



Corporate, Individual Membership Rights And Liabilities Under The Nigeria Company Law: Comparative Analysis

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Abstract

It has long been an established fact that companies are persons at law. And just as human persons are made up of different body parts or members, so a company is also made up of different members. Everybody part or member has its own functions and is equipped to perform these functions. This equipment can be seen from a legal perspective as the right of that member to do certain acts in furtherance of its functions and membership of the entire body, and also to be free from interference from other members. In this work, we shall be looking at the company as a body, focusing on its constituting corporate and individual membership rights and liabilities, the circumstances under which those rights can be said to have been infringed upon, these rights in relation to other members and organs, the pattern or kind and extent of liability to be borne by those liable and the remedies available to members whose rights have been infringed upon. The work further analysis the corporate and individual membership rights and liabilities, protection of minority rights, and investigation of company's affairs at the instance of a member under the Nigeria Company law with that of other jurisdiction like English, United State of America, and China. This work will conclude that the Nigeria company law has made adequate and democratic provisions and procedures like personal actions in the case of personal membership rights and derivative action in the case of corporate member rights.

Keywords: *Individual, Membership, Liabilities, The Nigeria Company Law, Comparative Analysis*

Introduction

Membership of a company is defined in section 79(1) and (2) of the provision of the Companies and Allied Matters Act 2004 to include:

The subscribers of the memorandum of the company, who are deemed to have agreed to become members of the company and on its registration shall be entered as members in its registers and

Every other person who agrees in writing to become a members and whose name is entered in its register of member. Section 79 (3) stipulates that in the case of a company having a share capital, each member shall be shareholder and shall hold at least one share.

Therefore, a member of a company limited by guarantee is a person who undertakes to make a contribution in the event of the register of members of the company.

A member of a company limited by shares is a person who has taken at least one unit of share in a company and his name is entered in the register of members of the company⁴⁹.

In *Sparks Electrics (Nig.) Ltd and Another v. Ponmile*⁵⁰, the issue as to whether there is any difference between a member and shareholder of a company limited by shares was raised, in that case the court stated that in modern company law there is actually no difference, in practice at least between being a member and being a shareholder of a company.

The above judicial authority was however distinguished by *Professor P. Eli Oshio*, as follow:

“With the abolition of share warrants by section 149 of the Act it may be thought that a member and shareholder are the same and the words may now be correctly used interchangeably. However, there is a distinction between the two. Every member of the company limited by shares is a shareholder of the company, since section 79 (3) provides that each member shall be a shareholder of a company and shall hold at least one share.

But, it does not follow that every shareholder is a member of the company. Mere allotment of shares to

⁴⁹ Companies and Allied Matter Act 2004 CAP.C.20 LFN 2004

⁵⁰ (1986) 2 N.W.L.R. PE.23.516.522

a person does not make him a member of the company.

An allotment of shares is an agreement in writing conferring a right on the shareholder to be included in the register of members of the company in respect of the shares held but until that is done, such a person is not a member of the company”.

It is clear from the above submission that the allotment and payment of shares only make the allottee a shareholder but until his name is entered in the register of the members, he is not a member of the company.

Two essential conditions to be satisfied for a person to be a member of a company

- i. Agreement to become a member and
- ii. Entry of the name on the register of members

These conditions are cumulative, unless an allocate of shares becomes a member of a company on its incorporation by the mere fact of subscribing the shares placed after his name in the memorandum of association, he must have his name place in the company’s register of members in order to become a member of the company

WHO MAY BECOME A MEMBER AND HOW?

As earlier mentioned, a company cannot exist without human members. Hence, by virtue of section 18 of the Companies and Allied Matters Act,⁵¹ the minimum number of human beings required for the incorporation of a company is two (2) However, it is not just any two (2) persons that can come together to form a company. It is persons that meet the requirement of the CAMA that may join in the formation of a company. By virtue of section 20 (1), (a) (b) of the CAMA, certain person are disqualified from the formation of a company. They are:

- (a) A person below eighteen (18) years
- (b) A person of unsound mind who has been so found by a court in Nigeria or elsewhere
- (c) An undischarged bankrupt
- (d) A person disqualified under section 254 of the CAMA from being a director of a company

Under subsection (3), a corporate body in liquidation shall not join in the formation of a company.

⁵¹ Cap C20 LFN 2004

However, aliens and foreign companies may join in forming a company subject to the provisions of any enactment regulating their participation in trade or business in Nigeria⁵².

It must however be said that, there is a difference between who is qualified to form a company and who may join or become a member subsequently. Thus while some may not be able to form a company, they may subsequently become a member of a company. An example is the case of persons under eighteen years.

It must also be noted that a person under eighteen (18) may even join in forming a company, if there are up two other subscribers to the memorandum that are not disqualified. They shall however not be counted in determining the legal minimum.

From what has been said so far, we can conclude that the following persons may be members of a company:

- (i) A Nigerian who lives in Nigeria
- (ii) A Nigerian outside Nigeria, subject however to the permission of the ministry of finance for issuance of any interest or security in his favour and for the re-issuance of any security (section 10 Exchange Control Act 1990)
- (iii) A company
- (iv) An alien
- (v) A foreign company

Having, seen who may become a member of a company, we can now go on to consider how those that can become members may do so.

Section 79(1) of the CAMA provides that “the subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of member”

Section 79 (2) provides that “every other person who agrees in writing to become a member of a company, and whose name is entered in its register of members shall be a member of the company”

⁵² Section 10, Exchange Control Act 1990

While the provision of section 79 (1) leaves no doubt as to who a subscriber is, the provisions of section 79 (2) leads us to ask the question; what constitutes an agreement in writing?

Agreement in writing may take any of the following forms:

- (a) Allotment of Shares: a situation where someone applies for shares and has shares allotted to him
- (b) Transfer of Shares: a situation where someone purchases shares from an existing member of a company and thereafter notifies the company.
- (c) Transmission: a situation where someone succeeds to shares on the death or bankruptcy of a member and thereafter notifies the company.

A distinction exists between the membership requirements of subscribers and those of persons under subsection (2) of section 79 of the CAMA.

While in the case of subscribers it is not necessary that their names be entered on the register of members before they can become members, in the cases of agreements in writing, their names have to be entered in the register of members.

Additionally, in the case of transfer and transmission of shares, the person acquiring or succeeding to the shares must notify the company.

It must also be added that in the case of transmission of shares, the shares will first of all be transmitted to the executors or administrators who must produce to the company the grant of probate of the will or letters of administration of the estate⁵³

The personal representatives may sell or transfer shares without being registered as member.⁵⁴

We now know who may be a member of a company and how they may do so. The next issue to consider is the rights of members, the duties they create on the part of other members, officers and organs of the company, and the remedies available in cases of breach of those rights.

RIGHTS OF MEMBERS, CORRESPONDING DUTIES, AND REMEDIES FOR BREACH OF RIGHTS.

In this section, we shall first of all enumerate the rights of members. Thereafter we shall identify the corresponding duties and where such duties lie. Lastly we

⁵³ Section 148, Companies and Allied Matters Act, Cap C20 LFN 2004

⁵⁴ Ibid. section 155(4)

shall consider the consequence of breaches and also remedies for breaches of rights.

So, what are the rights of members? They include:

- (i) Right to dividends
- (ii) Right to return of capital on winding up, subject to the existence of surplus
- (iii) Right to return of capital on reduction of capital
- (iv) Right to attend meetings
- (v) Right to vote at meetings.
- (vi) Right to transfer shares subject to restrictions in the Articles.
- (vii) Right to sell, mortgage, or otherwise dispose of his shares.

It must be added that apart from these rights, there are broad provisions that vest right on members of a company.

One of such is the duty of directors to govern in a lawful and efficient manner and in a way not unfairly prejudicial to the interests of any member or group of members or in a way that is oppressive.

There is also the practice of lifting the veil of incorporation which enables the courts to look beyond the corporate legal personality of a company and hold specific persons responsible for wrongful acts.⁵⁵

Let us briefly now consider some rights of members one after the other.

Right to Dividends

The declaration of dividends is a management decision to be made by the board of directors⁵⁶. A shareholder does not have a right to dividend until it is declared, but when declared, it becomes a special debt due to the member and the member may recover same by a count action within 12 years from the date the dividend is declared.⁵⁷

In addition, if directors fail to declare enough or any dividends against the good judgment and desire of the General Meeting, the directors any be removed under section 262 and another board constituted, that will satisfy the members.

The members may alter the articles altogether to take away the power to declare dividend from the directors and vest it in themselves.

⁵⁵ Ibid. Section 246(3), section 93; *Chinwo v Owhonda* (2008)3 NWLR (Pt. 1074)341 at 362; *Adeyemi v Lan & Baker Ltd* (2000)7 NWLR (pt. 663) P.33 at P.51

⁵⁶ *Scott v Scott* [1943]1 All ER 582

⁵⁷ Section 385, Companies and Allied Matters Act, Cap C20 LFN 2004.

Thus this right creates a duty to declare dividends when possible on the board of directors, the breach of which may lead to the remedies already stated above.

Right to Return of Capital on Winding Up if There is Available Surplus

When a company is wound up, the members are entitled to return of capital if there is any, after other liabilities have been settled. The liquidator may be liable to the member if he acts in breach of this right

Right to Return of Capital on Reduction of Capital

Members are entitled to return of capital on reduction of the capital of a company. The reduction of share capital can be done by the general meeting alone and so the members in general meeting ought to ensure that capital is returned to those deserving it.

A member may sue to enforce this right.

Right To Attend Meetings

Members have a right to attend meetings⁵⁸. This means they have to be notified of meetings and the meetings must be held in a place where the members can attend (in Nigeria).

The notice required is a 21-day notice.⁵⁹ Every company must in addition to personal notices, advertise notice of meetings in at least two (2) daily newspapers.⁶⁰ Failure to give notice of any meeting to a person entitled to receive it will invalidate the meeting unless such failure is an accidental omission on the part of the person giving the notice⁶¹.

Right to Vote at Meetings

Connected to the right to attend meetings is the right to vote at meetings.

The person presiding over every meeting must ensure that he voting right of every member is protected. A breach of this right entitles a member to sue.

Right to Transfer Shares

A member shall be free to transfer their shares unless restricted by the article or for lack of a proper instrument of transfer.⁶² The company may also refuse to register the transfer of shares on which it has a lien.

⁵⁸ Ibid. section 227

⁵⁹ Ibid. section 217

⁶⁰ Ibid. section 222

⁶¹ Ibid. section 221(1)

⁶² Ibid. section 151

These rules must be observed but not exceeded or else the member will be entitled to sue personally.

What has been stated also apply to mortgage of shares or disposal by any other means.

So far we have considered membership rights form a general perspective. There is however a distinction, although very thin, between individual membership rights and corporate membership rights.

We shall now consider these two classes of membership rights.

INDIVIDUAL MEMBERSHIP RIGHTS

These rights attach personally to members. They enjoy the protection of the law, and as such the company or any group of members cannot lawfully deprive the shareholder of their enjoyment.⁶³

These rights encompass what was described in *Edward v. Halliwell*⁶⁴ as the right “to maintain (himself) in full membership with all rights and privileges appertaining to that status”.

These rights are protected by statute and by the memorandum and articles of companies.

CORPORATE MEMBERSHIP RIGHTS

These are rights that cannot be exercised by an individual member but by a collection of members. Examples are rights the exercise of which requires resolutions.

While the individual reserves a right to participate in decisions of a company, there are decisions to be taken by a majority of members and in such cases his rights are subject to the majority decision.

As was said earlier, there is a thin line of distinction between individual and corporate membership rights. This situation was recognized by *Olatawura, JSC in Globe Fishing Industries Ltd. V. Coker*⁶⁵ thus:

The dividing line between personal and corporate right is very hard to draw, and perhaps the most that can be said is that the court will incline to treat a provision in the memorandum or

⁶³ Orojo, J. Olakunle Company Law and Practice in Nigeria, 5th ed. (London: LexisNexis ButterWorths,2008), 205

⁶⁴ (1950)2 All ER 1064 at 1067, per Jenkin LJ

⁶⁵ (1990)7 NWLR (pt. 162)265 at page 280

articles as conferring a personal right on a member only if he has an interest in its observance distinct from general interest which every member has in the company adhering to the terms of its constitution”

PROTECTION OF INDIVIDUAL MEMBERSHIP RIGHTS IN NIGERIA

As a general rule, decisions of a company are taken by a majority of its members, and where a wrong is thereby done to the corporate right of a member, it is for the company alone that is the majority to decide whether to redress or ignore such wrong. This principle was laid down in the case of *Foss v. Harbottle*⁶⁶

The principle has also been enacted as law in the CAMA by virtue of section 299 which reads thus:

Subject to the provisions of this Act, where irregularity has been committed in the course of a company’s affairs or any wrong has been done to the company, only the company can sue to remedy that wrong and only the company can ratify the irregular conduct.

However, exceptions have been created to this harsh rule.

A member who perceives that his rights have been infringed upon may institute a personal action to redress the wrong done against him. This right to institute a personal action is recognized under the Companies and Allied Matters Act by virtue of section 300 which provides as follows:

Without prejudice to the rights of members under sections 303 to 308 and section 310 to 312 of this Act or any other provisions of this Act, the Court, on the application of any member, may by injunction or declaration restrain the company from the following-

(a) entering into any transaction which is illegal or ultra vires;

⁶⁶ (1843)2 KB 461

- (b) purporting to do by ordinary resolution any act which by its constitution or the Act requires to be done by special resolution;*
- (c) any act or omission affecting the applicant's individual rights as a member;*
- (d) committing fraud on either the company or the minority shareholders where the directors fail to take appropriate action to redress the wrong done;*
- (e) where a company meeting cannot be called in time to be of practical use in redressing a wrong done to the company or to minority shareholders; and*
- (f) where the directors are likely to derive a profit or benefit, or have profited or benefited from their negligence or their breach of duty*

By section 301(1), a member instituting an action under section 300 cannot claim damages but is only entitled to an injunction or declaration to restrain the company and/or directors from doing a particular act.

It is possible that two or more member may be personally aggrieved and one of them may bring a representative action on behalf of him and the others. In such cases, the remedies are by virtue of section 301(2) of the CAMA, same as in the case of a personal action mentioned above⁶⁷.

PROTECTION OF CORPORATE MEMBERSHIP RIGHTS IN NIGERIA

Under the common law, various means were used to circumvent the rule in *Foss v Harbottle*⁶⁸ when it led to undue harshness. These exceptions have been enacted in the case of corporate membership rights in section 303 of the CAMA which provides as follows:

303-(1) Subject to the provisions of subsection (2) of this section, an applicant may apply to the court for leave to bring an action in the name or on behalf of a company, or to intervene in an action to which the company is a party, for the

⁶⁷ Orojo, *Company Law and Practice in Nigeria*, 208

⁶⁸ *Ibid*

purpose of prosecuting, defending or discontinuing the action on behalf of the company.

(2). No action may be brought and no intervention may be made under subsection (1) of this section, unless the court is satisfied that

(a) the wrongdoers are the directors who are in control, and will not take necessary action;

(b) the applicant has given reasonable notice to the directors of the company of his intention to apply to the court under subsection (1) of this section if the directors of the company do not bring, diligently prosecute or defend or discontinue the action

(c) The applicant is acting in good faith; and

(d) It appears to be in the interest of the company that the action be brought, prosecuted, defended or discontinued.

The provisions of section 303 makes room for what is called a derivative action and section 304 provides for the order or orders that court may make:

304-(1) In connection with an action brought or intervened under section 303 of this section the court may at any time make any such order or orders, as it thinks fit.

(2) Without prejudice to the generality of sub section (1) of this section, the court may make one or more of the following orders, that is an order-

(a) authorizing the applicant or any other person to control the conduct of the action;

(b) giving directions for the conduct of the action;

(c) directing that any amount adjudged payable by a defendant in the action shall be paid, in whole or in part, directly to former and present security holders of the company instead of to the company;

(d) requiring the company to pay reasonable legal fees incurred by the applicant in connection with the proceedings.

The rule established by these provisions applies even when the wrongdoer, though not holding the majority of shares in the company is known to be able,

by manipulating his position in the company, to ensure that the majority would not allow a claim to be brought for the alleged wrong.⁶⁹

Where those responsible for the alleged wrong do not control the company, the mere unwillingness of directors to take action does not establish the right of shareholders to do so unless they show that they had taken all reasonable steps to secure action by the company⁷⁰. This would include at least an attempt to invoke the statutory right to have an extraordinary general meeting convened by a requisition.⁷¹

RELIEF ON THE GROUNDS OF UNFAIRLY PREJUDICIAL AND OPPRESSIVE CONDUCT

By virtue of section 311, a company member may make an application by petition to the court for relief on the ground that the affairs of a company are being conducted in an illegal or oppressive manner

Under section 311(2) (a) (i) (ii), such application may be made by a member who alleges that:

311-(2)

(a) (i) that the affairs of the company are being conducted in a manner that is oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or members, or in a manner that is in disregard of the interest of a member or the members as a whole; or

(ii) that an act or omission or a proposed act or omission, by or on behalf of the company or resolution, or a proposed resolution, of a class of members, was or would be oppressive or unfairly prejudicial to, or unfairly discriminatory against, a member or was or would be in a manner which is in disregard of the interests of a member or the members as whole.

Having heard the application, the court, if satisfied that a petition is well founded, may make such orders or orders as it thinks fit for ensuring relief in the matter complained of.⁷²

⁶⁹ Prudential Assurance Co. Ltd v Newman Industries Ltd (No. 2) [1980]2 All ER 841

⁷⁰ Orojo, Company Law and Practice in Nigeria, 214

⁷¹ section 215, Companies and Allied Matters Act, Cap C20 LFN 2004

⁷² Ibid. section 312(1)

Subsection (2) of section 312 also lists certain orders that may be made which include among others, an order for winding up, for regulation of the affairs of the company, for purchase of members' shares by other members, directing an investigation to be made by the CAC, requiring a person to do a specific thing or act.

Investigation of Company's Affairs at the Instance of a Member

In order to ensure that the rights of members are protected, provisions are made for the investigation of the affairs of a company⁷³.

Thus, by virtue of section 314(1) and (2) (a) and (b), the Corporate Affairs Commission may appoint one or more competent inspectors to investigate the affairs of accompany and to report on them in such manner as it may direct. The CAC may do this on the application of members holding not less than one-quarter of the class of shares issued in the case of a company with a share capital.

If the company does not have a share capital, the CAC may carry out an investigation on the application of not less than one quarter of its registered members.

An order for investigation may be made by the court by virtue of section 315(1), if the conditions in section 315(2) are satisfied.

Based on the report of the investigation, the CAC may bring civil proceedings on behalf of the company and in its name⁷⁴.

Under section 322(1), the CAC must refer cases involving criminal guilt to the Attorney General who may institute proceedings by virtue of section 321(2).

Also, civil actions for damages or recovery of property may be instituted by the Attorney General on being referred to it by the CAC. This is by virtue of section 322(3).

The report may also be used as evidence in other legal proceedings.⁷⁵

If it appears to the commission after considering the report, that it is expedient in the public interest that a company is wound up, the commission may present

⁷³ Ibid. section 314; 315(1)(2)

⁷⁴ Ibid. section 321(1)

⁷⁵ Ibid. section 325, Y.H Bhadmus, Bhadmus on Corporate Law Practice, (Enugu: Chenglo Limited, 2009), 257.

a petition to that effect subject to section 408 that is if the court thinks it just and equitable to do so.

Investigation of Company's Ownership

There are times when it may be necessary to carry out some fact finding work in order to determine who benefits from the way a company is being administered. This is especially so when certain members have expressed their displeasure over the ways the affairs of a particular company is being managed. The Companies and Allied Matters Act create room for this by virtue of *section 326 (1)* reproduced below:

326-(1) Where it appears to the commission, that there is good reason so to do, it may appoint one or more competent inspectors to investigate and report on the membership of any company and otherwise with respect to the company for the purpose of determining the true persons who are or have been financially interested in the success or failure (real or apparent) of the company or liable to control or materially to influence the policy of the company.

By the virtue of section 326 (3) , an application for investigation of ownership may be made by members having not less than one-quarter of the class of shares issued or not less than on quarter of registered members in the case of a company without a share capital with respect to particular shares or debentures. By paragraph (a) of that subsection, “the commission shall appoint an inspector to conduct the investigation unless it is satisfied that the application is vexatious”.

By virtue of section 329 of the CAMA, the debentures or shares in questions may be subject to a range of restrictions.

Winding Up on Just and Equitable Grounds.

A member may petition for the winding up of a company. This is recognized by the provisions of section 408 and 410 of the CAMA

This remedy is not likely to be brought however because it is capable of working hardship against the petitioner himself.⁷⁶

⁷⁶ Orojo, Company Law and Practice in Nigeria, 215

From the aforementioned, we can see that in Nigeria, extensive provisions are made for the protection of membership rights and remedies put in place in case such rights have been breached.

However, since company law practice and legislations often flows across borders, it is good to look at some other jurisdictions. This is necessary to see where we can improve our own legislations and practices, and also to predict where we may likely be sometime from now, since as mentioned already, different jurisdictions have a great influence on one another as far as company law and practice is concerned.

A GLIMPSE AT OTHER JURISDICTIONS

The Nigeria Company law originated from that of England. As a result of that, there are very great similarities between minority protection provisions in Nigeria and England.

The English company law contains provisions for procedures like personal actions in the case of personal membership rights and derivative action in the case of corporate member rights. The English companies Act 2006 also outlines provisions relating to investigation of companies.

Let us consider the provisions of the companies Act 2006 on relief for unfairly prejudicial and oppressive conduct.

In England, it is section 994 of the companies Act 2006 that deals with actions based on unfairly prejudicial and oppressive conduct. This provision acts as a substitute for the restrictive pre-conditions for bringing a derivative action

Section 994 of the Companies Act 2006 reads as follows:

- (1) A member of a company may apply to the court by petition for an order under this part on the ground-*
- (a) That the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interest of members generally or some part of its members (including at least himself) or*
 - (b) That an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial*

- (2) *The provisions of this part apply to a person who is not a member of a company but to whom shares in the company have been transferred or transmitted by operation of law as they apply to a member of a company.*
- (3) *In this section, and so far as applicable for the purposes of this section in the other provisions of this part, “company means*
- (a) A company within the meaning of this Act, or*
 - (b) A company that is not such a company but is a statutory water company within the meaning of the statutory water companies Act 199 (s. 58)*

Just like in Nigeria, section 994 does not define what amounts to “unfair” and “prejudicial” conduct. The courts therefore, are free to interpret as they think fit⁷⁷.

The court may make “such order as it thinks fit” under S. 996 (1). This is similar to 321(1) of the CAMA. Section 996 (2) also specifies other orders that the court may make. This section is virtually the same as section 312 (2) of the CAMA. In England members may assert conduct was unfairly prejudicial even if it was before they joined the company and they may claim against a person who has already sold their shares (so the wrongdoer cannot escape). But once a claimant shareholder has sold his own shares and is no longer a member, no claim may be brought⁷⁸

It must be added here that most common wealth countries have provisions on minority protection in their different company law legislations that are similar to those of Nigeria and England.

Even in America, the laws are very much like those found in Nigeria and England. It is therefore, necessary to look outside these jurisdictions and that of America to see what applies elsewhere.

One such place we are going to consider is China. This is because china is now the second largest economy on the world, and companies are major players in every economy.

⁷⁷ Wikimedia Foundation Inc., Unfair Prejudice, Wikipedia the Free Encyclopedia, Wikimedia Foundation Inc, http://en.wiki.org/wiki/unfair_prejudice accessed on February 26, 2013

⁷⁸ Ibid

In China, the company law offers protection to minority shareholders. These protections are contained mainly in the Company Law of China. The Company Law of China is also supported by other legislations like the Securities Law of People's Republic of China, the Criminal Law of People's Republic of China, the General Principles of Civil Law of People's Republic of China, the administrative regulations enacted by China Securities Regulation Commission and the judicial decisions of the Supreme Court of China.⁷⁹

Article 1 of the Chinese Company Law says that one of its legislative duties is the protection of the rights of shareholders.

Item 1 of article 4 of the Company Law of China briefly talks about shareholders' power to make decision. It states that shareholders can make decisions based on capital contributed.

Though the Company Law of China talks about protecting minority shareholders in Article 3, in reality, little protection is provided for certain reasons.

The first is the existence of the absolute majority rule. This rule is confirmed by Article 43 and 106 of the Company Law. Article 38 and 103 give wide powers to the general meetings. However the powers to supervise management are mainly controlled by majority shareholders. The fundamental principle is that shareholders shall vote according to their invested capital.

The Company Law of China does not provide for derivative action by minorities and an individual can hardly bring an action on behalf of the company since by item 1 of Article 108 of the Civil Procedural Law of China requires that legal persons bringing an action should have a direct interest. This would mean the company itself⁸⁰

Secondly, minority shareholders cannot supervise the management because they have no powers to call for a general meeting. Article 43 and 104 specifies that it is the board of directors that can call for meetings which are to be chaired by the board chairman.

The shareholders can only make a request for the convening of a meeting if they are in majority. Such request can also be turned down by the management.

⁷⁹ All Answers Ltd, Exploring the Issue of Protecting Minority Shareholders, Law Teacher, All Answers Ltd, <http://www.lawteacher.net/business-law/essays/exploring-the-issue-of-protecting-minority-shareholders-business-law-essay.php> accessed on February 27 2020

⁸⁰ Ibid

Even if meetings are held, article 44 and 104 imply that matters to be discussed at meetings are to be raised by the board of directors.

Article 105 states that an interim shareholders general meeting cannot adopt matters that are not stated in the notice.

Thirdly, the Chinese Company Law does not have provisions for the doctrine of lifting the veil of incorporation and as such it is difficult to hold individuals (major shareholders and officers) personally liable for abuse of the rights of other shareholders⁸¹

As we have seen, the Company Law of China has many loopholes as regards the protection of minority shareholders. These would have to be fixed if company management in China must be seen as democratic and fair in the future.

RECOMMENDATIONS

From what has been discussed so far, we can say that the Nigeria Company Law has done well in guaranteeing the protection of minority rights in companies.

Even when compared to the protection available to minority shareholders in countries like England and the United State of America, the Nigerian Company Law cannot be said to have done badly in this regard.

However, there is nothing that says that the relevant laws as they are cannot be improved, or even that Nigeria cannot set the pace for others to follow in the protection of minority shareholders.

Having said this, some of the provisions that may be re-considered are section 301(1) (2) of the CAMA. These provide that where a member brings a personal action to enforce any right due to him personally and when a member institutes representative action on behalf of himself and other affected members to enforce any rights due to them, he shall not be entitled to any damages but to a declaration or injunction restraining the company and/or directors from doing a particular act.

From these provisions we can decipher that persons or organs responsible for certain acts cannot be compelled to carry out restitution by way of paying damages to the member personally affected by their act. Thus the remedy will only help to prevent harm not already done to the rights of a shareholder.

⁸¹ Ibid

This point is particularly relevant when we consider the fact that the CAMA itself anticipated situations where the wrongdoers would have done some harm and profited by it before the minority shareholder brings his action. This is seen from the provisions of section 300 (f) which deals with one of the conditions on which a shareholder may bring an action. Paragraph (f) reads as follows:

(f)Where the directors are likely to derive a profit or benefit, or have profited or benefited from their negligence or from their breach of duty.

From the aforementioned, we may want to consider making provisions for rectification of harm already done to shareholders under these particular provisions.

CONCLUSION

In Nigeria today, the minority shareholder has a lot of provisions in our Company Law to fall back on in order to defend himself against oppression from other members or any organ of the company.

Thus, the rule in *Foss v. Harbottle*⁸² does not constitute a substantial hindrance to the protection and enforcement of minority rights in Nigeria even though it is still retained by virtue of section 299 of the CAMA.

As long as the individual is well informed, he may carry out actions to defend himself either alone or in conjunction with other shareholders.

⁸² Ibid