term that is used to refer to the behavior of shareholders in an attempt to manipulate the behavior of a company through the exercise of their rights and powers.[4] provide that activism entails:

1. Proxy contests: Defying the management proposals or board elections.
2. Engagement: Conversations with the management in order to impact policy or ethics.
3. Litigation: Lawsuits against misconduct of the management or suppression.
4. Public campaigns: Media (or advocacy) campaigns to bring to attention governance issues.

4.6.1. Shareholder Activism Forms

1. Governance-Based Activism: this type of activism is intended to enhance accountability of boards, transparency and independence of boards.
2. Financial Activism: Attacks high executive compensation or unhealthy practices in dividend policy.
3. Social and Environmental Activism: Sustainable, diversity, and corporate social responsibility (CSR).

4.6.2. Activism in Nigeria

Nigeria has been experiencing increased shareholder activism with organizations like the Independent Shareholders Association of Nigeria (ISAN) assisting in this process. Nevertheless, it is threatened by barriers like low quality of investor education, institutional inadequacy, and indifference of the retail shareholders.[6]

4.7. Safeguarding the Rights of the Shareholders in Nigeria

Shareholder rights are secure in Nigeria due to the legal and regulatory frameworks.

4.7.1. Companies and Allied Matters Act (CAMA, 2020)

The most important law that regulates corporate conduct in Nigeria is CAMA. Key provisions include:

1. Equal protection to shareholders (Section 110).
2. The right to know information and company registers inspection (Section 331).
3. The right to sue oppression or bad management (Section 353).
4. Compulsory AGMs and equal voting system (Sections 240242).

4.7.2 Financial Reporting Council of Nigeria (FRCN) Code (2018),

Promotes participation, transparency and disclosure of shareholders by companies. The principle 23 is particularly concerned with fair treatment and involvement.

4.7.3. Securities and Exchange Commission (SEC) Rules (2011)

SEC Code means that the shareholders of listed companies can obtain the quality information, equal dividends and the redress of grievances using the Investors Protection Fund.

4.7.4. Nigerian Exchange Group (NGX) Listing Rules

These rules make listed companies disclose suitable material information on time and conduct regular investor briefings. Failure to comply is sanctioned hence enhancing transparency.

4.8. Minorities Shareholder Protection

The minority shareholders are likely to be pushed into the periphery by the majority shareholders. Governance systems seek to offer institutional protection including legal redress.

Mechanisms include:

1. Derivative actions: The minorities shall be allowed to sue directors on the basis of fiduciary breach.
2. Cumulative voting: Allowing the minorities to have at least one representative on the board.
3. Disclosure laws: Being completely transparent in related-party transactions.
4. Judicial review: Not only can the courts interfere in order to safeguard fairness in corporate acts.

Section 354 of CAMA 2020[5] allows the minorities to seek relief against oppression or prejudice.

4.9. Shareholder Engagement and Stewardship

In modern governance, full ownership is promoted, which implies that the shareholders are stews not passive investors.

Stewardship, according to the UK Stewardship Code (2020) and IFC Corporate Governance Toolkit (2021) implies:

- Surveillance of the performance of the investee companies.
- Communicating with boards and management.
- Making responsible votes on corporate resolutions.
- Inclusion of environmental, social, and governance (ESG) in the investment decision-making.

Nigeria has institutional investors, including the Pension Commission (PENCOM) and the Nigerian Sovereign Investment Authority (NSIA), who are increasingly becoming expected to practice stewardship in a manner that is consistent with sustainability.

The shareholder roles are regarded differently by the various cultures around the globe, thus:
United Kingdom

Shareholders in the UK have extensive right of voting and the right to requisition general meetings (UK Companies Act 2006). The UK Corporate Governance Code (2018), encourages shareholders by engaging in open communication and reporting.

United States

Sarbanes-Oxley Act (2002) added more power to the shareholders by demanding accountability on financial reports by the CEO/CFO. Heavy governance roles are played by activist hedge funds and pension funds (e.g., CalPERS).

OECD Countries

The OECD Principles (2015) recommend fair treatment of shareholders and ability to engage in critical decisions, dispute resolution mechanisms and insider abuse protection.

Emerging Markets

In emerging markets such as Nigeria, the rights of shareholders are becoming more advanced but remain limited by a poor enforcement system, low investor education and through a concentrated ownership system.(7)

4.10. Nigeria Shareholders Problems

Shareholders have a number of challenges in spite of all this progressive reforms:

1. Weakness in the enforcement of the governance laws and disclosure laws.
2. Poor access to information of the retail investors.
3. Ineffective shareholder literacy and activism.
4. Family and state ownership suppressing independence.
5. The bad corporate morality and insider trading in the capital markets.

The need to deal with these issues is to have more powerful institutions, regulatory synergy and investor education.

4.11. Technology and Shareholder participation

The move towards digitalization is changing the shareholder involvement in the governance.

- Virtual voting and E-AGMs increase inclusiveness.
- Share registries based on blockchain will provide ownership transparency.
- Online investor relation portals enhance transparency and good governance.

Hybrid meetings are now allowed by the Corporate Affairs Commission (CAC) and NGX (2022) and allow participation regardless of the location of the discussion, which is a significant advance to corporate democracy.

The shareholders will still form the underpinning of corporate governance. They determine the process of direction and control of the companies through ownership, voting rights and activism. Proper shareholder engagement fosters transparency, accountability and ethical leadership.

Shareholder protection and participation have been enhanced in CAMA (2020) and the FRCN Code (2018)[8] reforms in Nigeria. Nevertheless, lifelong learning, use of technology, and enforcement of regulations are critical to establish that shareholders make use of their rights and obligations to the maximum in the formation of sustainable corporate governance.

REFERENCES

1. Tricker B. Corporate governance: principles, policies, and practices. 4th ed. Oxford: Oxford University Press; 2019.

2. Organisation for Economic Co-operation and Development. G20/OECD principles of corporate governance 2023. Paris: OECD Publishing; 2023. https://doi.org/10.1787/ed750b30-en

3. Fama EF, Jensen MC. Separation of ownership and control. J Law Econ. 1983;26(2):301–25. https://doi.org/10.1086/467037

4. Gillan SL, Starks LT. The evolution of shareholder activism in the United States. J Appl Corp Finance. 2007;19(1):55–73. https://doi.org/10.1111/j.1745-6622.2007.00125.x

5. Federal Republic of Nigeria. Companies and Allied Matters Act (CAMA). Official Gazette No. 33, Vol. 107, 7 Aug 2020. Abuja: Government Printer; 2020.

6. Ojo M. Corporate governance, risk management and internal control in financial institutions: the governance of risk. J Financ Regul Compliance. 2019;27(2):121–38.

7. Adegbite E. Good corporate governance in Nigeria: antecedents, propositions, and peculiarities. Int Bus Rev. 2015;24(2):319–30. https://doi.org/10.1016/j.ibusrev.2014.08.004

8. Financial Reporting Council of Nigeria. Nigerian Code of Corporate Governance 2018. Abuja: FRCN; 2018.