AN ANALYSIS OF MEETINGS AS AN EFFECTIVE MEDIUM FOR SHAREHOLDERS' PARTICIPATION IN CORPORATE MANAGEMENT UNDER THE COMPANIESAND ALLIED MATTERS ACT, 2004

BY

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BEING A THESIS SUBMITTED TO THE FACULTY OF LAW, AHMADU BELLO UNIVERSITY, IN A PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF MASTER OF LAWS – LL.M DEGREE.

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DECLARATION

I declare that this thesis entitled ***"An Analysis of Meetings as an Effective Medium for Shareholders' Participation in Corporate Management under the Companies and Allied Matters Act"*** is a product of my research work. It has not been presented in any previous application for a higher degree.

The information derived from literature had been duly acknowledged in the text and a list of references provided. No part of this thesis was previously presented for another degree or diploma at any university.

_____ _____

Bello Lateefat. A. Date

CERTIFICATION

This Thesis entitled an analysis of meetings as an effective medium for shareholder's participation in corporate management under the companies and Allied Matters Act, meets the regulations governing the awards of the degree of Master of Laws LL.M, Degree of Ahmadu Bello University and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

To my Husband, Yunusa ‘Ladi Bello for inspiring, nurturing and sharing my dreams.

And

My bundle of joys, Moh’d Salihu Tolani, Ba’asit Babatunde and Ummul – Khair Gbonjubola Bello. All of whose constant reminder of “Mummy you must hurry and finish this work” acted as the motivational catalyst for it completion.

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TABLE OF CASES

TABLE OF STATUTES

TABLE OF CONTENTS

CHAPTER TWO

CHAPTER THREE

CHAPTER FOUR

ABSTRACT

The role of shareholders in decision-making cannot be undermined, if corporate governance standards aimed at accountability, transparency, and adequate disclosure are to be observed. As a result, reforms in corporate governance and company statutes should be directed towards ensuring increase shareholder participation. Incidentally, the only foray in which shareholder can participate in company decision-making is through their attendance at company meetings. As a rule, the decisions of companies are generally taken at company meetings. The word "meeting" presupposes the presence of more than one person. Thus, companies around the world Nigeria inclusive, yearly send out annual reports and proxy form to shareholders, who are expected to send out their ballot proxy forms back to the company or better still to attend annual general meetings, but proportionately few in fact, ever do so. This work is a contribution to improving shareholders' activism through participation in the company meetings. This is a six chapter structured thesis, outlining general introduction, the distribution of powers between the company organs, factors mitigating against shareholders participation in meetings, corporate governance and shortfall in effective implementation and apathy of shareholders to meeting. The extent of shareholders participation in the decision making of companies was achieved by analysis of respondents' response to questionnaire. The collected data provided solutions to some identified problems in the study. The work concluded with recommendations on the need for review of some statutory provisions and the need for application of information technology tools, as additional incentive to, improve participation in company meetings.

CHAPTER ONE

1.1 GENERAL INTRODUCTION

The new dawn in corporate governance accountability in Nigeria is set to encourage shareholders' ability to hold management accountable by their active participation in company meetings[1]. The shareholders are to appoint the directors and auditors and to satisfy themselves that an appropriate governance structure is in place[2] Thus, rules governing shareholders' participation should be such that would facilitate the efficient determination of the will of the majority shareholders in informed decision–making.

In concept and definition, "Corporate governance" transcends corporate management focusing more prominently as it were, on monitoring and control of management actions. The governance of a company demands the formulation of rules and regulations to guide the behavior of its employees, enunciating powers and responsibilities of its management and board of directors who are responsible for the governance of their companies. All shareholders[3]

[1] Amao O. & Amaeshi, K.: Galvanizing Shareholder Activism: A Prerequisite for Effective Corporate Governance and Accountability in Nigeria? Journal of Business Ethics, 2008, Vol.82, no.1 Pg 119-130

[2] Agom, A.R: Company Meetings and Corporate Governance in Nigeria LL.M Thesis Faculty of Law A.B.U. Zaria 1999 (unpublished) Pp. 2

[3] Irrespective of the number of shares they hold

should have a right to all appropriate information and opportunity to express their views, with voting rights proportionate to their shareholding, through which they can influence a corporation's behavior by exercising their right as owners. For instance, shareholders by resolution can appoint, and may at any time remove, the directors, thereby ensuring managerial accountability. Also, only the shareholders by resolution can make certain other key decisions affecting their companies. This assures shareholders that the basic terms of their investments cannot be altered without their consent[4].

Since both ownership and control of the early common law, corporation ordinarily resided in a handful of individuals, personal attendance at Annual shareholder meetings was the rule not the exception. As a result, these meetings afforded each shareholder an opportunity to submit proper proposals to the collective judgment of other shareholders present.

As a rule, the larger the company, the more widely dispersed is the share capital. In a small number of very large companies, the shareholders have gradually become so numerous that it has become most impractical for all of them to meet and act together. This is

[4] Sections 44-46 0f The Companies And Allied Matters Act Cap C20 LFN 2004

because many small holders of stock conceive of shareholding more as an interest yielding bond investment than as a way of influencing the policy of the company such that, their direct interest in the practical policy of the companies in which they have shares has considerably diminished. The result is that, many situation arises, where relatively small stockholders-small in relation to the total shares issued by the company but of course large relative to the other stock-holders- have been able to achieve effective majorities based on the "splintering" of the exceptionally large number of small shareholders and on the long "distance" perceive by small shareholders to exist between themselves and the company[5]

The resultant effect of this wide distribution of shareholding is that "control in many cases has passed over from shareholders [6] to the representative[7] of the "management"[8] who eventually , by a well oiled machinery of proxy voting[9] have assume to themselves dictatorial powers to decide what they deemed "best" for the effective governance of the company.

[5] Gunner Lindgren, Uppsala Shareholders And Shareholder Participation in the larger companies' meeting in Sweden JSTOR Weitwirtchaftliches Archive, Bd, 71 (1953) Pp.281-298
[6] These are statutorily part owners of the stocks of a company.
[7] Managers by power of delegation by the board
[8] Board of Directors Statutorily the second organ of company given the power to manage the affairs of company
[9] Op Cit.

Historically, shareholders' meeting provided a forum for discussion about the conduct of the business, however the geographic spread of corporate ownership, made it more and more inconvenient for shareholders to attend meetings. This led to disenfranchisement of the absentee shareholders particularly the smaller shareholders. In an attempt to overcome this difficulty, the concept of proxy[10] was developed. Although proxy forms are included in annual reports and sent to individual shareholders, only few if any are ever returned. This led to a miniscule portion of the shareholders, much less than 1%[11] in number attending the meeting and exercising their rights, which ultimately did not bring out the decision of the majority. The argument is that since the proxy system for shareholder participation emerged, corporate directors have enjoyed virtually unfettered control of the company domain. This power has resulted in some startling examples of abuse such as economic and political corruption, rashes of risky leveraged buyouts for short-term gain and excessive executive compensation.

The problem of low-level participation by the shareholders has been plaguing countries around the world, Nigeria not been an exception.

[10]Delegation of one's voting rights

[11] This is discernible from the number of shareholders displayed as attending some of the Annual general meetings on most of local Television Network and business news in Nigeria.

This can be an ominous sign for the health of any capital market. Further erosion takes place when shareholders do not "participate" actively in the decision making process of the company in which they hold share thus making corporate democracy illusory[12].Obviously attending company meetings is not synonymous to participation, hence the need to define a "participant" shareholder.

The New Oxford Dictionary of English defines a "Participant" as a person who takes part in something' with the notion that shareholders are to be active participants in the decision making process, it goes on to provide that the Latin translation of "participant" is sharing in"[13] This reinforces the fact that real participation by shareholders is not achieved, simply by informing shareholders of decision that are made, but empowering shareholders to veto decisions at the Annual General meeting.

In an attempt to veto a decision shareholders can exercise voting rights at the general meeting, and this could be considered to be participating at least in some way in the decision making process. In reality, however, individual shareholders in public listed companies

[12] Sharm J.P et al: Impact of Postal Ballot Mechanism in improving Shareholders' Participation n Corporate Decision-Making: A Research Study, Dept of Commerce Delhi School of Economics University of Delhi Pp.7
[13] New Oxford Dictionary of English 2001 Edition Pp. 1352

very rarely have the voting power or influence to veto decision or even to have any input on how the decision is formed because of their apathy towards participation in such meetings.

The importance of meeting in the affairs of a company cannot be over emphasized, at pre-incorporation, the promoters need to meet discuss and arrange how to set up the company, as a going concern. Its proprietors, officers and creditors convene and attend meetings at all material times to appraise the performance of their investments, the exigencies of business and fate of the enterprise at winding up and dissolution. Meetings are held to appoint liquidator, work out schemes of distribution of assets or to call up debts due to the company, or such other matters peculiar to dissolution.

Thus at gestation; as a being in ailment and death company meeting play vital roles. The reason is that a company is not a natural being and its personality exists only in the eyes of the law. The company has human agents as its ego and it directing mind and will, who must meet to take decision and act on its behalf. The reality here is that the company itself being an artificial person in contradistinction to a natural human being can only retire its obligation and perfect it rights

through human agents[14]This was succinctly, portrayed by Viscount Haldane L.C. in the case of **Leonard's Carrying Ltd v. Asiatic Petroleum Ltd**[15] when he stated thus,

> ***A corporation is an abstraction; it has no mind of its own. Its active and directing will must subsequently be sought in the person of somebody who for some purpose maybe called an agent, but who is really the directing mind and will of the corporation , the very ego and centre of the corporation, that generally may be under the direction of the shareholders in the general meeting, this person may be the board of directors itself[16].***

The law has therefore vested the power to act for and on behalf of the company often called corporate powers on its human element[17]. This, human element is as constituted in the body of directors referred to as the Board of Director and also in the body of members constituted in the general meeting[18], these two constitute the primary organs for the exercise of company powers the details of which would be discussed in subsequent chapter.

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[14] Agom, A.R Company Meetings and Corporate Governance in Nigeria LL.M Thesis, Faculty of Law, A.B.U. Zaria, 1999 (unpublished) Pp.2
[15] (1866) L.R 2CH.77
[16] Ibid
[17] Section 63(1) Company and Allied Matters Act Cap C20 LFN 2004
[18] Ibid

At a close glance, a company meeting serves a variety of purposes and interests. To the members it provides the foray to be heard on matters affecting their investments. Here the members are sure of face-to-face meetings with their corporate chieftain in one place and questioning them on the company's position and prospects.

It is one place where members meet to discuss and ventilate their grievances on matters affecting their interest and are able to extract some measure of accountability from management. Further the members could activate at meetings, the potency of their ultimate control over the affairs of the company by becoming organized and sacking the directors if they so desire. Meetings therefore provide to members a tool for intervention in corporate administration[19] .This research work examines the fact that shareholders' power and influence are not effectively put into use. This is because of their apathy towards company meetings arising from ignorance, indifference as well as misuse/non-use of statutorily guaranteed rights.

It is therefore the general objective of this work to give an overview of the extent of shareholders' participation in general meetings as part of their contribution to effective corporate management decision. As well

[19] Agom , A. R. Op. Cit @ Fn 2

as to explore avenue of improving participation of shareholders in Corporate Governance by distribution of rights and responsibilities amongst different actors involved in corporate organization. The fair treatment of shareholders and the ability to have their voice heard is one major issues at the core of best corporate practice. This thesis work is therefore a contribution to the education of shareholders on their rights and to assist them to play more active roles in exercising these statutorily guaranteed rights by participating in company meetings.

1.2 BACKGROUND

There is no gainsaying that the decisions of a company are generally taken at the meetings of its members, which constitute its primary organ. , the word "meetings", presupposes the presence of more than one person, but the context of the use of the word may be restrictive[20].

Every year many corporations all around the world send hundreds and thousands of annual accounts, proxy materials and proxy forms to shareholders. Who are expected to send their ballots/proxy form back

[20]. Orojo. J.O, Company Law and Practice in Nigeria Mbeki & Associate ,Lagos,2004 .pp.273

to the company, or better still to attend Annual General Meetings[21]. However, proportionately few, in fact ever do so. This is because, when all is going well shareholders tend not to attend Annual General Meetings (Hereinafter referred to as AGM), and tend to leave it to the pressure groups and "querulous" individual shareholders such that managing directors regard the Annual General Meetings as presently constituted as an expensive waste of time and money or to put it more succinctly a "Jamboree" of some sort. That is to underestimate its value, at least, in the background when things are not going on well[22].

The reality of the division of powers between the board of directors and the shareholders in general meeting, is such that the general meeting (shareholders) had for long been considered as the supreme organ of the company[23], while the board of directors are regarded as agents or employees of the general meetings subject to the control of the company at general meeting[24].

[21] Hereinafter referred to as AGM
[22] Davies. L. Paul, Gower and Davies Principle of Modern Company Law, Sweet and Maxwell, 7th Ed. 2003 Pg 300
[23] The articles of association provide the ambit within the various organs of company Operates. Unfortunately this traditional division of power had been overtaken by the Board of Directors.
[24] Ibid

In **Isle of Wright Railway v Tahourdin**[25], Cotton L.J. had this to say:

> ***It is very strong thing indeed to prevent shareholders from holding a meeting of the company when such meeting is the only way in which they can interfere if the majority of them think that the course taken by the directors, in a matter intra of the directors, is not for the benefit of the company[26].***

However, as company management took a professional and technical turn, the board of directors, became a very pre- eminent organ having taken over completely in the areas of company management except as otherwise provided in the Articles of Association and the Memorandum of Association.

An overview of shareholders' role in corporate decision making in general meetings, which is inevitably the method used by companies, public or private where there is a large shareholding body, reveals little or no shareholders participation.[27]

The reason for shareholder's apathy towards general meetings, vis-à-vis the appropriate use of their statutorily guaranteed rights, the extent

[25] (1883)25CH.D 320 C.A. – Where the court refused the directors of a statutory company an injunction to retrain the holding of a general meeting, one purpose of which was to appoint a committee to reorganize the management of the company.
[26] Ibid
[27] Op .Cit Fn 22 at Pp 301

of their participation in corporate management decision through resolutions, are some of the many questions which this work seeks to provide answers for.

In addition, this work critically analyze proceedings of general meetings through the identification of some provision of the Companies and Allied Matters Act[28] [hereinafter referred to as CAMA] that inhibits or encourages, the effective participation or otherwise of shareholders in general meetings, despite the fact, that it is one of the means available for ensuring shareholder's contribution to corporate management decision.

1.3 STATEMENT OF THE PROBLEM

The increasing realization of less shareholders' participation in general meetings in spite of the importance of such attendance and the paucity of knowledge about corporate governance[29] have necessitated a discourse into this research topic. The depth of this problem can be

[28] Cap C20 LFN 2004 .
[29] Particularly now that there is significantly more people investing in companies and the capital market

appreciated if we visualize what an eminent writer[30] sought to explain in the following sentences.

> ***The question is merely whether each shareholder as and when he received the notice of the meeting had fair warning of what was to be submitted to the meetings. A shareholder may properly and prudently leave matters in which he takes no personal interest to the decision of the majority, because he knows the matter. In that case he is content to be bound by the vote of the majority because he knows the matter about which the majority is to vote at the meeting.***
>
> ***If he does not know that, he has not fair chance of determining in his own interest whether he ought to attend the meeting, make further inquires, or leave others to determine the matter for him[31].***

The poser is, how do you seek to contribute to a decision – making process of a company, when that which is the object of a resolution to be passed at a meeting eludes the understanding of the "participant" – shareholder, because the organ statutorily saddled with the responsibility of doing so, misuses his power to ensure that company meeting do not hold, or that shareholders do not get the agenda so has to forestall been called upon to give account of their stewardship in

[30] Ignatius. A .Ayua, Nigerian Company Law, Graham Burn, London, 1984 Pp.136
[31] Ibid.

the face of daunting challenges facing the cooperation. This work is an attempt to educate the shareholder on how germane his role is, in corporate management through highlights of available methods to reduce the misuse of inside information by person in control of the company, to the detriment of the company and its shareholders.

1.4 AIMS AND OBJECTIVE

The objective of this thesis work is to determine the behavioral, environmental and procedural factors, which led to apathy of shareholders to company meetings and their non – participation in decision – making process of companies.

The work also aims to reduce the present level of maladministration, corruption and apparent collapse of most corporate entities arising from the ineffective use of appropriate checks and balances provided by the statute. This we hope to achieve by enlisting strategies for overcoming such identified hurdles as, abuse of proxy machinery, negligence of regulatory bodies to ensure adherence to statutory provisions and enforcement of disciplinary measures for non compliance to same.

The acceptability of these strategies, would be examined vide the conduct of a field study, that will make use of questionnaires, from which data will be collated and analyzed to determine the extent of shareholders participation/non participation in company meetings and decision making. This is with the view of recommending avenues for future improvements in the procedure and participation in company meetings and management.

1.5 JUSTIFICATION

The apparent non – disclosure of information, maladministration and corporate abuse have contributed adversely to the fortune of most emerging economics such as Nigeria. The resultant effect is apathy of seemingly owners of corporation towards participation at company meetings as statutorily provided. Unfortunately in recent times, shareholders have been frustrated in the exercise of their statutorily guaranteed rights to control the excesses of the board of directors who have abrogated to themselves the dictatorial powers of management of affairs of companies to their individual and collective advantages.

It is the desire to protect shareholders from exploitation by insiders controlling shareholders who wear , several hats e.g. shareholder,

creditor, supplier manager to mention just a few that has led to the disenfranchisement of most shareholders who are generally ignorant of their rights and responsibilities. When they do become aware, they often adopt passive and inexperienced approach especially due to lack of established good corporate governance practices, even when they do take action, they are usually not familiar with their rights, options and the appropriate approach to air their grievances.

It is pertinent to note that shareholders role in decision – making cannot be undermined, if corporate governance standards aimed at accountability, transparency and adequate disclosure are to be observed. This been the case, then one of the effective means by which corporate decision can enhance effective management of company, is through the participation of shareholders in company meeting, enlightenment on their statutory right and how such rights can be harnessed towards improve performance of both the Board and management of companies.

In addition, a research is intended to contribute to knowledge and benefit humankind. This is not an exception as it would be of immense benefit not only to shareholders and directors but also to the society at large.

To the shareholders it will create a reawakened realization of their ownership rights in the company that will enable them to contribute more effectively to corporate management decision through their participation in general meetings. And the directors, it would be a wake-up call to conform, by limiting the extent/application of their powers to those statutorily provided to them under the statute, without necessarily eroding the powers of the shareholders by the abuse of the proxy machinery.

Generally, this work is a contribution to the development of law because it introduces information communication technology as a means of enhancing/improving future participation of shareholder in company meetings and decision-making. Finally, this work though not exhaustive is a meaningful contribution to research on improving shareholders participation in company meetings as a tool for enhancing corporate governance accountability in Nigeria.

1.6 SCOPE OF THE RESEARCH

The scope of this work covers corporate meetings generally, by examining shareholders rights and duties vis-à-vis. management decision emanating from such meetings. Further, it examines various

statutory provisions contained in Companies and Allied Matters Act[32] relative to practical realities such as the proxy system, voting pattern of the different classes of shareholders, notices of meeting and its effectiveness in the light of advance communication technology, ICT; and venue of meeting so as to determine the extent to which they have been utilized to the advantage or otherwise of shareholders' participation in company meetings. According to William Paley[33]:-

> ***When a writer offers a book to the reading public upon a subject on which the public are already in possession of many others, he is bound by a kind of literacy justice to inform his readers, distinctly and specifically, what he professes to supply and what he expect to improve[34].***

In the light of the above, it is the intent of this research to improve shareholders appreciation on the need for their participation in corporate decision making as basis for improves corporate governance accountability and practices in Nigeria.

[32] Cap C20 LFN 2004
[33] The Principles of Moral and Political Philosophy 13th Ed. Vol. 1. 1801 In: Irukwu J. O, the Company, the Shareholders', the Director and the Law, Dimension Publishing Co. Ltd Enugu 1994 Pg VI.
[34] Ibid

1.7 LITERATURE REVIEW

This definitely is not the first work in this area of law bearing in mind that both foreign and Nigerian authors writing on company law, have discussed exhaustively on issues pertaining to company meetings. Thus the works of Davies[35], Pennington[36], Shaw and Smith[37], Clive Schmitt off[38], Stratling Rebecca[39], Boros Elizabeth[40], Amao, et al[41] were of immense benefit in writing this thesis.

Interestingly though, is the fact that the works of these authors formed the cornerstone of any discussion on company law even though (with all sense of humility) they may not necessarily be a true reflection of the current trend in corporate governance principles, as the tool that provides the effective checks and balances that could enhance participation of shareholders in corporate management decision.

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[35] Davis .L. Paul Principles of Modern Company Law, Sweet And Maxwell, London, 8th Ed
[36] Pennington Company Law 4th Ed. England Butterworth 1970
[37] Clive Schmitt off ,The Law of Meetings, their conduct and Procedure 15th Ed. Plymouth, Macdonald & Evans 1999
[38] Palmers on Company Law. Stevens & Sons Edinburgh. W. Green & Sons 1987 Vol. 1
[39] General Meetings: A dispensable tool for corporate Governance of listed Companies. Blackwell Publishing Ltd. Oxford Malden U.S.A. 2003
[40] Virtual Shareholders meetings: who decide how Companies make decision. Melbourne University Law Review MULR9, Global Search 4/7/2000 Pg. 3 of 23
[41] Amao .O. & Amaeshi K., Galvanizing shareholder activism: a prerequisite for effective Corporate Governance and Accountability in Nigeria; Journal of Business Ethics. Vol. 82, No 1, Pp. 119 - 130

For instance, the works of Davis[42], Pennington[43], and Clive Schmitt off[44] are all based on foreign laws and the now repealed English Companies Act of 1985. These works provide little knowledge on what the law *currently is* in Nigeria. As such their content on meetings, represent the position of the law on corporate meeting as it then was.

The works of Stratling, Rebecca[45] Boros Elizabeth and Amao et-al [46] show the need to establish a relationship between the theoretical and practical approach to issues, especially corporate governance. This is because their work in related research area highlighted, likely solutions to practical problems, which had prevented stakeholders from obtaining the desired results in corporate management and shareholder activism. This was achieved by sending out questionnaires in order to elicit responses that will ensure future reforms and improvements in shareholder's participation in corporate meetings. These works are more recent and a good rendition of the current practical reality of corporate meetings.

[42] Op Cit fn 38
[43] Ibid Pg 246. The Law of Meetings, their conduct and procedures
[44] Naresh Kumar: Shareholders activism Healthy trend for Corporate Governance (Article) Advocate Business Laws, New Delhi Naresh advocate 08@yahoo.com
[45] The Law of meetings, their conduct and Procedures 15th Ed. Plymouth Macdonald & Evans 1999
[46] Amao .O. & Amaeshi .K. Op Cit fn 38

Another writer whose work was of tremendous assistance in writing this thesis is Amupitan[47] his, is probably the first and most lucid exposition on corporate governance principles .This is because, the book not only traced the historical antecedent of corporate governance and code of best practices as applicable in different jurisdictions, it also adumbrated the power play and de facto control of corporate management by the board of directors through their misuse of statutory provision to their collective advantage and the detriment of the shareholders and other stakeholders. This he contended had prevented exercise of effective checks and balances by shareholders as statutorily provided.

The theme of the works highlighted above formed the pivot point for the present research. The strength and focus of the writer's arguments are in line with what legal research has attained in modern times -i.e. it has gone beyond doctrinal to empirical studies as well as providing emphasis on actual happenings in corporate world and its management. They therefore provide the linchpin or pivot to any

[47]Amupitan J.O Corporate Governance Models And Principles, Hilltop Publishers(Formerly Abeson and Clestinno Publishers) Nigeria, 2008

discussion on the subject[48]. For instance the view of Davis[49] when he gave an insight on shareholders decision-making role thus:

> ***In small companies where shareholders and directors are the same people, requiring them to distinguish between the decisions they take as directors and those, which they take as shareholders, can seem unduly burdensome. They will tend in fact to take all decision as directors since the rules about board meeting are largely under their control. Accordingly even the AGM is not compulsory if the company is a private one[50].***

The learned author was of the opinion that meetings under company law was in the case of a private company optional, because management is in the hands of a few who incidentally meet on a daily basis, thus the need for a formal meeting seems pointless.

The substance of this work disagrees with the Davis's view in the sense that, even in an apparently informal setting like a private company, there is still need for shareholders to meet. (Although one cannot disagree with the practical reasoning that underlines his view- which is, preventing unnecessary delay in decision making.) This is because it is

[48] Reason has been that there are insufficient local authorities on some aspect of the subject matter.
[49] Paul .L. Davies , Gower and Davies Principles Of Modern Company Law ,Sweet And Maxwell 8th Ed, 2008
[50] Ibid at Pp 412.

only when this is done that effective and an all-embracing decision could be deemed to have been taken.

In the book written by Kiser,[51] the chapter on management is essentially a critique of judicial decision relating to meetings. The writer opined that, ***Directors control over the day-to-day affairs of the company, gives them practical control over corporate affairs. The situation is hardly daunted by a shareholder who feels it is in his interest to take time and expenses to attend general meeting[52].***

We respectfully submit that while there is no contest about the division of corporate powers between the general meeting and the board of directors, the fact remains that statutorily guaranteed rights are absolute rights, which should not be abused or subjected to misuse. The fact that members of general meetings are apathetic to their rights is no premise for usurpation of the rights guaranteed to them under the statute, as doing so will render corporate management decision dictatorial, a stance that could be inimical to corporate development.

What distinguishes the learned author's view from this research work is that it showed that, no matter how apathetic they are, shareholders still have a voice in company management decision one, which cannot

[51] Kiser. D. Barnes , Cases And Materials On Nigerian Company Law, Obafemi Awolowo University Press Limited, Nigeria , 1992
[52] Ibid at Pp 167

be stifled by the board of directors. Other works that were of benefit to this study includes Orojo. [53]. Asomugha[54], Sasegbon[55], and the edited work of Ojo et al[56]

The reoccurring decimal in all the above-cited works, is that they are more of adumbrations' of statutory provisions. They essentially failed to approach meetings in the wider context of shareholders participation as a focus for improve corporate governance practice in today's business world. These works when distinguished from this study, highlights how the corporate meetings is nowadays geared towards ensuring, that every shareholder, no matter how minimal the shareholding is, have the opportunity to attend annual general meetings of company where they own stocks because of the reawakened clamor for shareowner's participation in company meetings through, enhanced information technology.

The learned authors' works' are also distinguished from the present study, in that they showed, to an extent that share owner's decision

[53] Orojo. J. O ,Company Law In Nigeria under the Companies and Allied Matters Act, Lagos Nigeria, 1994

[54] Asemogha E.M ,Modern Nigeria Company Law, Lagos 1992

[55] Sasegbon Deji Nigeria Companies and Allied Matters Law and Practice Nigeria, 1991 1st Ed. Vol. 1

[56] Olugbenga .Ojo et al(Ed) Cross –Cutting Issues In Nigerian Law, Essay In Honors Of Prof Adaramola, 2007

making role forms an integral part of corporate management decision and that there is more to company meetings, than explanations of their statutory provisions, For the simple reason that, no law is relevant where it cannot be applicable to practical situations.

What makes a law relevant is the fact that it appeals to the yearnings and aspirations, as well as protect the interest of people for whose benefit it was enacted. Thus, where statutory provisions are derogated from, or become inapplicable to practical life situations, it is as good as no law and it becomes imperative to review or change it.

Other works to which this study owes credit is the work of Irukwu[57] and Onamade Adebayo[58]. These works are apparently the most recent and illuminating work on shareholders rights -a-viz management decision. It therefore became expedient to borrow their theme, being the most potent expositions of the current trend in corporate governance, as it relates to shareholders' activism through the eye of the Nigerian writer. This was vividly portrayed by Adebayo thus;

> The ***position in Nigeria today shows that large proportions of shares are in the hand of individual private investors, for***

[57] Irukwu J.O, The Company, the Shareholders, the Director and the Law, Fourth Dimension Publishing Co. Ltd.Enugu 1994

[58] Onamade Adebayo , Shareholders Activism: A control Mechanism in Cross – cutting issues in Nigeria Law Olugbenga Ojo et al (Ed) 2007

this reason exercising their voice has never been an issue for directors to have sleepless night over. Only few enlightened investors or shareholders do such… Activism in this regard is still very discouraging[59].

Thus, one of the major challenges facing shareholder's activism is that shareholders most times do not have incentives to monitor the management closely, because the cost of monitoring management would normally exceed the benefit to that person. In addition the type of information made available to shareholders, are so scanty and very ambiguous. One requires a technical knowledge to be able to interpret such financial information about the company. Often times many extraneous things are deliberately thrown into Annual general meetings to distract shareholders' attention.

This literature will be incomplete without due credence to horde of information available on the internet, a lot of which were of immense benefit to this write-up. These includes Scout Lynn[60], Stratling Rebecca[61] Boros Elizabeth[62] and many others too numerous to mention. The works of seasoned hands in this area at the faculty such

[59] Ibid at Pp.178
[60] Stout Lynn, Bad and Not so Bad Arguments for Shareholder Primacy: University of California, Los Angeles school of Law Research Paper No 25, Law and Economics Research Paper No 02- 04 The Social Science Network Electronic paper collection http://papers.ssm.com/abstract= 331464 02/3/09 8.48 AM
[61] Rebecca Stratling Op Cit fn 39
[62] Boros Elizabeth Op Cit fn 42

as Ali[63]. Agom[64] whose work added value to the present research which though similar differ only to the inclusion of analysis of data and the need for the inclusion of information technology to reduce apathy of shareholders to company meetings. Also worthy of mention is Akume[65] 's review of the Court's decision in one of the precedents used in this thesis, the work of Aboki Y[66] was also of benefit in the structural outlay of the thesis. All of which provided the much needed guide in writing this thesis.

In all the focus of this thesis is the empowerment of general meetings of companies as a counter-balancing force to management decision making powers. Monitoring and controlling the professional management of a company through participation in Annual General Meetings consumes time and requires expertise this therefore will only be efficient for the individual investor, if the benefits from these activities outweighs there costs. This becomes less likely, because the lower the proportion of shares held by the investor, the shorter the

[63] H. L. Ali, The Powers of Directors in Nigerian Company Law: An Analysis of the Dynamics of Director's Dominance In Nigeria Companies. LL.M Thesis (Unpublished) Faculty Of Law A .B.U ,Zaria, `1996

[64] Agom A .R.Company Meetings and Corporate Governance in Nigeria (unpublished) LL.M Thesis, faculty of Law, Ahmadu Bello University, Zaria, Nigeria 1999

[65] A. A. Akume L onge V First Bank of Nigeria PLC, A Review of Corporate Governance Issues Revisited By The Supreme Court, NIALS Journal of Supreme Court Review, 2011, vol 1

[66] Aboki. Y, Introduction to Legal Research Methodology, Tamaza Publishing Co Ltd. Zaria, Nigeria 2001

investment horizon of the shareholder and the higher the monitoring cost. Being one of the shareholders, any attempts to improve the managers' accountability through participation in the general meetings will lead to costs that have to be borne by all other shareholders as well.

Thus the free- rider problem is made worse if individual shareholders only hold a truly small proportion of the votes in the general meeting. In this case shareholders need to find ways, to coordinate the voting behavior of a large number of members of the company in order to influence the outcome of votes on resolution in general meetings, this could only be achieved if the present attendance of shareholders in company meetings can be improved[67], a feat which the present work seeks to achieve.

1.8 RESEARCH METHODOLOGY In this work, both the doctrinal and empirical approach was adopted. The doctrinal approach was achieved by the appraisal of related topic from textbooks, journals and internet sources which were evaluated and processed to suit the dictates of the subject matter of the thesis. While

[67] Stratling Rebecca Op Cit fn 41

the empirical approached was carried out through the preparation and random distribution of questionnaires across five major Nigerian cities viz- a- viz Zaria, Kaduna, Minna, Lagos and Abuja.

The reason for limiting the study to this fewer number of cities arose from time constraints and costs implication of dealing with a larger audience, on the other hand the writer opined that the nature of the random sampling carried out could be deemed to be a representative fraction that maybe applied to other cities in the country. Data collated from the responses to the questionnaire were analyzed and the result compiled was of assistance in determining the practical extent of shareholders' participation in corporate Meetings. This was to the effect that the minimal numbers of shares individual shareholders owe and the benefits they stand to gain with their holdings, was found to be much less than the cost they will incur to attend company meetings.

Moreover, many respondents were disinterested in the workings of the companies. They were however enthusiastic about the need for reforms and introduction of modern communication like the GSM and internet to improve participation in company management. The results obtained provided an overview of the extent of apathy and enabled an

evaluation of the problems and recommended areas in need of urgent reforms.

1.9 ORGANISATION LAYOUT

This research work is divided into six main chapters for a better appreciation of the topic. These are outlined thus:

Chapter 1 is an introduction to corporate meetings and the extent of shareholder's participation in such meetings.

Chapter 2 opens with an introduction on the distribution of corporate powers between the company organs. In addition, the body of the chapter discussed the Board's functions and duties, as well as highlights the right and duties of shareholders in corporate decision-making. Chapter 3 discusses extensively on the proceedings of meetings relation to notices, resolution, agenda, and proxy machinery and concludes with an analysis of the modern trends in company meetings.

Chapter 4 outlines and discusses the mitigating factors/problems of corporate meeting.

Chapter 5 defines corporate governance with particular emphasis of some corporate governance codes as defined by Central Bank of

Nigeria (CBN) and Securities and Exchange Commission (SEC) for application in Nigeria Corporate Organizations.

Chapter 6 is the conclusion of this thesis work with the summary of findings as obtained from the response to questionnaires and the writer's recommendations as to how the present apathy of shareholders in relation, to corporate meetings can be improved.

CHAPTER TWO

2.1 THE DISTRIBUTION AND EXERCISE OF CORPORATE POWERS THROUGH MEETINGS.

2.2 Distribution of Corporate Powers

The early Companies in Nigeria were British based, by virtue of colonial statutes enacted between 1876 and 1922; the law applicable to companies in Nigeria at this time was "Common Law" the doctrine of equity, and the statute of General Application in England on the 1ST day of January, 1900, subject to any later relevant statute[1].

The implication of this approach was that the Common Law statutory interpretation of the concept of separate and independent legal personality of companies as enunciated in **Salomon. v. Salomon**[2] was received into the Nigerian Company law and has since remained part of the Law[3].However with continued growth of trade, the colonialist felt it was necessary to promulgate laws to facilitate business activities locally. The first Company's law in Nigeria was the Companies' Ordinance of 1912, which was a local enactment of the Companies

[1] Orojo J. O, Op Company Law and Practice under the Companies and Allied Matters Act, Lagos, Nigeria, 1994 Pp. 2
[2] (1897) A.C 22, 66, 45 W.R 193
[3] Op. Cit

(Consolidation) Act 1908 of England[4], and even the current company law in Nigeria (now known as the Companies and Allied Matters Act[5] is largely modeled on the UK Companies Act of 1985.

Under the Companies and Allied Matters Act (Hereinafter referred to as CAMA), the principal legislation on company law in Nigeria, the management of a company by virtue of the provisions of Section 63CAMA[6] resides with the principal organs of a company. These are the shareholders in a general meeting, the board of directors. The exercise of corporate powers had been divided proportionately between the investors and managers, in this case the members and the board of directors of the company. In order to prevent conflict in corporate management, the Memorandum and Article of Association of the company provides the ambit within which each of the organs can operate.

Fundamentally, the requirement that membership and management of a company cannot in any case decrease in number below two does recognize that a mode of arriving at consensual decisions should be

[4] Ibid
[5] Cap C20 LFN 2004
[6] Cap C20 LFN 2004

devised. The medium for this joint deliberation and action found its expression in meetings[7].

In practice, the initial constitution of the company provides for the appointment by the members of a board of directors, and expressly delegates all powers of management to it. The authority to exercise the company's power is delegated not to individual directors, but only to the directors acting collectively as a board. The board may sub delegate this power to individual managing director and other officers of the company[8].

The CAMA[9] has vested the corporate powers on the members of general meetings and the directors. The authority of the individual directors must emanate from the board, that is to say, the directors must meet together and collectively resolve on the line of action to embark upon to realize the corporate goal. It is therefore an open secret, that member and directors must necessarily attend company meetings to consider and chart a course for the company.

.Furthermore, since the powers of the company can only be exercised or discharged by the, organs, agents and officers, it became necessary

[7] Agom A.R Op Cit at VII
[8] Section 64 (a) Op Cit Fn 6
[9] Ibid

to assign the functions of the company and its management to the various organs, agents and officers.

At Common Law, the distribution or allocation of powers depends in the most part on the Memorandum and Article of Association of the company when compared to the American system where distribution of powers is done by the Act. Consequently, the question of who controls the company between the general meeting and the board of directors has been a source of controversy not only in Nigeria but also in other Common Wealth countries.

This chapter examines the distribution of power between the board of directors and the General meetings, the board functions and powers as well as the extent of shareholder's participation in corporate decision-making

2.3 The Board of Directors

The board of directors is a body of elected or appointed members who jointly oversee the activities of a company or organization. A board is the most important decision–making body within the company. The board should set the company's strategic aims, ensure that the necessary financial and human resources are in place for the company

to meet its objectives and review management performance. The board set the company's values and standards and ensures that its obligations to its shareholders and others are understood and meet[10].

Although Section 18 CAMA[11] requires that, all companies should have a minimum of two directors. It leaves the determination of the role of the board very largely to the company's constitution, which is of course, under the control of the shareholders. Since the division of powers between board and shareholders is a matter for the articles[12] (it is difficult to generalize about patterns of division found in practice). Interestingly, the default position in both private and public companies is the same i.e. it is one, which gives substantial authority to the board subject to the articles. The directors are responsible for the management of the company's business for which purpose they may exercise all the powers of the company. This is because; the mechanism for shareholders' participation in management is through express provision in the Articles of incorporation.

The original articles of incorporation can give shareholders a right to control, or participate in the control of, ordinary business matters. But

[10] Davies. L. Paul, Gower and Davies, Principle of Modern Company Law. Sweet and Maxwell 8th Edition 2008 Pp. 365
[11] Cap C20 LFN 2004
[12] Subject to a 'limited range of matters where the statute requires the participation of the shareholders in decisions

this is not often done. Then can disillusioned shareholders in a corporation that has not made advance provision for their direct participation in management attempt to change corporate policies, or affect the ordinary business decisions of the corporation.

One obvious rule will be to amend the articles of incorporation to give shareholders the right to make a business decision or to prescribe directly whatever change is desired. The impediments which arises in such situations, is that apart from the difficulty in gaining the necessary votes, shareholders may sometimes run head –on into the normal corporate law rule that an amendment to the article may only be initiated by the directors who may not be willing to initiate an amendment that will curb their own powers. Even when the article allow the shareholders to amend the articles, they may not do so, to make ordinary business decision or to establish corporate policy, because such ` power belongs to the directors and can only be taken away from them by the contrary provision in the article of incorporation.

The directors' management authority extends to chairing and controlling the agenda of shareholders meeting [13].It is however clear, that in a large company, the totality of its management is something quite beyond the grasp of even the most talented set of directors. This is because the task of executive management is not for the board but rather for the full-time senior employees of the company"[14] Thus, the board has wide discretion, to delegate the powers conferred upon them by the articles "to such person---- to such an extent ---and on such terms and conditions as they deemed fit[15].

2.4 Powers of The Board:

The Board of directors has the overall responsibility for the company; the directors must act in accordance with the best interests of the company and its shareholder. Because directors exercise control and management over the organizations, but organizations are (in theory) run for the benefit of the shareholders, the law imposes strict duties on the directors, in relation to the exercise of their duties. That is found on trust and confidence.

[13] Amupitan Op Cit Pp 34
[14] Paul L. Davies Op. cit page 367
[15] Section 64 (a) & (b) CAMA Cap C20 LFN 2004

The board is required to hold General meeting once a year but usually more often than that. A board's activities are determined by the powers, duties, and responsibilities delegated to or conferred on it by an authority outside itself. These matters are typically detailed in the organizational bye-laws. The exercise by the board of directors of its powers usually occurs in the board meetings, and that a quorum must be present before any business may be conducted. Some functions of the board are,

a. Adopt by laws: The bye laws stipulates how frequently the board must meet and how the agenda will be prepared and by whom. The bye laws also indicate the procedures for selecting board and corporate officers and may spell out terms under which the services of board members may be terminated. The bye laws may cover additional structural and operational details, such as the number of directors who will sit on the board, the length of terms of directors, details about the annual meetings of shareholders and election and duties of corporate and board

officers[16], to mention just a few. Other functions of the board includes:

b. Designates the principal place of business, elect officers and Selects the fiscal year
c. Designates the company's(Banks)
d. Issues initial stock to shareholders
e. Pays organizational expenses
f. Authorize initial agreement and allocation of resources.
g. Lay down general policy and board divisional policies
h. Ensure that sufficient capital is available and must approve all capital expenditure and maintain an efficient system to enable it effectively control the affairs of the company.
i. It ensures the method of disposal of profits as well as approves it.
j. Must ensure that the managing director develops good morale and a feeling of security and job fulfillment amongst the workers in the company.
k. It is important to note that the board of directors is a distinct and separate entity from the individual directors that constitute its

[16] John .L .Colley JR. et al, Corporate Governance the McGraw –Hill Executive Series. McGraw – Hill Inc. 2003 pp.36

membership. The decisions of the board are its own decisions taken collectively by the members and recognized in law as a decision of the Board as a body[17].

The board is in a most peculiar legal position. Although the shareholders who appoint the directors and whom they represent, are generally protected under the law by the generous concept of limited liability. In exceptional situations, the board of directors has no such protection. So many laws, regulations and duties, severally and collectively, bind the board and the directors, and if they act in breach of any of these laws and duties, they may be exposed sometimes, to grave civil and criminal liabilities.

Furthermore, although, directors are elected or appointed by the shareholders, the law does not regard them as the agents of the shareholders, but rather as agents of the companies[18], as evident in a decision of the court in the case of **Marshall's valve Gear Co Ltd .v. Manning Wardle Ltd[19],** where the directors of a company declined to initiate a corporate action to vindicate rights the company held in a patent. Consequently, the majority shareholders commenced proceedings in the company's name. The directors sought an injunction

[17] Kesho Prasad, Corporate Governance, PHI Learning Private Limited, New Delhi.2008 Pp.57-58
[18] Irukwu J.O the Company, the Shareholder, the Director and the Law. 4th Dimension publishing Co. Ltd Enugu 1994 Pp 91--93
[19] (1909) inc. 26

to strike out the action on the ground that a decision to initiate a suit by the company was a management matter exclusively delegated to them. In dismissing the claim his Lordship Neville J. opined that,

> ***… the powers of the directors are regulated by the articles and under the article the majority of the shareholders in the company at a general meeting have a right to control the action of the directors so long as they do not attempt to control it in a direction contrary to any of the provisions of the articles which binds the company.***[20]

Apparent from the above is that where directors fail to commence a proceeding on behalf of the company, then the General Meeting can. The power of the company to act in such circumstances had been, variously regarded as inherent or as being default power[21].

In the late 19th century, the popular view was that the shareholders in General Meeting are the company so called, and that the Board of Director is merely an agent of the company, subject to the control and directions of the members. The members in general meeting were regarded as the supreme-decision making authority. The ultimate control of a company resides with them, as the most important

[20] Ibid- This is in Para material to the provision of S. 41 Companies and Allied Matters Act ,Cap C20 LFN 2004

[21] Section 63,Companies and Allied Matters Act Cap C20 LFN 2004

functions of the company were required to be performed by, or in the general meeting. For example, the basic constitution of the company, the memorandum and the articles of association are alterable by the general meeting. The alteration, increasing or reduction of the company's share capital are done in the General Meeting and not otherwise. The General Meeting appoints and can remove any director by an ordinary resolution. These are substantially the position under the Companies and Allied Matters Act[22.]

In ***Isle of Weightlerly v. Tahourdin***[23], the court of Appeal refused an application by the directors for an injunction to restrain the holding of a general meeting which inter alia, seeks to appoint a committee to reorganize the management of the company, in that case, Cotton L.J. made the following observations:

> ***It is a very wrong thing indeed to prevent shareholders from holding a meeting of the company, when such a meeting is the only way in which they can interfere, if the majority of them think that the course taken by the directors in a matter intra-vire of the directors is not for the benefit of the company.***[24]

[22] Danjuma N.N The Role of Company Sectary in Corporate Management, Ibadan, HEBN publishers Plc Revised Edition 2009 Pp.39
[23] (1883) 25 CH. D 20 at 329, Per Chitty .J, See also Ferguson v. Wilson (1866) L.R 2 CIT 77
[24] Ibid

Directors have great powers and the court refuses to interfere with their management of the company's affairs. If they keep within their powers, and if shareholders complain of the conduct of the directors, the court directs him to go to the general meeting if he his dissatisfied with the management of the affairs of the company. In addition, if they agree, a resolution obliging the directors to alter the course of proceedings will be passed.

At the beginning of the 20th century, this view of the abolute controling influences of the General Meeting was questioned, in the later case of

Automatic Self-Cleansing Filter Syndicate v. Cunningham[25] where it was clearly stated that the division of powers between the Board of directors and the members of the company in General Meeting depended in the case of registered companies, entirely on the construction of the articles of association and that where powers had been vested in the board, the general meeting could not interfere with their exercise. The articles were held to constitute a contract by which the members had agreed that their directors and directors alone shall manage the afffairs of the company.

[25] (1883) 25 CH. D.320 CIT C.A

In the instant case, the company refused to carry out a sale agreement resolved upon by the company in general meeting because in their opinion, it was not in the best interest of the company. The directors relied for support of their decision upon the articles which delegated to them all powers of management. The members agreed that the articles are subject to the general rule that agents must obey their directors or principals. The court of appeal refused this contention holding that the resolution of the general meeting was a nullity and could therefore be ignored.

In framing the articles of association, corporators and their advisers where possible, usually distribute powers as they deem fit and the original allocation can be varied at anytime by altering the articles of association of the company[26].Warrington LJ succinctly portrayed this when he made the following observations:

> ***It seems to me on the true construction of these articles, that the management of the business and control of the company are vested in the directors. Consequently the control of the company as to any particular matter, of the company , or the management of any transaction or any particular part of the business of the company, can only be removed from the board by an alteration of the articles such alteration, of course, requiring a special***

[26] Bamford v. Bamford, (1970) CIT 212 Per Plowman J. at 38-39

resolution. A company cannot by ordinary resolution dictate to or over-rule the directors in respect of matters entrusted to them by the articles in order to do that, it is necessary to have a special resolution".[27]

The directors and no one else are responsible for the management of the affairs of the company, except in the matters specifically allotted to the company in general meeting; this is a term of the contract between the shareholders and the company.

Under the present company Act, there seems to be a slight predomination of the members in general meeting over the Board of directors.

According to Section 63(4) CAMA[28], subject to the Act, the company's articles shall determine the respective powers of the members in general meeting and the Board of Directors. The director's power to manage is qualified, the shareholders in general meeting by passing a resolution can bind and give directions or instructions to the board in matters of management, provided always that the management function is not removed from the directors.

[27] Akanki E.O. Essays on Company Law (Ed) .Department of Commercial and Industrial law, University of Lagos.1992.
[28] Cap C20 LFN 2004

However, according to Amupitan[29],whatever the provisions of the Act or Articles, it is obvious that it is a universal truism that the management of the company is vested on the board of directors[30], and there could be some impediments in the general meeting exercising or supervising the directors. This is especially so in the case of public companies where management cannot be undertaken by a vast body of small shareholders. Even though the Companies Act allows the general meeting to dismiss the board by an ordinary resolution but it is hardly an easy thing to do, while management powers are vested on the board, but where the board cannot or will not for some reasons exercise the powers vested in them, the general meeting may do so[31].Cases where the general meeting has exercised such defaulting powers are:

1. Where there was a deadlock.[32].
2. Where there were no directors[33].
3. Where the directors were disqualified from voting[34]
4. Where directors fail to commence legal proceedings on behalf of the company

[29] Op Cit at Pp. 32
[30] Section 63(4) Companies and Allied Matters Act, Cap Op Cit Fn 28
[31] Section 63(5) Ibid
[32] Baron V Potter (1914)1 AC 895
[33] Alexander Ward * Co .V. Samyang Navigations & Co (1975) 1 WLR 673
[34] Irvine, v. Union Bank of Australia (1877) 2. App Case 366. See generally Section 63(5) of CAMA

It would appear that where effective governance could not be obtained. As no form of resolution or proceeding was referred to, the General Meeting could issue directions to the board in matters of management by the passing of an ordinary resolution, so long as the resolution does not constitute a fraud on, or oppression of the minority. Nevertheless, no alteration of the articles shall invalidate any prior act of the board, which has been valid, if that alteration had not been made[35].

It is legally feasible for the shareholders in general meeting, being the principal to exercise all the powers of the company that the board (agent) can exercise. "After all" "agency" (and this is almost the position of the board vis-à-vis the company) is based simply on the principle expressed in the maxim *"qui per alium facit per seipsum fecere vide ture"*. (He who does an act through another is deemed in law to do it himself.) Surely, it is implicit in the maxim that the principal can always act if the agent will not[36]. Therefore, if for some reason the board cannot or will not exercise the powers vested in them by the articles the general meeting may do so.

[35] Per Lord Brandon in Alexander Ward v. Sangang 1975, 1 WLR 673 At 683
[36] Per justice Idigbe JSC in Okeowo v. Migliore (1979) N.S.C.C 210@ 237

This position was adumbrated by Warrington J. when he observed, in the case of ***Baron v. Potter***[37] that "if directors having certain powers are unable or unwilling to exercise them or are in fact, a non-existent body for that purpose, there must be some power in the company to do itself that which under other circumstances would otherwise be done" by the directors under the powers conferred on them by the articles, or in any opinion, the company in general meeting has power to make the appointment[38].

It might not be wrong to say, "If the general meeting fails to perform it role, the board of directors could take control, which is the situation that is inherent in most company management today. The power of the general meeting to appoint or remove directors is statutory as well very effective. But it is however subject to a lot of limitations which Amupitan[39] highlighted as follows:

a. The new directors are not bound to obey the instructions of the general meeting because, according to the decision in, **Lonrho. v.**

[37] (1914) 1 Ch.895 at Pp. 903
[38] Ibid
[39] Op. Cit

Shell Petroleum Company Ltd[40], the newly appointed directors would still have a duty to act in the best interest of the company and where this duty is in conflict with the instructions of the general meeting, it may create a problem.

b. Another problem is getting a meeting convened[41] the provisions of CAMA, provides for circumstances under which a company may convene the general meeting. It may be difficult to convene a meeting where it cannot be brought under the provisions. For instance, where the annual general meeting has just been held and the requisite locus standi cannot be obtained for an extraordinary meeting, and then it may become impracticable to convene a meeting in that year.

c. There may be a problem of placing the resolution on the agenda of the annual general meeting. The directors may do this deliberately since they dictate the agenda and any matter which may adversely affect their interest could be left out of the meeting.

In the same vein, there are constraints to the removal of directors. This is because for the removal of directors to be effective, the procedure

[40] (1982) A.C.173
[41] Sections 211 and 217 of Companies And Allied Matters Act Op Cit

provided under Section 262 CAMA[42] has to be strictly followed. Where the procedure stated for removal of a director is not followed, the removal can be set aside by the courts[43].

However, the question of whether Section 262 CAMA[44] is the only procedure provided by Company Act for the removal of directors , formed part of the decision of the Supreme Court in **Longe .v. First Bank of Nigeria PLC**[45] where the Supreme Court held in parts, that "There is no power to remove a director under CAMA which exists apart from section 262[46]". The implication of this judicial interpretation is that by the combined effects of Sections 262(1) & (2)[47] a director can only be removed by ordinary resolution where a special notice of intent to remove him, has already been given.

The above position was however criticized by Akume[48], when he highlighted the governance issues raised in Alonge[49] 's case and called attention to the provision of Section 41 (3)[50] as an alternative way of removing a director. The section, provides, that a director can be

[42] Ibid
[43] Yalaju - Amaye. v. AREC Ltd (1990) 4 NWLR (PT .145) 422.
[44] Op Cit fn 41
[45] (2010) All FWLR pt.525 .p.258
[46] Per Oguntade JSC, Adekeye JSC (as they then were)
[47] CAMA Op Cit fn 43
[48] Akume A. A, Longe .v.First Bank of Nigeria PLC; A Review Of The Corporate Governance Issues Revisited By The Supreme Court, NIALS Journal Of Supreme Court Reviews, Vol 1, 2011.pp.123-125
[49] Ibid
[50] CAMA Op Cit

removed if the instrument appointing him prescribes a different mode for his removal. The scholar reiterated that where the instrument appointing the director does not provide for his removal, the only other way out, is to remove him by giving the company a special notice of 28 days of a motion to remove a director at the next Annual General Meeting or Extra Ordinary General Meeting. Interesting though is the fact that a director removed can also bring a petition in the court under the partnership analogy challenging his removal[51].A director once removed is entitled to compensation and damages payable to him in respect of the termination of his appointment as director[52].

The Overall, the general meeting has inherent power to remove the board even though doing so is without it inherent limitations. To this extent; general meeting retains (in theory) the ultimate control and is more truly the company than the other organs, which it can remove whilst it is removable.

Except for some extreme occurrence, the shareholders voice in the management of the company is passive. The Board is the body and soul of the company as well as the keeper of the company's consciences and the measure of it corporate goodness and morality. It is pertinent

[51] Ebrahimi.v. Westbourne Galleries Ltd (1973) A.C.360.
[52] Section 262 (5) Companies and Allied Matters Act Op .Cit.

to include here that whether a company succeeds or fails, depends on the quality of its board[53].

2.5 Criticism of The Board of Directors:-

A number of major criticisms have been leveled at corporate board of directors, in recent times is that they are largely ceremonial, and simply rubber stamp the decisions of management who are in the control of the proxy voting system, it is more likely for management to select directors whose role is largely advisory and are not involved in decision making "further encourage the boy" network that dominates some boards and makes it undesirable for directors to question their performance.

A related criticism is that the board's discussions are dominated by the Chief Executive Officer who typically chairs/heads the board. When the same person controls the agenda of the boardroom proceedings as well as the company, the power of the individual director maybe diminished, many directors acting as participants rather than as

[53] Danjuma N.N The Role of Company Sectary in Corporate Management, Ibadan, HEBN publishers Plc Revised Edition 2009 Pg. 142

monitors able and willing to reward and patronize management's performance.[54]

Corporate directors are also criticized of conflicts of interest and for showing greater interest in the finances of the company.[55] Many outside directors of corporations do business with companies on whose board they sit as directors. The management of which was subjected to such abuses as receiving loans at very low rates, and proposals for increased compensation of their counterparts. This is where the shareholders' role of holding management accountable becomes more illuminating, as management is called upon to give account of its stewardship, where it fails to do measure up to expected standards, the shareholders can then exercise their franchise and remove them. This can only be achieved if shareholders attend and participate in company meetings.

2.6 Rights and Duties of the Shareholder

For an in depth appreciation of the extent of distribution of corporate powers, there is need to discuss, the other organ of company i.e. the

[54] Robert T. Klriman-Board of directors Encyclopedia of Business 2nd Ed http//www. Reference for business com./encyclopedia/ASSRN-Board of Director accessed on 1/28/2011
[55] Ibid

shareholder with emphasis on the rights and duties accruable to this organ of the company[56].

Shareholder's rights aims to outline the legal position of shareholders in companies. Shares are simply bundles of contractual and statutory rights which the shareholder has against the company. He acquires these rights by paying for or agreeing to pay for shares he has been allotted in the company. The amount of payment he makes for his shares becomes part of the company's capital, and this capital is the total of such payments made by all the shareholders. **"A share is a right to a specified amount of the share capital of a company carrying with it certain rights and obligations while the company is a going concern and in its winding-up"[57].**

In practice, the strict rights and entitlement that come with the ownership of share in a limited company, are seldom fully exploited or utilized by shareholders. This is largely because shareholders are generally unaware of the rights that they have simply by virtue of being a shareholder[58].Similarly, most company directors would be alarmed at the strict obligation that they have as regards the companies'

[56] E.M Asomugha, Company Law In Nigeria Under The Companies and Allied Matters Act, Lagos, 69, Bamgbose Street, 1994 Pg. 94
[57] Per Odesanya J .A. in Odumody .v. Estee Manufacturing and Construction Co. Ltd (1973) (3) A .L .R Comm.)
[58] Ibid

shareholder. The most pertinent question here is, who then, is a shareholder?

2.7 Who is a Shareholder?

Apparently, not all persons with rights and liabilities vis-à-vis a company can be regarded as a shareholder. In this respect, a shareholder is a part owner who is considered in law to be a "member" of a company and not an "owner"[59] and is entitled to take part in making decisions for the running of the company. The conditions precedent to being a member of a company is defined in the Companies and Allied matters Act[60] Thus,

The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registrations shall be entered as members of the company, and shall be entered as members in its register of member. 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 a company. In any case, of a company having a share capital, each member shall be a shareholder of the company and shall hold at least one share[61].

[59] Short .v. Treasury Commissioners (1948) 1. K.B 112.
[60] Cap C20 LFN 2004

[61] Section 79 (1), (2) & (3) Ibid

The above statutory provision was given judicial interpretation in the case of **Berliet Nigeria Ltd.v. Francis[62].**Where the plaintiff, a branch manager of the defendant Company purported, to buy shares in the company. His offer to purchase the company's share was rejected. Since no allotments were made to him in respect of his offer, the company refunded his money to him. He then sought for specific performance of an alleged contract between him and the company for the sale of two hundred and fifty thousand ordinary shares.

The court held that an application to buy shares in a company is an offer by the applicant only and like any other offer it may not be accepted. The court added that an acceptance of an offer is achieved by allotment of shares and notified to the applicant. That in this case, no contract was proved between the parties herein. Since no contract was proved, there was nothing before the court on which it could decree specific performance. The Nigerian Supreme court then adumbrated, the position of law as it relates to the membership of company Per Kutigi J.C.A (as he then was) Thus;

> **... A company is composed of members thought in law it is an entity distinct from its constituent members. The question then is who are members of a company?**

[62] (1987) 2 N.W.L R (PT.58) 673

The answer is; the subscribers to the memorandum of the company, who become members upon its incorporation and other persons who agree to become members and whose names are entered in the register of members[63]

What the above definitions portends is that a person becomes a shareholder by being a subscriber to the memorandum upon incorporation of the company as a legal entity, and by acquiring shares which when entered in the register of members entitles him to be a member of the company. Also deemed to be members are directors appointed by the articles of a company or named in its prospectus or statement in lieu of prospectus and take qualification shares as provided by the articles[64].

A further interpretation of who a shareholder in a company is was given by the Supreme Court in the case of **Oilfield Supply Centre Limited .v. Johnson**[65], where it held that "the respondent had not satisfactorily shown that he is a shareholder of the applicants"[66] and further held thus:

[63] Section 83 CAMA Op .Cit.
[64] Section 251 CAMA Op.Cit
[65] (1987) 2 N.S.C.C 725 (Vol 18)
[66] Per Oputa J. S.C, Omo - Eboh .J. C.A (As they then were) in their dissenting judgment.

> **… Owning shares in a company is not a matter which can be proved by mere assertion or claim alone. Ownership of such shares can only be conclusively proved by necessary documentary evidence to be provided by receipts showing payments effected on the allotted shares, of shares (and their numbers) in the name of the shareholder as entered in the register of shareholders of the company and /or share certificate issued in the name of the shareholder, bearing the share (and their numbers) as required by the said shareholder. In the absence of proof of any and/or all the above by means of documentary evidence then the person concerned cannot be said to have conclusively proved that he has or holds shares(either paid up in full or partially paid up)of that company[67].**

The conclusion drawn from the above decisions is that membership in a company maybe proved by documentary or oral evidence, and that the share certificate of a shareholding in the company's share register are primafacie evidence of membership[68]. However the rights to become a member of a company are limited by provisions in the companies and Allied Matters Act[69]

The membership of a company entitles the owner to certain rights and powers. The powers reserved for shareholders may only be exercised

[67] Ibid
[68] Kiser .D. Barnes, Cases And Materials On Company Law, Obafemi Awolowo University Press Limited. Ile –Ife Nigeria, 1992 ,Pp.178
[69] Section 80 CAMA, Cap C20 LFN, 2004 –to the effect that persons of unsound mind, an undercharged bankrupt, a corporate body in liquidation cannot become a member of a company.

at a general meeting of shareholders or by the unanimity principle laid down in the case of **Re-Duomatic**[70]. By this principle, it can be shown that if all the shareholders who have right to vote at a general meeting of a company assents to some matter which a general meeting of the company can carry into effect ,then that assent is as binding as a resolution in a general meeting would be. This means that a decision may be taken even though no formal meeting is held as long as all members agree by a written resolution[71]

A shareholder benefits immensely wherever a company is doing well (i.e. making profit", then his shares would be worth more than when he bought them (capital appreciation) and he may receive an income called dividend, as well as participate in the rights issued by the company[72]. A shareholder, is entitled to access information regarding the performances or otherwise of the company as contained in its annual report at the end of every financial year. He can vote on company issues at shareholders' Annual General Meetings (AGMS) and other meetings. There are different classes of shareholders, these are enumerated below.

[70] (1969) 2. CH .365
[71] Section 234 Op ,Cit Fn 68
[72] Shareholders' Rights, Responsibilities Research and Market Development Department Securities and Exchange Commission. Abuja, Tower 421, Constitution Avenue, central Business District, P.M B 315 Garki, Abuja WWW.SEENGR.ORG

2.8 Types of Shareholders

Shareholders may be classified based on the quantum of their shareholding and the class of shares they hold in a company. The Classification of shareholders based on quantum of their shareholdings is explained below:

a) **Small Private shareholders**: Majority of shareholders in a company falls into this category, they acquire share in tiny proportion as part of a portfolio investment. These individuals own share directly and have very little communication with the company other than the formal communication from the company. Shareholders activism from this group of shareholders is very minimal; therefore they do not constitute threat in any form to the company as their votes are unlikely to affect the outcome of shareholders votes at general meeting of the company.

b) **Large Private shareholders:** Are individuals holding share in large proportion and their influence could be brought to bear on the company. Most times group constitutes before going public

c) **Corporate shareholders:** shares of a company could be held by corporate bodies and mostly in large proportion. In some cases

two companies might have cross shareholding. (Mutual shareholdings which may be in form of strategic alliance or mutual understanding).

d) **Institutional shareholders:** These are organizations that have large amount of fund to invest and put a large amount of these funds into company shares. Notable of such organization are pension funds, insurance companies, collective investment such as until organization fund etc.[73]

Shareholders may also be classified according to the types of shares they own. These are also explained below[74].

a) **Ordinary Shares:** Are held by ordinary shareholders .The ordinary shareholders also referred to as common stock, are regarded as the main risk bearers of the company. Before they become entitled to any dividend at all, the preference shareholders must have been paid their own fixed dividends. Ordinary. Holders of these type of shares profit when a company performs well and suffers losses when a company does not perform well .In addition common stock does not have a fixed

[73] Olugbenga .Ojo et al (Ed) Op Cit at Pp 177
[74] Olufemi Morounfolu , Business Law Study Manual, Interterms Konsultancy Limited Nigeria,1999 1st Ed. Pp 198

value. Nonetheless, ordinary shareholders are typically the bulk of publicly traded firms' shareholders and in many cases enjoy voting privileges that preferred shareholders lack.

b) **Preference Shares:** The holders of this type of shares are usually entitled to fixed dividends before any dividend is paid to ordinary shareholders. No matter how prosperous the company may turn out to be for the year, preference shareholders cannot receive more than their fixed dividends. Preference shares may be made preferential as to capital. Where this is the case, surplus assets after payments of the company's debts will in the event of the company being Wound –up, be applied first n repaying the capital investments of the preference shareholders.Preference shareholders may further be classified into **"cumulative"** and **"non cumulative"** .Where they are **cumulative**, if the profit made in a year is insufficient to pay the fixed dividends, the deficiency must be made good out of the profit of the subsequent years. Preference shares are generally presumed to be cumulative.

c) **Deferred / Founders shares:** This type of shares is rarely in use these days. Deferred shareholders are entitled to a portion of

their profit, if the declared dividends on the ordinary shares, exceeds a fixed amount. The rationale behind this is to motivate the holders of this type of shares[75].

2.9 Rights of Shareholders:

While the day –to –day management of the company is the responsibility of the company's board of directors, the shareholders may exert a significant indirect influence by exercising the rights and powers available to them. By the provisions of the CAMA, shareholders have several basic rights relating to general meetings. This includes:

a) Rights to attend *any* general meeting of the company[76], to speak, and opportunity to ask questions from the board and to place item on the agenda at the general meetings, subject to reasonable limitations. They also have right to vote in person or by proxy or any resolution before the meeting.[77]Equal effect shall be given to votes whether cast in person or by proxy.
b) Right to be furnished with sufficient and timely information concerning the date, location, and agenda of the general

[75] Ibid at pp 199
[76] Section 228 Companies And Allied Matters Act Cap C20 LFN 2004
[77] Section 81 Ibid

meetings as well as full and timely information regarding the issues to be decided at the meeting.[78].

c) They have the rights to be informed of any resolution appointing or approving the appointment of a director[79]and the rights to sue for dividends[80]

d) Rights to a copy of the memorandum and articles, if any, and a copy of any enactment which alters the memorandum[81]

e) Rights of a preference share to more than one vote[82]

f) Rights of conveying or transferring shares and of sharing in the residual profits of the company and to bonus and right issue of the company.

g) Rights to inspect the register of members of the company.

h) Rights to be issued within 3months, without any payment certification of shares after the close of offer[83]

i) Voting out directors:

j) Electing to sell their shares. Aggrieved shareholders also have the right to seek redress in court.

[78] Section 218 ibid
[79] Section 256 ibid
[80] Section 385
[81] Section 42 Ibid
[82] Section 143(1),(2) Ibid
[83] Section 146

k) Exercising minority buy-out-rights (this is where dissenting shareholders require the company to buy their shares: the right can give significant protection to disaffected shareholders wanting to sell and preserve their capital.) and electing to sell their shares.

l) Requiring the company to provide the shareholders with a statement of the shares that he or she holds, and of the various rights privileges conditions and their limitations that are attached to those shares.

Furthermore, there are certain company decisions that require mandatory shareholders' participation such as decisions requiring the unanimous assent of shareholders which includes the following:

i. Alterations of the constitution
ii. Alterations to shareholders' rights
iii. Decisions involving remuneration and other benefits.

Shareholders may also review management of the company by taking unanimously, any of the following actions:

i. Authorizing dividends and approving a discount scheme.
ii. The acquisition by the company of its own shares

iii. The redemption of shares

iv. Giving financial assistance to some other persons or company to buy the company's own shares. Generally, shareholders can only exercise their rights effectively when acting as a group in meetings.

The distribution of corporate power between the various organs of the company may be likened to the two sides of a coin, where one cannot exist without the other. Thus, as against the popular saying "The shareholders of the corporation are "the owners of the business, the legal position is that the shareholders do not in fact, own the company. Rather they own a type of corporate security commonly called "stock". As owners of stock, shareholders do not have the rights to exercise control over the companies' assets. The company's board of directors' holds that right. Similarly, shareholders do not have any right to help themselves to the firm's earnings. The only time they can receive any payment directly from the company's coffers is when they receive dividend, which occurs only when the directors decide to declare one[84].

[84] The Investment and Securities Tribunal (IST) of the Securities and Exchange Commission are mechanism that can be used to address such grievances

As a legal matter, shareholders accordingly enjoy neither direct control over the firm's assets nor direct access to them. Any influence they may have on the firm is indirect i.e. through voting in company meetings. Shareholders can influence the board of directors. However in this time and age, this leaves very much to be desired. This is bearing in mind the abuse that proxy machinery has been subjected to, and the fact that many shareholders are generally not people of substance, who could at the drop of a hat, and with little or no time for preparation, attend company meetings, which details eludes his knowledge. This invariably leads to apathy as what is uppermost on this group of shareholders' mind would most likely be, is a general meeting really worth sacrificing a few months salary for, if at all the details is even given.

Finally, one cannot but accept the fact that as distinct as the distribution of powers is between the various organs one cannot do without the other. It is therefore important that a shareholder should understand the different types of meetings and the proceedings thereof, for effective participation. This would be the theme for the discussions in the next chapter.

CHAPTER THREE

3.1 MEETING: TYPES AND PROCEEDINGS.

The various company legislations have evaded any conscious effort at defining the Phraseology "Company meetings" at least they have only catalogued the various types of meetings that companies must and may hold. It is therefore no surprise that text writers and case law have also adopted an approach this was adumbrated Davies[1].thus:

> ***… Although Company law is a well-recognized subject, in the legal curriculum and the title of a voluminous literature, its exact scope is Vague, since the word company has no strict legal meaning. The term implies an association of a number of people for some common object or objects***.[2]

In a similar vein, Ayua[3] observed that ***"Strictly speaking the word company has no definite legal meaning. In ordinary parlance, a company is an association of a number of people carrying on business for the purpose of monetary gain***[4].

Case law has failed to solve this problem of definition and judges have also admitted difficulty in positing a definition of this concept thus in

[1] Paul .L . Davies, Gower Principles of Modern Company Law 5th Ed. Sweet & Maxwell London, 1991
[2] Ibid
[3] Ayua .I.A, Nigeria Company Law U.K Graham Burns
[4] Ibid Pp. 1

the case of **Re – Stanley Tennant. v. Stanley**[5]. Buckley J had cause to say that

> ***…The word company has no strict technical meaning. It involves, I think two ideas firstly, that the association of persons so numerous as not to be aptly described as a firm and secondly that the consent of all other members is not required for the transfer of members interest***[6].

The reoccurring decimal in the above definitions is ''association'' of persons. A person in private companies is largely fictional, owing to the ubiquitous presence of the practically one-man company in all respect, except in name only. While in large Public companies, owning to the dispersal of share ownership, the idea of association of members to a great extent is also fictional[7].

However, for the purpose of this work, a company may be loosely referred to as a duly registered association of more than one person for a common object usually for carrying a business for purpose of gain. Although the *companies and Allied Matters Act*[8] devoted some sections[9] to Company meetings, no definition is given of what a

[5] (1906) 1 CH. 131
[6] Ibid Pg. 134
[7] Agom A. R. – LL.M thesis (unpublished) PP.29
[8] Cap C20 LFN 2004
[9] Sections 211-243 Companies And Allied Matters Act Ibid

meeting is. The AIYAR"S Judicial dictionary[10] defines meeting thus, **"… The word "meeting" when not defined under the relevant statute, has to be construed only in its popular sense. If a common sense view of the matter is taken, it is quite clear that for a meeting, there must be at least two persons because a man cannot meet himself"**[11].

Judicially in, **Sharp .v. Darwes**[12] it was held that a meeting meant "**the coming together of person for the purpose of discussing and acting upon some matter or matters in which they have interest"**[13.] A year later, following the above decision, the court held that there had not been a valid meeting where there was only one member present, even though he held proxy for others. More recently an English court held that no meetings was constituted where all but one of the shareholders have left the room where the meeting was held.[14]

This common law position on meetings has been indented by legislative and judicial permissiveness. Since it is now possible for one person to constitute a meeting[15] members need not necessarily

[10] Aiyar's Judicial Dictionary 10th Edition, the Law Book Company (p) Ltd Allahabad India
[11] Ibid
[12] (1876) 2 QBD. 26
[13] Re Stanley Carbon Co (1877) W. N. 223
[14] Re London Flat Ltd (1969) 1 WLR 711
[15] Section 213(2) and 223(2) Companies and Allied Matters Act, Cap C20 LFN 2004

assemble in a place[15] before a valid meeting can be held, and a written resolution of members is as valid and effectual as a resolution properly considered and passed at a duly convened meetings[17]. In truth, the word meeting is susceptible to many connotations, but in one of it's, more specific sense, it indicates an assembly of persons, such assembly may arise in circumstances infinitely diverse in their character and combination. It may be tortuous and casual or organized and contrived and its object maybe as varied as is the interest which are common to the generality of humankind. An assembly may forgather for the purpose of discussions or social intercourse, for entertainment, in order to indulge in an aesthetic interest, to receive instruction or to participate in the administration of public or private affairs.[18]

For the purpose of this work, company meetings may be said to be the coming together of members of a company with the object of deliberating and taking decision aimed at attaining overall corporate goals. In certain extreme situations, the court may permit one member of the company to converse and hold a meeting.

[15] Byng. v. London Life Assurance Ltd (1900) CH. 170. CA
[17] Section 224 Companies and Allied Matters Act Cap C20 LFN 2004
[18] Agom A.R LL.M Thesis (Unpublished)

In **Byng .v. London life Assurance**[19] the court held that if more members turned up at a meeting than there had been foreseen a valid meeting can still take place if proper arrangement has been made to direct the outflow of discussions to other room with adequate audio visual links, enabling everyone to participate in the discussion to the same extent as if it all had been in this same room – this decision seems to give impetus to the new clamors for e – meetings around the world.

In company meetings, decisions are made according to the view of the majority. These decisions are taken at the various meetings, which take place between members and between directors. Needless to say, in the case of companies, the importance of meetings cannot be over emphasized. The *Companies and Allied Matters Act*[20] contains several provisions regarding meetings. These provisions which are discussed below have to be understood and followed.

3.2 KINDS OF COMPANY MEETINGS: Meetings in a company are of the following types:-

[19] Op Cit Fn 16
[20] CAMA Op. Cit Fn 17

3.2.1Meeting of Members: - these are meetings where the members/ shareholders of the company meet and discuss various matters. Member's meeting includes the following types:-

A. **Statutory Meeting-**A public company limited by shares, or a company limited by guarantee having share capital is required to hold a statutory meeting. Such a statutory meeting is held only once in the lifetime of the company. It must be held within a period of not less than one month or within a period not more than six months from the date on which it is entitled to commence business. In a statutory meeting, only the following matters can be discussed[21]:

a. Floatation of shares /debentures by the company

b. Modification to contract mentioned in the prospectus

The purpose of this meeting is to enable members to know all-important matters pertaining to the formation of the company and its initial life history. The matter discussed includes which shares have been taken up, what money has been received, what contracts have been entered into, what sums have been spent on preliminary

[21] Section 211 Ibid

expenses, etc. The members of the company present at the meeting may discuss any other matter relating to the formation of the company or arising out of the statutory report also, even If no prior notice has been given for such other discussions but no resolution can be passed, of which notice has not been given in accordance with the provision of the Act[22].

A notice of at least 21 days before the meeting must be given to members unless consent is accorded to a shorter notice by members, holding not less than 95% of voting right in the company. A statutory meeting may be adjourned from time to time by the members present at the meeting[23].

The Board of Directors must prepare and send to every member a report called the "Statutory Report" at least 21 days before the day on which the meeting is to be held[24]. However, if all the members entitled to attend and vote at the meeting agree, the report could be forwarded later. The report should also be certified as correct by the auditors of the company with respect to the shares allotted by the company, the cash received in respect of such shares and the receipt and payment of

[22] Section 211 Companies And Allied Matters Act, Cap C20 LFN ,2004
[23] Ibid
[24] Section 211(10) Ibid

the company. A certified copy of the report must be sent to the Commission for registration immediately after copies have been sent to the members of the company.

A list of members showing their names, addresses and occupations together with the number of shares held by each member must be kept in readiness and produced at the commencement of the meeting and kept open for inspection during the meeting[25].If default is made in complying with the above provision, every director or other officer of the company who is in default shall be punishable with fine up to N50[26]. The Content of Statutory Report must provide the following particulars:-

a. The total number of shares allotted distinguishing those fully or partly paid – up, otherwise than in cash, the extent to which partly paid shares are paid- up in both cases the consideration for which they were allotted.

b. The total amount of cash received by the company in respect of all shares allotted, distinguishing as previously mentioned.

[25] Ibid
[26] Section 212,408 Ibid

c. An abstract of the receipt and payment up to a date within 7 days of the date of the report and the balance of cash and bank accounts in hand, and an account of preliminary expenses.

d. Any commission or discount paid or to be paid on the issue or sales of shares or debentures must be separately shown in the previously mentioned abstract.

e. The names, addresses and occupations of directors, auditors, manager and secretary, if any, of the company and the changes which have taken place in the names, addresses and occupations of the above since the date of incorporation.

f. Particulars of any contracts to be submitted to the meeting for approval and modification done or proposed.

g. If the company has entered into any underwriting contracts, the extent, if any, to which they have not been carried out and the reasons for the failure.

h. The arrears, if any, due on calls from every director and from the manager.

i. The particulars of any commission or brokerage paid or to be paid, in connection with the issue or sale of shares or debentures to any director or to the manager[27].

B. Annual General Meeting:-

This meeting must be held by every type of company, public or private, limited by shares or guarantee, with or without share capital or unlimited company, once a year. Every company must in each year hold an annual general meeting. Not more than 15 months must elapse between two annual general meetings. However, a company may hold its first annual general meeting within 18 months from the date of its incorporation. In such a case, it need not hold any annual general meeting in the year of its incorporation as well as in the following year only[28].

In case there is any difficultly in holding any annual general meeting (except the first annual meeting), the Commission may, for any special reasons shown, grant an extension of time for holding the meeting by a

[27] Section 211(3) a -f Ibid
[28] Section 213 Ibid

period not exceeding 3 months provided the application for the purpose is made before the due date of the annual general meeting[29].

A notice of at least 21 days before the meeting must be given to members unless consent is accorded to a shorter notice by members holding not less than 95% of the voting rights in the company. The notice must state that the meeting is an annual general meeting. The time, date and place of the meeting must be mentioned in the notice[30]. The notice of the meeting must be accompanied by a copy of the annual accounts of the company, director's report on the position of the company for the year and auditor's report on the accounts. Companies having share capital should also state in the notice that a member is entitled to attend and vote at the meeting and is also entitled to appoint proxies in his absence. A proxy need not be a member of that company. A proxy form should be enclosed with the notice. The proxy forms are required to be submitted to the company at least 48 hours before the meeting[31].

A company may, by appropriate provisions in its articles, fix the time for its annual general meeting and may also by a resolution passed In

[29] Ibid
[30] Section 218 Ibid
[31] Ibid

one annual general meeting, fix the time for its subsequent annual general meetings[32].

Companies incorporated under *Section 25 Companies And Allied Matters Act*[33] are exempt from the above provision that the time, date and place of each annual general meeting are declared upon beforehand by the Board of Directors having regard to the directions, if any, given in this regard by the company in general meeting. In case of default in holding an annual general meeting, the following are the consequences:-

a) Any member of the company may apply to the Corporate Affairs Commission. The Commission may call, or direct the calling of the meeting, and give such ancillary or consequential directions as it may consider expedient in relation to the calling, holding and conducting of the meeting.

The Commission may direct that one member present in person or by proxy shall be deemed to constitute the meeting. A meeting held in pursuance of this order will be deemed to be an annual general

[32] Section 211(10) Ibid
[33] Ibid

meeting of the company[34]. Fine, which may extend to N500 on the company and every officer of the company who is in default may be levied and for continuing default a fine of N25 per day during which the default continues may be levied.

C. Extraordinary General Meeting:-

Every general meeting (i.e. meeting of members of the company) other than the statutory meeting and the annual general meeting or any adjournment thereof, is an extraordinary general meeting. Such meeting is usually called by the Board of Directors for some urgent business, which cannot wait to be decided until the next AGM. Every business transacted at such a meeting is special business. A statement that special business is to be transacted must also accompany the notice calling the meeting.

The notice must also give the nature and extent of the interest of directors or manager in the special business, and also the extent of the shareholding interest in the company of every such person. In case approval of any document has to be done by the members at the meeting, the notice must also state that the document would be

[34] Section 213(2) Ibid

available for inspection at registered office of the company during the specified dates and timings[35].

The Articles of Association of a Company may contain provisions for conveying an extraordinary general meeting. E.g. it may provide that "the board may, whenever it thinks fit, call an extraordinary general meeting" or it may provide that "if at any time there are not within Nigeria, directors capable of acting who are sufficient in number form a quorum, any director or any two members of the company may call an extraordinary general meeting"[36]

D. **Extraordinary General Meeting on Requisition**

The members of a company have the right to require the calling of an extraordinary general meeting by the directors. The board of directors of a company must call an extraordinary general meeting if it requires doing so by the following number of members:-

Members of the company holding at the date of making the demand for an EGM not less than one –tenth of such of the voting rights in regard to the matter to be discussed at the meeting. Or if the company

[35] Section 215 Ibid
[36] Akume A.A Op Cit

has no share capital, the members representing not less than one – tenth of the total voting rights at the date about the said matter[37].

The requisition must state the objects of the meetings and must be signed by the requisitioning members. The requisition must be deposited at the company's registered office. When the requisition is deposited at the registered office of the company, the directors should within 21 days from the date of the lodgment of the requirements at (a) or (b) above move to call a meeting[38], as the case may be, may themselves proceed to call a meeting within 3 month from the date of the requisition, and then claim the necessary expenses from the company. The company can make good this sum from the directors in default. At such an EGM, any business, which is not covered by the agenda mentioned in the notice of the meeting, cannot be voted upon[39]

E. Class Meeting

Class Meetings are meetings, which are held by holders of a particular class of shares, e.g. preference shareholders. Such meetings are normally called when it is proposed to vary the rights of that particular

[37] Section 215(2) Ibid

[38] Section 215(3) Ibid

[39] Ibid

class of shares. At such meetings, these members discuss the pros and cons of the proposal and vote accordingly. Class meetings are held to pass resolution, which will bind only the members of the class concerned, and only members of that class can attend and vote[40].

Unless the articles of the company or a contract binding on the persons concerned otherwise provides, all provisions pertaining to calling of a general meeting and its conduct apply to class meetings in like manner as they apply with respect to general meetings of the company[41].

3.2.2 Meetings of the Board of Directors. This is a meeting where all directors of the company are expected to attend and discuss matters that will improve managerial responsibility and company prosperity. A board of directors normally conducts its business through a well organized committee structure that partitions the work of the board and allows directors to make maximum use of their expertise. Many issues are too complicated to be dealt with by the entire board. It is a matter of time and efficiency as well as expertise.

The board can delegate certain policy or issue decisions to relevant committee or ask the committee to complete a detailed study of issues

[40] Section 243 Ibid
[41] Ibid

and come back to the entire board with recommendations. Each committee usually has a set of duties, and their reports becomes part of the board's minutes as they report to appropriate board meetings[42].

Although the Act[43] did not specifically make provision for the board of directors meeting, its intendments can however be gleaned from the provisions of Section 223[44] a position that was adumbrated in **Baron V Potter[45].** This case provided a classic example of a break down in the management of a company as well as a complete deadlock in its board. In it, the articles provided that the number of directors should not be less than two, and that the a quorum of directors should be two unless otherwise agreed by the directors, and that the directors should have power to appoint additional directors, and the chairman should have a casting vote. The conduct of the company's business was at a standstill since one of the directors refuses to attend any board meetings with the other, the chairman therefore, purported to hold a board meeting and purporting to elect three additional directors and terminating the chairman's appointment as the Managing Director when his co – director called at office .

[42] John. L. Colley, JR. et al, Corporate Governance, The McGraw –Hill MBA series, McGraw-Hill Companies inc. USA 2003 pp.44
[43] Companies and Allied Matters Act, Cap C20 LFN 2004
[44] ibid
[45] (1914) I CH. 895 at 903

It was held, inter alia, that where the articles gave the directors power to appoint additional directors but the directors were unwilling to exercise this power, the company has residual power to appoint in general meeting, and any resolution made at such meetings is valid.

The power of the company to act in such circumstances had been variously regarded as inherent or as being a default powers. The board usually has sub committees such as credit, audit to mention a few. The meetings of any of these committees is the subject of the reference here

3.2.3 Other Meetings

a. Meeting of Debenture Holders

A company issuing debentures may provide for the holding of meetings of the debenture holders. At such meetings, generally matters pertaining to the variation in terms of security or to alteration of their rights are discussed. All matters connected with the holding, conduct and proceedings of the meetings of the debenture holders are normally specified in the Debenture Trust Deed. The decisions at the meeting

made by the prescribed majority are valid and lawful and binding upon the minority[46].

b. Meeting of Creditors

Sometimes, a company, either as a going concern or in the event of winding up, has to make certain arrangement with its creditors. Meetings of creditors may be called for this purpose. E.g., a company may enter into arrangement with its creditors with the sanction of the Court for reconstruction or any arrangement with its creditors.

The court, on application, may order the holding of a creditor is meeting. If the scheme of arrangement is agreed to by majority in number of holding debts to value of the three- fourth of the total value of the debts, the court may sanction the scheme. A certified copy of the court's order is then filed with the Registrar and it is binding on all the creditors and the company only after it is filed with Commission.

Similarly, in case of winding up of a company, a meeting of creditors and of contributories is held to ascertain the total amount due by the

[46] Section 186 Ibid

company and also to appoint a liquidator to wind up the affairs of the company[47].

c. Court Ordered Meetings:

If for any reason, it is impracticable to call or conduct a meeting of the company[48] or the board of directors[490], in the manner prescribed by the Act or Articles, the Court May, either on its own motion, or on the application of any director of the company or of any member entitled to vote at the meeting, in the case of a company meeting, order a meeting to be held and give ancillary or consequential directions as it is expedient[50]. Such directions may include a direction that one member present in person or by proxy for company meetings, or one director, for board meetings, may apply to the court to take a decision which shall bind all the members.

The above section provides an alternative remedy to be applied when the normal machinery for the management and administration of a company has broken down. It gives the courts a residual power to order meeting in such circumstances. There need not be consensus by the members of the company before the court can exercise these

[47] Section 537,538 Ibid (Generally)
[48] Okeowo .v .Milgliore (1979) 11 SC at 160. 187.
[49] Iro v Park (1972) 1 ALL NLR Pt 2 pp.474
[50] Section 223(1) Companies And Allied Matters Act Op.Cit.

residual powers. For the section to apply there must be reason why it is impracticable to call a meeting of the company.

Where the court intervenes, it is allowed to make ancillary orders necessary to enable the meeting to hold. Meeting held and conducted as ordered by the court shall for all purposes be deemed to be a meeting of the company or of the board duly called, held and convened[51].

3.3 REQUIREMENTS OF A VALID COMPANY MEETING: -

The following conditions must be satisfied for a meeting to be called a valid meeting:

i. It must be properly convened. The persons calling the meeting must be authorized to do so[52].

ii. Proper and adequate notice must have been given to all those entitled to attend. Thus, where a notice stated that two related resolutions were to be proposed, and only one was put into the agenda of the meeting, it was held that passing of that one resolution was insufficient as it

[51] Danjuma, N.N The Role Of Company Secretary In Corporate Management, HEBN Publishers Plc, Ibadan Nigeria, Revised Edition 2009 pp.163-165
[52] Okeowo.v.Migliore (1979) 11.S.C.138

resulted in a position fundamentally different from that contemplated by the notice[53].

iii. The meeting must be legally constituted. There must be a chairperson. The rules of quorum must be maintained and the provision of the Companies and Allied Matters Act, and the articles must be complied with.

iv. The business at the meeting must be validly transacted[54]. The meeting must be conducted in accordance with the regulation meetings[55].

3.4 NOTICE OF GENERAL MEETING

Notice is an advance intimation of the happening of an event. They afford to members advance intimation to an impending meeting to enable the members make up their minds on whether to attend or, what contributions to make and adequately prepare towards it. Where, they do not wish to attend, whether to appoint a proxy to exercise their corporate franchise or not.

[53] Re –Bishop (1901) 70 LT (CH) 407.
[54] Alexander .v. Simpson (1889) 43 CH.D 39.
[55] Section 217 Companies And Allied Matters Act Cap C20 LFN 2004

In another sense, it gives an indication of company compliance with a statutory corporate requirement. It also creates awareness of the company's existence to enable the general public, competitors and the government monitors its activities for purposes of investment, policy formulation and regulation[56].

A meeting cannot be held unless a proper notice has been given to all persons entitled to attend the meeting at the proper time, containing the necessary information. A notice convening a general meeting must be given at least 21 clear days prior to the date of meeting. However, an annual general meeting may be called and held with a shorter notice, where all the members entitled to vote at the meeting consents. In respect of any other meeting, it may be called and held with a shorter notice, if at least members holding 95 percent of the total voting power of the company consent to a shorter notice.

Notice of every meeting of company must be sent to all members entitled to attend and vote at the meeting. Notice of the AGM must be given to the statutory auditor of the company[57].Accidental omission to give notice to, or the non – receipt of notice by, any member of any

[56] Agom ,A. R. Company Meetings and corporate governance in Nigeria(Unpublished)LL.M Thesis Faculty of Law, A.B.U Zaria 1999 PP.4
[57] Section 218 Ibid (Generally)

other person on whom it should be given will not invalidate the proceedings of the meeting[58]. The notice may be given to the member either personally or by sending it by post to him at his registered address, or if there is none in Nigeria, to any address within Nigeria supplied by him for the purpose.

Where notice is sent by post, service is affected by properly addressing, pre- paying and posting the notice[59]. A notice may be given to joint holders by giving it to the joint holder first named in the register of members. A notice of meeting may also be given advertising the same in a newspaper circulating in the neighborhood of the registered office of the company and it shall be deemed to be served on every member who has to registered address in Nigeria for the giving of notices to him.

A notice calling a meeting must state the place, day and hour of the meeting and must contain the agenda of the meeting. If the meeting is a statutory or annual general meeting, notice must describe it as such. Where any items of special business are to be transacted at the meeting, an explanatory statement setting out all materials facts

[58] Longe .v. F.B.N Plc. (2006) 3 NWLR at Pp. 239-Where the court held that a director who accepted the suspension of his only subsisting appointment with the respondent was not entitled to receive notice of meeting.
[59] Section 220 Companies and Allied Matters Act Cap C20 LFN 2004

concerning each item of the special business including the concern or interest, if any, therein of every director and manager, must be annexed to the notice. If it is intended to propose any resolution as a special resolution, such intention should be specified.

A notice convening an AGM must be accompanied by the annual accounts of the company, the director's report and the auditor's report. The copies of these documents could, however, be sent not less than 21 days before the date of the meeting if agreed to by all members entitled to vote at the meeting[60].

3.5 BUSINESS TO BE TRANSACTED AT ANNUAL GENERAL MEETING

At every AGM, the following matters must be discussed and decided. Since such matters are discussed at every AGM, they are known as ordinary business. All other matters and business to be discussed at the AGM are special business[61].

The following matters constitute ordinary business at an AGM:-

i. Consideration of annual accounts, director's report and the auditor's report

[60] Ibid
[61] Section 214 Ibid

ii. Declaration of dividend

iii. Appointment of directors in the place of those retiring

iv. Appointment of and the fixing of the remuneration of the Statutory auditors[62]

In case any other business (special business) has to be discussed and decided upon, an explanatory statement of the special business must also accompany the notice calling the meeting. The notice must also give the nature and extent of the interest of the directors or manager in the special business, as also the extent of the shareholding interest in the company of every such person. In case approval of any document has to be done by members at the meeting, the notice must also state that the document would be available for inspection at the Registered Office of the Company during the specified dates and timings.

3.6 QUORUM

Quorum refers to the number of members who must be present at a meeting in order to constitute a valid meeting. A meeting without the quorum is invalid and decisions taken at such a meeting are not binding. The articles of a company may provide for a quorum without

[62] Section 218(2) Ibid

which a meeting will be construed to be invalid. Unless the articles of a company provide for larger quorum, the quorum for the meeting of a company shall be one-thirds of the total number of members of the company or 25 members (Whichever is less) present in person or by proxy. Provided that when the number nearest one third, and where the number of members is 6 or less, the quorum shall be two members[63].

It has been held by Court that unless the articles otherwise provided, a quorum need to be present only when the meeting commenced, and it was immaterial that there was no quorum at the time when the vote was taken. Further, unless the articles otherwise provide, if within half an hour from the time appointed for holding a meeting of the company, a quorum is not present in the person, the meeting:-

a. If called upon the requisition of members, shall stand dissolved
b. In any other case, it shall stand adjourned to the same day in the next week, at the same time and place, or to such other day and time as the Board of Directors may determine.

[63] Section 232 Ibid

If at the adjourned meeting also, the quorum is not present within half an hour from the time appointed for holding the meeting, the members present shall a quorum.

In case the Commission calls or directs the calling of a meeting of the company, when default is made in holding an annual general meeting, it may give directions regarding the quorum including a direction that even one member of the company present in person, or by proxy shall be deemed to constitute a meeting. Similarly, the Commission may, direct a meeting of the company (other than an annual general meeting) to be called and held where for any reason it is impracticable to call a meeting and direct that even one member present or by proxy shall be deem constitute a meeting[64].

3.7 CHAIRMAN

The Chairman's primary responsibility is to ensure effective operation of the Board such that it works towards achieving the company's strategic objectives. He should not be involved in the day –to-day operations of the company. This should be the primary responsibility of

[64] Ibid

the Chief Executive Officer and the management team[65]. For Public Companies with listed securities, the positions of the Chairman of the board and the chief Executive Officer shall be separate and held by different individuals. This is to avoid over concentration of powers in one individual, which may rob the board of the required checks and balances in the discharge of its duties[66].

Generally, the Chairman, if any, of the board of directors shall preside as a chairman at every general meeting of the company, or if there is no such chairman, or if he is not present within one hour after the time appointed for holding of the meeting or is unwilling to act, the directors present shall elect one of their number to be chairman of the meeting[67] unless the articles otherwise provides.

However if no director is willing to act as the chairman or if no director is present within one hour after the appointed time of the meeting, the members present should choose one among themselves to be the chairman of the meeting[68]. It is the duty of the chairman to[69]:

a. To preserve order

[65] Section 5.1 Code Of Corporate Governance For Public Companies In Nigeria, Securities And Exchange Commission 2011 Pp. 10
[66] Ibid
[67] Section 240 CAMA Cap C20LFN 2004
[68] See generally Section 240 Ibid
[69] Ibid

b. To see that the proceedings are regularly conducted.

c. To take care that the sense of the meeting is properly ascertained with regards to any question properly before it[70]

d. To decide incidental questions during the meeting e.g. whether proxies are valid or not[71].

The Chairman must allow minority shareholders to have a reasonable time to put forward their arguments, but at the expiration of that time he is entitled, if he thinks fit, to put a motion to the meeting that the discussions be terminated[72].

The Codes of Corporate Governance enunciated that the Chairman of the board should be a non-executive director whose functions includes amongst others,

a. Playing a leading role in ensuring that the board and its Committees are composed of the relevant skills, competences and desired experiences.

b. Ensuring that all directors focus on their key responsibilities and play constructive role in the affairs of the company.

[70] National Dwelling Society .v.Skyes (1894) 3 Ch.159
[71] Geoffrey Morse et al , Charlesworth and Cain Company Law, Stevens & Sons London, 1983 , Twelfth Edition Pp.314
[72] Section 239 & 240(5) CAMA Cap C20 LFN 2004 See also Nell .v. Longbottom (1894) 1. Q.B 767

c. Ensuring effective communications and relations with the company's institutional shareholders and the strategic stakeholders.

d. Taking a lead role in the assessment, improvement and development of the board and, presiding over general meetings of shareholders.[73]

3.8 VOTING AND DEMAND FOR POLL

Generally, matters are decided at a general meeting by a show of hands[74]. If the majority of hands rise in favor of a particular resolution, then unless a poll is demanded, it is taken as passed. Voting by a show of hands operates on the principle of "One Member – One Vote".

However, since the fundamental voting principle in a company is "One Share – One Vote", if a poll is demanded, voting takes place by a poll. Before or on declaration of the result of the voting on any resolution on a show of hands, the chairman may order sue motu (of his own motion) that a poll be taken[75], The chairman may order a poll when a resolution

[73] Code Of Corporate Governance in Nigeria

[74] The common law rule is that, unless the articles provide ,a resolution put to a meeting is normally decided in the first instance by a show of hands-Re Horbury Bridge Coal Co.(1879) 11 Ch. D .109 (C.A)

[75] Section 224 (5) CAMA Op Cit.

proposed by the Board is lost on the show of hands or if he is of the opinion that the decision on the show of hands is likely to be reserved by poll. When a poll is taken, the decision arrived by poll is final and the decision on the show of hands has no effect[76].

A poll is allowed only if the prescribed number of members demands a poll. A poll must be ordered by the chairman if it is demanded[77]:-

a. By any member or members present in person or by proxy and holding shares in the company:-
   I. Which confer a power to vote on the resolution not being less than one – tenth of the total voting power in respect of the resolution, or
   II. On which an aggregate sum of not less than fifty thousand naira has been paid up
b. In the case of a private company having a share capital, by one member having the right to vote on the resolution and present in person or by proxy.

[76] Section 226 Ibid
[77] Section 224 Ibid

c. In the case of any other, by any member or members present in person or by proxy and having not less than one – tenth of the total voting power in respect of the resolution[78].

3.9 MOTION

Motion means a proposal to be discussed at meeting by the members. A resolution may be passed accepting the motion, with or without modification or a motion may be rejected. A motion, on being passed as a resolution becomes a decision.

A motion must be in writing and signed by the mover and put to the vote of the meeting by the chairman. Only those motions, which are mentioned in the agenda to the meeting, can be discussed at the meeting. However motions incidental or ancillary to the matter under discussion may be moved and passed. Generally, a motion is proposed by one member and seconded by another member.

3.10 RESOLUTIONS:-

A resolution is a formal expression of the opinion or will of a company taken at a meeting or otherwise. A resolution must be within the competence of the company, in the sense that it does not conflict with

[78] Section 225 Ibid

the basic constitutive instruments of the company i.e. memorandum and articles. It must also be consistent with the provision of Section 542[79] which provides that the Act shall have effect not withstanding anything to the contrary contained in any resolution passed by the company in general meeting or by its board of directors ,whether before or after the commencement of the Act. Any provision contained in a resolution shall be or become void to the extent of its repugnance to the Act.[80]

3.10.1 Kind of Resolutions: - There are three types of resolutions these are ordinary, special resolutions and resolutions requiring notice[81] **Ordinary Resolution:-**This was not defined by the Act but it was generally taken to be one that requires only a simple majority of the votes of persons entitled to vote and voting in person or by proxy where they have a right to vote as proxy. No period of notice was prescribed for it. The length of notice depends on the meeting where the resolution was to be moved and passed.

[79] Part xviii Miscellaneous And Supplemental provision, Companies And Allied Matters Act Cap C20 LFN,2004
[80] Danjuma N.N, The Role of Company Secretary In Corporate Management, Ibadan., HEBN Publishers Plc. Revised Edition P.190
[81] Agom ,A.R. Op Cit P.122

Ordinary resolution is generally presumed where the Act merely refers to the passing of a resolution of the company without specifying the type intended.

A company, however, by its articles may provide that anything not required by the articles or by the Act to be passed by a special resolution shall be passed by an ordinary resolution.[82] Nevertheless, the court on the application of any member may by injunction or declaration restrain the company from purporting to do by ordinary resolution any act, which by its constitution or the Act requires to be done by special resolution[83]

a. **Special Resolution:-**This Kind of resolution is passed by no less than three-fourth majority of the votes of the members entitled to vote and voting in person or by proxy at a general meeting of which at least 21 day's notice specifying the intention to propose, the resolution as a special resolution has been given. However a special resolution maybe proposed, and passed at such a meeting of which less than 21 days notice is given if it is so agreed by a majority together holding not less than 95% in

[82] Section 236 Companies And Allied Matters Act Cap C20 LFN 2004.
[83] Section 300(b) Ibid

nominal value of the shares giving the right to attend and vote at the meeting or, if the company has no share capital, then by a majority of members representing not less than 95% of the total voting right at that meeting of all the members[84]

At a meeting at which a special resolution is passed unless a poll is demanded, the Chairman's declaration that the resolution is carried is conclusive evidence without proof of the number of proportion of votes for or against the resolution[8575]. Nevertheless, it seems that the declaration of the Chairman would not be conclusive evidence if such a declaration is fraudulent or obviously wrong.

If a resolution is passed at an adjourned, meeting of a company, a class meeting, or board meeting, it is treated as having passed on the date when it was actually passed, not any earlier date[86]

b. **Written Resolution**: - The general rule is that for all resolutions to be effective, it shall be passed at general meeting. Nevertheless, in the case of private company, a written

[84] Section 233(2) Ibid
[85] ***Section 233(3) Ibid***
[86] Section 238 Companies and Allied Matters Act Cap C20 LFN, 2004.

resolution signed by all the members entitled to attend and vote shall be as valid and effective as if passed in a general meeting[87].

c. Resolutions Requiring Notice

There are certain matters specified in the Companies and Allied Matters Act, which may be discussed at the general meeting only if a special notice is given regarding the proposal to discuss these matters at the meeting. It affords protection to the occupants of certain offices from arbitrary or rash removal. Since it gives concerned an opportunity, to prepare their defense to be presented before the general meeting. It also enables the members to be prepared on the matter to be discussed and gives the time to indicate their views on the resolution.

This Davies[88] put it more succinctly thus, ***"…there is no doubt that these provisions are a reasonable restraint on the power to remove a director and a valuable protection to the auditor, the watchdog of the shareholders interests ".***

[87] See Re- Duomatic Ltd (1969) 2.CH .365- Where the court held, that if all members agree, a decision of a company may be taken even though no meeting is held.
[88] Paul .L.Davies, Gower And Davies, Principle Of Modern Company Law, Sweet and Maxwell 6Th Edition p.536.

Whenever, special notice is required of a resolutions, the company must be given 28 days notice before the meeting at which the resolution is to be moved by the person who is proposing such a resolution. The company will then give to the members' notice of the resolution at the same time as it gives notice of the meetings, or if this is not practicable, it shall give the notice by advertisement in a newspaper having appropriate circulation or in any other manner permitted by the articles, not less than 21 days before the meeting.

If after notice of the intention to move such a resolution has been given to the company (not by it) a meeting is called for a date 28 days or less after the notice has been given, the notice though not given within the time required, shall be deemed to have been properly given[89].The following matter requires Special Notice before they are discussed at the meeting[90]:-

(a) To appoint at an annual general meeting an auditor, a person other than a retiring auditor.

(b) To resolve at annual general meeting that a retiring auditor shall not be reappointed.

(c) To remove a director before the expiry of his period of office.

[89] Section 236 Companies and Allied Matters Act Op Cit.
[90] Schmitthoff .M. Clive ,Palmer's Company Law, Stevens & Sons London ,24Th Ed , Pp 836

(d) To appoint another director in place of removed director

(e) Where the articles of a company provide for the giving of a special notice for a resolution, in respect of any specified matter or matters[91].

3.10.2 Circulation of Member's Resolution

Generally, the Board of Directors prepares the agenda of the meeting to be sent to all members of the meeting. A member, by himself has very little say in deciding the agenda. However, there are provisions in the Companies Act, which enable members to introduce motions at a meeting and give prior notice of their intention to do so to all other members of the company. If members having one twentieth of the total voting rights of all members having the right to vote on a resolution or if 100 members having the right to vote and holding paid – up capital of N500 or more, require the company to do so, the company must[92]

1. Give to the members entitled to receive notice of the next annual general meeting, notice of any resolution which may be

[91] Section 214 Ibid
[92] Section 235 Ibid

properly moved and is intended to be moved at that meeting: and

2. Circulate to members entitled to have notice of any general meeting sent to them, any statement of not more than 1,000 words with respect to the matter referred to in any proposed resolution, or any business to be dealt with at that meeting.The expenses for this purpose must be borne by the requisitionists and must be tendered to the company. The requisition, signed by all the requisitionists, must be deposited at the registered office of the company at least 6 weeks before the meeting.

In the case of resolution and not less than 1 weeks before the meeting in case of any other requisition requiring notice of resolution together will be deposited at the registered office of the company and an annual general meeting is called for a date six weeks or less after the requisition is deposited, the copy though not deposited within the prescribed time is deemed to have been properly deposited.

The company is required to serve the notice of resolution and/or the statement to the members as far as possible in the manner and so far as practicable at the same as the notice of the meeting; otherwise as soon as practicable thereafter. However, a company need not circulate

a statement if the Court, on the application either of the company or any other aggrieved person, is satisfied that the right so conferred are being abused to secure needles publicity or for defamatory purposes[93]

3.10.3 Adjournment

Adjournment means suspending the proceedings of a meeting for the time being so that the meeting may be continued at a later date and time fixed in that meeting itself at the time of such adjournment or to be decided later on. Only the business not finished at the original meeting can be transacted at the adjourned meeting.

The majority of members at a meeting may move a motion adjournment at a meeting. If the chairman adjourns the meeting, ignoring the views of the majority, the remaining members can continue the meeting. The chairman cannot adjourn the meeting at his own discretion without there being a good cause for such an adjournment.

Where the chairman, acting bona fide within his powers, adjourns the meeting as per the view of the majority, the minority members cannot continue with such meeting and, if they so do the proceedings there

[93] Ibid

will be null and void. An adjourned meeting is merely the continuation of the original meeting and therefore, a fresh notice is not necessary, if the time, date and place for holding the adjourned meeting are decided and declared at the time of the adjourning. If a meeting is adjourned without stipulation as to when it will be continued, fresh notice of the adjourned must be given[94].

3.10.4 Postponement

Postponement of a meeting means deferring the holding of the meeting itself at a later date. Postponement is done by the Board of Directors or by the person convening the meeting. In case of adjournment, it is the decision of the majority of the members present at the meeting itself.

3.10.5 Minutes of Proceedings of Meetings: Every company must keep minutes of the proceedings of general meetings and of the meetings of board of directors and its committee. The minutes are a record of the discussion made at the meeting and the final decision taken thereat[95].

[94] Section 239 CAMA Op Cit.
[95] IAI .v. Chika Bros(

Every company must keep minutes containing details of all proceedings at the meetings. The pages of the minute's books must be consecutively numbered and the minutes must be recorded therein. Pasting or attaching of papers is not allowed. Each page of every minute's books must be initiated or signed and last page of the record of proceedings of each meeting in such books must be dated and signed by the secretary and Chairman of the meeting.

The minute's books of the proceedings of general meetings must be kept the registered office of the company. Any member has a right to inspect, free of cost during business hours at the registered office of the company[96].

3.10.6 Proxy Machinery

For resolutions to be effective it must be passed by a simple majority in the case of ordinary resolution and by three-fourth majority voting in person or by proxy in the case of a special resolution, this calls to bear the importance of the proxy machinery in company meetings, since in most cases a lot of shareholders tend to vote by proxy.

[96] See generally section 241- 242CAMA Cap C20LFN 2004

By the provision of section 230(1)[97] any member entitled to attend and vote at a meeting can appoint a proxy, whether a member or not to vote and speak for him. This does not however apply to a company not having a share capital unless the articles provides otherwise.

A proxy is a lawfully constituted agent of a member of a company to attend company meeting on behalf of the member. The term is also used to denote the instrument conferring authority upon the agent.

The nature and extent of the authority conferred upon a proxy to vote on behalf of the donor of the authority will depend upon the terms of the instrument appointing the proxy. A proxy authorizing the done to vote only upon a particular resolution is termed " special proxy" while one which gives power to vote upon all proposals relating to a specific subject matter or at any meeting or any matter is termed "general proxy".

The authority of a proxy to vote on behalf of the donor maybe revoked at any time before its exercise and an intimation of the revocation given to the company. The death or incapacitation of the donor may also revoke the authority.

[97] Section 230 Ibid

A proxy can only cast one vote on a show of hands even though he may be entitled apart from the proxy to vote in his own right. All proxy votes are however counted on a poll taken.

Where a motion has been debated on and votes of members and proxies taken thereon, there may arise a situation of deadlock. This is equality of votes for and against the motion. In this case, to break the impasse, the chairman is allowed a casting vote i.e. this is a vote vested in a person in his capacity as chairman of the meeting and exercisable independently on any voting power, which he is entitled to exercise as a member of the meeting.[98] To make the conduct and proceedings of meetings convincement and practicable for shareholders proponents of effective corporate governance have suggested reforms in this area, this is discussed below

3.10.7 Modern Trend in Company Meetings.

One of the areas in which the internet has had the greatest practical impact on corporate law is in the context of shareholder meetings in widely held companies. Virtual shareholder meetings[99] could herald either the elimination of the last vestige of director's accountability to

[98] Agom A. R. Op Cit

[99] This are ' meetings' that do not involve physical gathering ,but which take place in an electronic in an electronic form, such as via are mote ballot or a corporation-sponsored electronic bulletin board.

shareholders or the revival of a moribund forum by offering shareholders the prospect of a low-cost and geographically limitless means of participation[100]

The main arguments in favor of introducing dispersed AGMs are that the increased accessibility could lead to an increased attendance of shareholders, at company meetings and that it would offer an opportunity for globally dispersed investors to attend general meetings without incurring prohibitive costs.

Those respondents who opposed this suggestion pointed out that dispersed AGMs do not allow for direct face-to face communication between shareholders and directors and that it is seen as highly likely that, particularly when controversial issues are raised, the "remote" meetings would not be conducted orderly and equitably[101].

Despite its shortcomings, a dispersed AGM, issuance of notice brought electronic means, such as e-mail , internet services seems to be the modern trend in which the present of Nigerian shareholder to AGMs can be minimized . It is the objective of this thesis that this would be made possible in the nearest future so that Nigeria could be attuned to

[100] Elizabeth Boros Virtual Shareholders Meetings! Who decides how Companies make decision? Melbourne University Law Review (2004) MULR 9, 4/7/2009 P.2 of 23.
[101] Ibid at Pp.11

corporate development other economically viable countries across the globe.

This chapter tried to highlight the proponents/ingredient of validly held meetings and the need for Nigerian companies to introduce the concept of dispersed AGMs into it corporate governance policies. This will enhance shareholders participation in these meetings. The preceding chapter would emphasis why it is important to introduce this technological innovation into corporate meetings, as it gives an in-depth analysis of the present problems affecting shareholder's participation in corporate meetings, some of which will apparently be resolved by the introduction of virtual shareholder's meeting/or dispersed AGM.

CHAPTER FOUR

4.1 PROBLEM MILITATING AGAINST SHAREHOLDERS PARTICIPATION IN COMPANY MEETINGS:

In most companies, attendance at general meetings is notoriously low; average attendance is only about 1 percent.[1] In public companies with widely dispersed shareholders with smallholdings, the members usually do not have sufficient money, time and interest to attend general meetings. For example, it is not conceivable, for a shareholder of a public company in Nigeria who has 50 units of shares of N1 each, who lives in Maiduguri, in Borno State, to leave his work, and family to attend a meeting of the company in Lagos. His traveling, catering and lodging expenses will be considerably more than the value of his shares. To address problems of this nature, section 230[2] provides for shareholders of a company entitled to attend and vote at the meeting of the company to appoint another (whether a member or not) as his proxy to attend and vote instead of him[3] .This chapter discuses the

[1] Stratling Rebecca; General meetings, a dispensable tool for corporate governance of listed companies? Blackwell publishing Ltd Oxford UK 2003 pg 74.

[2] Companies and Allied Matters Act Cap C_{20} LFN 2004.

[3] Ayua I.A; Nigerian Company Law Graham Burn, 1984 Pp. 129.

abuse that the proxy machinery has been subjected to and some of other problems militating against shareholders participation in company meetings.

4.2 MANIPULATION OF THE PROXY MACHINERY

The usual practice is that shareholders attend general meetings in person and voting is by show of hands, each member present having one vote irrespective of the number of shares he has, the Act[4] gives a shareholder the right to appoint a proxy in his stead. Such a proxy shall also have the same rights as the member to speak at the meeting.

In order to remind the shareholders, that they have the right to vote by proxy, section 230[5] provides that for every notice calling a meeting of a company having a share capital, there shall appear with reasonable prominence a statement that a member is entitled to appoint a proxy (or where it is allowed, one or more proxies) to attend and vote instead

[4] Companies And Allied Matters Act Cap C20 LFN 2004
[5] ***Section 230 Ibid***

of him. That a proxy needs, not also be a member. Failure to comply with this subsection renders every officer liable to a fine of N250[6] .

The purport of the above provision of the Act is to assist the shareholders in maintaining their control over the directors (even though they may not be present at the meeting) through voting by proxy. However, as will be seen later, this objective has never been achieved. In practice, the reality of the proxy voting system is that contrary to the salutary intention in introducing it, it is rather used to perpetuate the domination of the shareholders by the directors, especially in developing African Countries like Nigeria where the ordinary man is not so sophisticated or educated, about the rights accruable to him as a stock holder.

Indeed, the proxy system only serves to enhance the dictatorship of the board. A fascinating description of the sad situation in which the directors perpetuate their de facto control of the shareholder through the proxy system is given in Nigerian Company Law[7] thus,

> ***…Proxy forms are made out in favor of certain named directors, and, although it is true that the word "for" or "against" maybe inserted in the modern proxy form, the recipients of the circulars, very often are in doubt as to***

[6] This is inefficient punishment to at as deterrent for abuse.
[7] Ayua Ignatius, Nigeria Company Law, Graharm Burn, 1984 pp. 14

whether the persons named as proxies, are bound to put in votes by proxy with which they are not in agreement[8].

The above elucidation vividly demonstrates how directors control the proxy machinery. The proxy has, in many respects become one of the principal instrument not by which a shareholder exercises power over the management of the enterprise, but by which his power is effectively minimized. The fundamental point to note here is why do shareholders have voting rights instead of conducting the company based on consensus? The responses maybe that, while it is true that directors do acquire a de facto control of the company by controlling the voting system, there are situations, indeed numerous, where the shareholders can actually use their voting rights to control the directors by, for example, threatening to refuse to re-elect them when they come up for re-election or divesting power from them by alteration of the articles of association It seems that without the vote, the shareholders as a group would have far less protection than they enjoy today. It is therefore a fundamental error to assume that because shareholders stop voting, even for long periods, they have also relinquish the vote.

[8] *Ibid at pp 141*

The corporate system, as it is today, only works because the shares have voting rights, and it is because of the potential exercise of those rights that shareholders can think of controlling the directors. The corporate electoral machinery makes available a procedure under which (however infrequently) management can be challenged which is sufficient justification for it preservation, as the general meeting can still serve as a means of exercising ultimate control by the shareholders over the company. Unfortunately this all powerful and all embracing instrument at the with withal of the shareholder is not as frequently used, as would have been expected because of apathy of the shareholders towards participation in general meetings.

In an attempt to elucidate on the reason for the abuse of the proxy machinery a writer opined ***thus is the members" own fault, for most of them are too apathetic to exert themselves to exercise such powers as the law affords them. Moreover, even when some disaster jerks them out of their apathy they all too often follow like sheep, the course that the management recommends***.[9] More often than not they may be right to do so, because they lack the modern day expertise necessary

[9] Ibid @ Pp. 145.

for running the day –to-day activities of a company, which is the prerogative of management.

The question that will readily come to mind is what are the reasons for this seemingly apathy of shareholders to participate in company meetings? The foregoing are some of the problems militating against active participation of shareholders in company meetings.

4.3 SHAREHOLDER'S APATHY

The premise for shareholders' apathy, maybe traceable to ignorance of his rights as a member of a company. In Nigeria today, especially during the consolidation of banks, the public became generally interested in capital Market investments, by buying stocks in most of the newly created banks. Many of the populace knew little or nothing as to right accruable to them. Thus when they received notices of meeting most of which are delivered belatedly, they are unaware of the importance of their attendance at such meetings .there is a general perception that if you want to deny a Nigerian "the knowledge of a particular fact, then hide it in a book" it is therefore no surprise that the annual reports, the proxy forms which are suppose to be the source of information and notice to shareholders of a company and to enable them exercise

their corporate franchise at company meetings all end up in the garbage bin.

4.4 INEFFECTIVE COMMUNICATION

This is another important reason for lack of , active participation of shareholders in company meeting. The basic rule of law of meetings is that adequate notice must be given to all entitled to receive it. The provisions of company and Allied Matters Act[10] provides that the notices required for all types of general meetings shall be 21 days from the date on which the notices was sent out. A further provision on the manner in which notices is sent is Provided in section 220(1)[11] thus "A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or if he has no registered address in Nigeria to the address, if any supplied by him to the company for the issuance of notice to him.

Section 220(2)[12] further provides that where a notice is sent by post, service of the notice shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the notice, and to have been effected in the case of a meeting at the expiration of seven

[10] ***Section 217 Companies and Allied Matters Act, Cap C20 LFN,2004***

[11] *Company and Allied Matter Act Cap C20 Ibid)*

[12] Ibid

days after the letter containing the same is posted, and in any other case at the time at which the letter would be delivered in the ordinary course of posting.

The above provision leaves no one in doubt, as to the onerous responsibility that rests on the shareholder. The simple reason is that in Nigeria today the postal service is one of the slowest means of communication, this is aside the fact that most houses, have no numbers or street names. Even when sent by registered post or courier services, locating some shareholders of a company will be an exercise in futility.

The provision of the Company Act[13] which would have militated against the problem is hindered by low readership of Nigerians coupled with the fact that not everyone has the economic means to purchase newspapers! What this portends is that most notices that are sent out to shareholders are received either too late, or not at all. This is because some shareholders may, by reasons of job search or transfers leave their last known address without a forwarding address as such, the notice may in this case never be received by the shareholders, for

[13] Section 222, Companies And Allied Matters Act Cap C20, LFN 2004,-which requires companies to publish notice of meetings in at least two daily news papers with wide coverage.

him to decide whether to attend or not to attend the meeting in respect of which it was sent.

Similarly companies sometimes, deliberately flout the rules regarding notices.

An example is that notices are contained in annual reports, which are sent in most cases in batches. Giving the terrain of Nigerian roads and the fact that there are towns and villages where shareholders of company's resides, that are almost inaccessible, one will not expect a shareholder residing in the hinterlands of Maiduguri, or Nassarawa State to receive his notice, the same time as one who reside in the city of the mentioned towns, this been the case, how would one expect such a shareholder(s) to attend company meetings let alone be actively involved in the decision taken at such meetings.

4.5 SENTIMENTS ATTACHED TO QUANTITY OF SHARES:

Another reason for shareholder's apathy is sentiments attached to the number of shares they own in a company, for instance, most shareholders have proliferation of shares in different companies and are generally not interested at participation in company meetings. In

the same vein, the cost that they are likely to incur by attendance at such meetings is not commensurate to the number of shares they hold in the company.

By way of illustration one will not expect a shareholder living in Jigawa State who has five hundred units of stock in a company to attend a company meeting in Lagos especially when he has no place of lodging, as compared to a shareholder who has 500,000.00 units of stock in the same company living in the same state. The later will be more interested in actually participating in company meetings than the former.

4.6 THE RULE IN FOSS .V. HARBOTTLE[143] :

The rights and liabilities of a shareholder of a company have to some extent been affected by the all ubiquitous principle of the rule in **Foss .v. Harbottle**[15]. The general principle enshrined in the above doctrine has drastically affected the effective control of the directors by the shareholders. This has further exacerbated shareholders apathy to meetings. In this case, it was established that whenever it is alleged that directors or management of a corporation have broken their

[14] (1841) 1. Hare 461
[15] 67. ER. 189(1843) 2 HARE ,461

duties to the company, the proper plaintiff to remedy the situation is the company itself through the action of the minority. Jenkins L.J puts the position more vividly thus:

"The rule in Foss .v. Harbottle as I understand it, comes to no more than this ,the proper plaintiff in an action in respect of a wrong alleged to be done to a company or association of persons is the company itself"[16]. Intrinsically, this rule has some benefits. Since companies are democracies, it recognizes the rights of the majority to have their way at meetings.

The rule also reinforces the corporate personality principles, prevents multiplicity of suits that would have been the case if every member is allowed to litigate wrongs done to the company. It helps prevent court orders from being rendered nugatory by a subsequent decision of the general meeting to legitimately embark on a contrary course.

Notwithstanding, the rule does not seem to appreciate the intrigues in the exercise of corporate powers. It reflects the weakness of the minority shareholders position in the company against those of the controlling faction. What this means is that the rule failed to take

[16] Edwards. v.Halliwell (1950) ALL ER 1064

cognizance of the fact that what in practice constitute a majority in corporate politics is quite different from that in common parlance.

To abandon the fate of a corporation to a non –existing majority in the true sense, is to give judicial approval to the exploitation of the minority investors by powerful ones who are able to manipulate the corporation's voting system.

In **Bushell .v.Faith**[17], by a clever device of loaded voting shares, a single shareholder was able to outvote the apparent majority of two shareholders. Similarly, at the 32nd Annual General meeting of Chemical and Allied Products (CAP) Plc held in June, 1997, United African Company of Nigeria (UACN) Plc, with forty –four percent (44) shareholding in Chemical and Allied Products (CAP)Plc, effectively put on the board of directors, of the latter, six (6) of the nine (9) directors of the company, leaving the remaining three directors to be appointed by the majority holding fifty-six percent (56%) shareholding in the company[18], With this state of affairs, bulk of the fragmented small holding members are left out in the decision –making of the general meeting. This has increased apathy of shareholders, who now attribute

[17] (1970) All ER 53

[18] This day Newspaper, Monday, June 30, 1997.

to the meeting, a hallowed importance and regards same as gathering of retirees, pensioners and idlers[19]

4.7 THE "EXIT" OR POISON PILL RULE:

This rule gives dissatisfied shareholders a right to sell off their shares. The voting rights attached to every ordinary shareholder are of importance to corporate governance. It is a trite fact that every shareholder of a company, has a right to have a say in the corporate decision making process by virtue of his shareholding. Every shareholder has a right to vote on any matter or question irrespective of whatever personal interest he might have in the subject matter and the shareholder could cast votes as he thought fit.

In other words the shareholder has complete control on what he does with his shareholding and can dispose of his share at will[20] i.e "exit" which is also a form of corporate control, which can be expressed via capital market .This is a situation whereby shareholders of a company express their dissatisfaction by selling off their shares in a company; the subsequent effect could be better imagined.

[19] Agom A. A. Op Cit at pp228

[20] North West Transport company. V. Beatty (1887) 589 cited with approval in Burland .v. Earle (1902) AC 83 PC

Widespread selling of shares may trigger a fall in the price and the company becoming a takeover target. The "exist" or poison pill rule is usually a most preferred method by which shareholders who are dissatisfied with management of the company in which they own shares show their discontent by dispose of their shares. For this group of shareholders this is a better approach than to devote time and skill to decoding information and assessing the significance of information

made available by the management of a company in which they own sharers. All of which costs time and money[21] a fact that has also contributed to shareholders' apathy to company meetings and management[22].

4.8 SEPARATION OF OWNERSHIP AND CONTROL:

The separation of ownership and control often leads to a proven persistence conflicts of interest between the owners may be set out in the memorandum and articles of association. One would have expected that the interests ought to coincide but in practice they are at odds with each other.

[21] John Colley JR, et al Corporate Governance ,The McGraw –Hill Executive MBA Series. ,2003 Pp.42
[22] Olugbenga Ojo Op Cit PPp178

Further to this, the principal agent problem creeps in. A behavior on the part of the directors(management) to pursue their own agenda while doing only enough to provide a return that shareholders consider adequate is witnessed, rather than maximizing shareholders wealth. It is an indisputable fact that , the traditional legal model of management structure of a company is that the board of directors manages the business in accordance with a provision to that effect in the articles of association. Therefore, shareholders cannot interfere with the day to day

management of operation by business executive[23] a fact that as contributed to an increase shareholders' apathy to company management.

4.9 WEAK SECURITY REGULATIONS

There are no doubts that are many guidelines that regulate company law in Nigeria .The problems are that of implementation. Such that where company guidelines theoretically provides for particular punishments for defaults, little or nothing is done to ensure that the

[23] Olugbenga Ojo Op Cit Pp 176

provisions are complied with. Similarly some of the default fines[24] provided for in the Act are so insignificance when compared to the stipulated offences, such that it rubbishes the legislative intent using the provision as a deterrence to future occurrence of similar nature. This is because some private companies usually take long period of time before holding their Annual general meeting.

Although the provision of a company making use of written resolution as a way of doing away with actual holding of meetings may sometimes be a safeguard for the abuse of this particular provision .Many of such provisions[25] are abound in the company Act and has in a way eroded the level of confidence that the investing public has in company practices and procedures.

In the foregoing chapter an attempt has been made to elucidate on the abuse of proxy machinery by companies, as well as the gamut of shareholder's apathy to company meetings and participation in decision making of companies in Nigeria.

[24] For example , Section 212 CAMA – Provides for a default fine of N50 only! For failure to hold a statutory meeting within the mandatorily stipulated period.While Section 213(5) –provides for a default fe of N500, for failure to call an annual General meeting.

[25] Section 234 CAMA Op. Cit Fn 16 – Gives Private Companies, the right to use written resolutions without necessarily conveneing a meeting. As long as those who are suppose to attend assents to the resolution.

On the one hand, there is need for increased awareness in Nigeria today on the need for shareholders irrespective of their shareholding capacity, to actively participate in decision making of companies through their attendance of company meeting. In addition companies should also explore more effective and efficient means of making company meetings accessible to shareholders, such as sending notices by text messages on mobile phones, and thereafter-sending hard copies this way a larger number of shareholders will be able to participate.

Furthermore, companies can also encourage more active participation by taking advantages of the new trend in company meeting. Participation through acceptance of voting by electronic means, proposed Resolutions through internet Communication as well as explore Virtual Shareholder's meeting, in tandem with the practice in most developed countries today. It is only by doing this, that the corporate governance objectives of companies can be adequately achieved.

In a bid to improve more active shareholders participation in company meetings, most countries around the world introduced what has come to be known as "best practices" in the management of the affairs of

companies. Nigeria is not an exception in this regards, she had over the years introduced different kinds of codes of corporate governance to ensure that company and its resources are Managed to the collective advantage of all stakeholders .The extent to which this has been achieved is discussed in the next chapter.

CHAPTER FIVE

5.1 AN OVERVIEW OF CORPORATE GOVERNANCE AND THE SEC CODE[1] AS IT RELATES TO MEETINGS

The recent financial crisis and enterprise collapses across the globe a fall out, of incidence of forgery ,dishonesty ,financial scams and corruption at corporate and state levels reinforced the need to check ethical behavior in corporate dealings .It has been argued, that shareholders have an Incentive to invest in resources in curbing both managerial and owner opportunism. However the recent experiences in Nigeria, shows that the significant shareholder that are most capable of curbing board and management excesses have showed an apparent unwillingness to oppose the management and the board of the companies through their low-level participation in company meetings and decision[2]

However as the need for an assembly of shareholders and directors at a specific location and at certain time reduces, shareholder loss the chance of a face – to face encounter with the directors at the Annual General Meetings (AGM) during which, they can question the

[1] Securities And Exchange Commission's Code of Corporate Governance For Public Companies 2003 & 2010

[2] Ajogwu Fabian, Corporate Governance and Management, paper presented to the Centre for Law & Business,Lagos,on September 22,2010.PP.3

companies past performance as well as proposed future management decisions. It has therefore become imperative for shareholders to find ways to hold management accountable for the governance of their companies[3]. This can only be achieved if the present low level participation of shareholders can be improved taking into cognizance, the enumerated problems in the previous chapter.

5.2 MEANING OF CORPORATE GOVERANANCE

In a narrow sense, corporate governance specified the relationship among various primary participants (shareholders, directors, and managers) in determining the directions and performance of corporations. In a broader sense, it delineates the rights and responsibilities of each primary shareholder and the design of institution and mechanism that reduce or control board directors and management to best serve the economic interests of shareholders (and other stakeholders) of a company. Many of these other stakeholders also play a role in monitoring the behavior of the board, and management.[4]

[3] Stratling Rebecca, General meetings: a dispensable tool for corporate Governance of Listed Companies? Blackwell Publishing Ltd,2003,Oxford , U.S.A PP.75
[4] Ajogwu Fabian Op Cit at PP.6

The part of any organization that has the control over governance is the board of directors and the board is the soul of a company[5], the foundation of all business decisions and the origin of corporate culture of the whole entity. The essence or attribute of good corporate governance includes ethics, managerial discipline, and independence, protection of shareholders rights, fairness, transparency, board responsibilities, accountability and social awareness. Most of these attributes are used as indices for measuring corporate governance on corporate level[6].

Corporate governance is an internal system encompassing policies, processes and people, which serve the needs of shareholders and other stakeholders by directing and controlling management activities with good business objectivity, accountability, and integrity –sound corporate governance is reliant on external market place commitment and legislation plus a healthy board culture, which safeguards policies and processes. The assumption is that the efficient use of company assets coupled with good governance invariably translate to higher probability of good returns on investment corporate governance

[5] Prasad Kesho Op Cit at pg 50
[6] Kaur Permit, Suveera Gill, The effect of Ownership Structure on Corporate Governance and performance: An empirical assessment in India, Research Project NFCC, Panjab University Chandigigarh.

impacts on the well being of a company, its economic performance and the ability to attract capital on a sustainable basis[7]

Today's corporate governance environment calls for more shareholders participation and exercise of their voting rights; often referred to as the voice, a vital tool in exercising control over persons who are managing their money. Expressing the voice as a right includes voting at general meeting and active monitoring of the management of companies[8], which cannot be achieved without shareholders participation in company meetings and decisions. The degeneration and corruption of our corporate system, put more bluntly, greed and the quest for more power have been pronounced as largely responsible for most corporate collapse witnessed in recent times. These paved the way for introduction of "best practice" that has became recognized as the code of corporate governance in organization.

5.3 THE CODE OF CORPORATE GOVERNANCE

It is important to ensure that rules governing shareholders participation should facilitate the efficient determination of the will of

[7] Ibid
[8] Onamade Adebayo, Shareholders activism: A Control Mechanism in Corporate Governance In: Cross –Cutting issues in Nigeria Law, Essay in Honor of Prof. Funso Adaramola 2007,PP.178

the majority of shareholders in define areas, with proper safeguards to ensure informed decision – making.

All shareholders should have a right to all appropriate information and the opportunity to express their views with voting rights proportionate to their shareholding[9]. Following poor shareholder practices and further marginalization of shareholders in corporate democracy in Nigeria, a code of corporate governance was adopted in 2003 by the Nigerian Securities and Exchange Commission and the Corporate Affairs Commission .This had however been reviewed in 2010 to address its weaknesses and to improve the mechanism for its enforceability[10]. The new code made a number of recommendations to increase the level of shareholders influence in corporate decision-making process[11]. Code of corporate governance has been recognized "as a set of best practice" recommendations regarding the behavior and structure of a firm's board of directors issued to compensate for deficiencies in countries corporate governance system regarding the protections of

[9] Section 22.1 Code of Corporate Governance for Public Companies , Securities And Exchange Commission, Nigeria, 2011. Pp33

[10] Section 1.3 (g) Ibid at Pp 6 –Provides that where there is a conflict between this code and the provisions of any other code and the provision of any other code that makes a stricter provision shall apply.

[11] Section 27 Ibid Provided that, Shareholders of public companies should play a key role in good corporate governace .In particular, instutional shareholders and other shareholders with large holdings should seek to influence positively the standard of corporate governance in the companies in which thery invest.They should demand compliance with the principles and provisions of the code.They should seek explanations whenever they observe non-compliance.

shareholders rights.[12] A major recommendation of the code[13] is that shareholders should work in concert through shareholders associations. ***The Board of every public company should ensure that the dealings of the company with shareholder associations are always transparent and strict adherence with the Code for Shareholder Association published by the Securities and Exchange Commission (SEC)[14].***

Regarding the compositions of the board of directors the code provided that shareholders with less than 20% or more shareholding should have a seat on the board. It further provides that interest of minority shareholders should be given a seat on the board. The code also provides for more regular briefings of shareholders going beyond the half-year and yearly reports[15].

To facilitate and improve on the attendance of shareholders at general meeting of the company, the code states that venue for general meetings should be places that are possible and affordable cost and distance wise and that the board should ensure that shareholders are

[12] Amao,O. Amaeshi, K. 'Galvanizing shareholder activism: a prerequisite for effective governance and accountability in Nigeria.PP.13
[13] Code of Corporate Governance,2011 Op Cit.
[14] Section 26 Code of Corporate Governance Op Cit
[15] Amao ,O, Amaeshi, K. Op cit .PP.13

not disenfranchised on account of the choice of venue for meetings[16]. In order to ensure that majority of shareholders attend and vote at Annual General Meetings, the code also stated that notice of general meeting must be given at least 21 days before the meeting and all details related to the agenda of the meeting should accompany the notice to enable shareholders to properly exercise their vote[17].

The code also envisaged that with widely dispersed share ownership, minimum standards for formal communication and disclosure, the general meeting should be a forum for shareholders to participate in the governance of the company. However, corporate governance mechanisms will only be of value if the shareholders are empowered to act on such information through adequate notice.[18]

The crucial question here is, can rules of corporate governance by themselves alone ensure good behavior in the management of company affairs? The question is premised on the challenges of modern day corporate governance in the context of the 'Agency Theory' which sees shareholders as 'principals' and management as their 'agents' that agents will act with rational self – interests, not with

[16] Section 23 Corporate Governance Code 2010 Op Cit @ Pp32
[17] Section 24 Ibid.
[18] Ibid at PP.14

the virtuous, wise and just behavior assumed in the stewardship model [fiduciary boards relationship] it highlight the tendency of people [agent manager] to act in their own interest rather than for the public or greater good of shareholders, they therefore need to be monitored and controlled in order to ensure that they do their primary job [work to maximize shareholder interest][19]. This can only be achieved if shareholders can participate more effectively in company meetings and decisions.

5.4 EMERGING PHENOMENON

Recent bank and company large-scale failure across jurisdiction have put to question the efficiency of standard models of corporate governance especially in relation to companies operating the group structure The force of code vary from jurisdiction to jurisdiction with some codes taking the comply or explain models, others taking the mandatory comply approach. Some governance codes are linked to listing or legal mandated disclosure requirements. Others are purely

[19] Ajogwu Fabian OP Cit at

voluntary in nature. Despite their origins, corporate governance codes have more or less the same principles[20].

The assumption seemed to be that where regulation is based on prescriptions and well-written codes there ought to be stable companies with good practices of corporate governance, however the reverse has been shown to be the case. The Nigeria's Central Bank code of Corporate Governance, that was a tighter prescription for banks specially, did not prevent the bank failures in Nigeria that necessitated Government bailouts, and move to establish an Asset Management company to take up the toxic assets (bad loans) of those banks[21].The question is, are those recent instances of corporate governance failures really a result of absent regulation or were they more of behavioral problems?

The Central Bank of Nigeria in reviewing its code of corporate governance for banks in 2010 took the view that the chief deficiency of banks and financial institutions was behavioral problems rather than organizational problems. It sought to get corporate boards challenged by requiring that non – executive directors [NEDs] should be charged to

[20] Ibid
[21] Ibid at PP.16

focus on risk issues separately from the executive risk committee process. It also requires that fund managers and other shareholders should engage more productively in their invested companies' over long term objectives. That there should be enhanced attention on remuneration policies in respect of variable pay, disclosure and incentives finally it looked to having board risk committees and remuneration committees and demand communication and engagement of institutional shareholders[22].

The code of corporate governance represent established rules regulating specific areas which includes the rights of shareholders, including minority interest, duties responsibilities, and liability of directors, separation of power between the general meeting and the board, and company best practices. Most of which has formed the thrust of the discussions in the present work. This is with a view to ensure increased participation of shareholders in company meetings.

In all the enumerated aspects of corporate governance, company meetings is a necessary stakeholders/shareholders stepping stone for charting a course in the efficient running of companies. Company meeting is therefore an all-encompassing aspect of corporate

[22] Ibid

governance, attendance of which must be encouraged if the 'best practice' the code of corporate governance seeks to enshrine in the corporate policy is to be collectively achieved by shareholders and stakeholders of companies.

CHAPTER SIX

6.1 DATA COLLECTION, ANALYSIS, FINDINGS, RECOMMENDATIONS AND CONCLUSION

6.2 Data Collection

In order to appreciate the topic as discussed in earlier chapters, questionnaires were prepared, distributed and responses collated as to assess the level of shareholders participation in company meetings.

Random sampling of respondent's opinion, perceptions and suggestions on how to improve shareholders participation in company meetings were conducted, the responses were analyzed, by the distribution of the various attributes. This was supplemented by analysis of response to different type of questions that were used in identifying correlation relationship between profile, behavior and

perception of the respondents by application of a cross liberating method.

6.2.1 Population

The population of the study consisted of civil servants in both the private and public sector of government. (Federal, State and Local Government areas) From the six geo-political zones of Nigeria. A total of one thousand two hundred questionnaires (1,200) were distributed i.e. 300 questionnaires to each of 3 randomly selected representative states capital {i.e. Kaduna (North West), Minna (North Central) and Lagos (South West)} in each of the 3 geopolitical zones earmarked for this study as indicated in **table A** below.

6.2.2 Sample and Sampling Techniques

The random sampling technique was used to draw 4 cities from 3 geo-political zones i.e. North West, North Central and South West. The random sampling was done by preparing a tag carrying the names of each state in the aforementioned areas, respectively carrying numbers that corresponds to the aforementioned geopolitical zones. Only Abuja was purposively sampled because it's a Federal Capital. The tags were

placed in a receptacle (box) and each tag was non replaceable (to prevent introducing bias into the subsequent selections).

The following states in the aforementioned geopolitical zones were randomly sampled. North West (comprising of Sokoto, Kebbi, Katsina, Kaduna and Zamfara States) ,North Central (comprising Abuja, Nassarawa, Benue, Kogi ,Kwara and Niger states) and South West (comprising , Oyo, Oshun, Ondo, Ekiti, Lagos and Ogun States) .

TABLE A: Distribution of questionnaires to the 4 randomly selected state capitals in the study

CITY	**QUESTIONAIRES DISTRIBUTED**	NO OF QUESTIONAIRES RETURNED	**% RETURNED**
ABUJA	300	138	11.6
KADUNA	300	180	15.0
LAGOS	300	54	4.5
MINNA	300	130	10.8
TOTAL	1200	504	41.9

6.3 Table for distribution of response to questions in the study

The questionnaires for the extent of shareholders participation were designed to capture the respondents' profile, perceptions and suggestions that will improve participation in decision-making of companies. The questions on the questionnaires were divided into the outlined types and corresponding tables were drawn to highlight questions and responses thereto as well as the percentage representations of the response to the study questions. This was to enable quantitative representation of evaluated data for this study. The **table 1-3** below depicts the number of respondents and their

percentage response to the aforementioned structured profiles in the questionnaire that was used for the study.

TABLE 1: Distribution of questions and response which depicts respondents profile age, occupation, literacy level and extent of ownership of shares in a company.

Questions	**Response Options Yes/No**	**Respondents**	**% Response**
1.Age	Adult Minor	500 Nil	100 Nil
2.What is your literacy level	High Medium	425 50 25	85 10 5
3. Are you literate or Non-Literate?	Literate Non-Literate	500 Nil	100 Nil
4.Do you have shares in any company	Yes No	380 120	76 24
5. In how many companies do you have shares?	1-5 companies 10 companies 10 and above ditto.	350 100 50	70 20 10

Table 2: Distribution of questions and responses which captured respondents' behavior Vis - a –Vis reasons for investment, in equity shares and participation in decision- making of companies through available avenue.

Question	Response Option Yes/No	Respondents	% Response
1. Have you ever participated in any Annual General meeting of your company?	Yes No	75 425	15 85
2. Have you ever attended any other company meetings where you own Shares?	Yes No	75 425	15 85
3. What are your reasons for investing in equity shares of a company?	Share appreciation Dividend income Interest in company workings	175 250 75	35 50 15
4. What are your reasons for not participating in the decision making of your company?	Low stake Management knows best No time Majority shareholders will take care. No interest	125 25 100 100 150	25 5 20 20 30
5. Do you belong to any shareholder Association?	Yes No	50 450	10 90
6. How early do you receive notice of your company meetings?	Before the fixed date After the fixed date Not at all	125 250 125	25 50 25
7.Have you ever voted in an AGM	Yes No	125 375	25 75
8. Are you aware of the existence of shareh0lder	Yes	50	10

Association in your locality?	No	450	90

TABLE 3: Distribution of questions which recorded perception, suggestions and highlighted the extent of participation by respondents in decision- making of company.

Questions	**Response Options Yes/No**	**Respondents**	**%Response**
1.What is your preferred means of communication with your company	Internet Gsm Postal System	25 325 150	5 65 30
2.How often do you access your choice of communication you above	Daily Weekly Monthly	125 250 125	25 50 25
3Which of the following means of participation will you prefer as a voting medium on a resolution of a company	Internet Gsm Raise of hand Postal Ballot	50 125 175 150	10 25 35 30

4 Suggest ways for improving your participation in company meetings	E-Mail Voting through SMS Postal Ballots	150 300 50	30 60 10

6.4 Analysis of Data for Profile, Behavior and Perceptions.

The respondents' response to questions on literacy level was recorded, with a view to capture the extent of respondents' ability to understand the general workings of the company and to impact on the decisions taken on corporate performance in particular[1]. In the same vein, response on the sources of information was tabulated in order to access respondents' behavior towards being regularly informed about the progress and well being of the company in which they invested. In addition, respondents' interest in rapidly accessing the available information about the companies, they invested in was measured, by an examination of the extent of their understanding of the content of

[1] Sharma J.P & Poonam Sethi,Impact of Postal Mechanism In Improving Shareholders' Participation In Corporate Decision Making: A Research Study ,Department of Commerce,Delhi School Of Economics,University Of Delhi.E Mail Jaiprakash2509@gmail.com Pp.8

the annual report of the companies usually sent to, and read by respondents.

The efforts of the respondents at taking up the opportunity of participation in decision – making of the companies they have invested in, through the attendance of general meetings were measured. In addition, to their preferred means of voting on resolution as well as their reasons for investing in equity shares was also tabulated.

Furthermore, respondents were asked to provide suggestions for increasing their participation in the decision making of their companies; response to this question was also tabulated.

Hypothesis testing for significant difference in the proportions of those who had participated in company meetings was done. The findings depicted on the tables revealed that respondents who had high literacy level displayed a greater understanding and appreciation of the need to participate in company meetings than those who had low literacy level (E.g. From table 1 respondents with high literacy level captured were 425 compared to table 2 where a corresponding 425 responded that share appreciation and dividend income were reasons for their investing in company shares. The inference that can be drawn here is

that it's only a fair understanding of company workings that can elicit such recorded responses.

The tables showed that about 85% of respondents gave price appreciation and dividend income as the driving forces for making most investments in equity shares. More than half of the respondents have never participated in AGM and even among those who have attended an AGM, less than 10% have ever voted. Reasons expressed for non-participation are similar, giving an indication that they are mere excuses used to cover their lack of the right attitude to investing.

In a related development, neither education nor the number of equity shares invested made significant difference to respondents' behavior to participation in company meetings .In addition, despite the fact that about 85% respondents had high literacy level and proliferations of shares in different company the findings still reflected about 15% abysmally low general attendance in company meetings. The response to suggestions on how to improve participation showed that voting and communicating through e - mail and mobile phones (Gsm) were the most mentioned.

6.5 Summary of Findings

Although the number of individual investors has grown tremendously over the years, yet a system to educate them has not been proportionately developed. The regulatory agency and stock exchange websites including regular business news on TV are good sources but are not enough. There is therefore further need to change the mindset of the Nigerian investor to participate more in the decision making of the company. Hence more educational and public awareness programs need to be put in place to allow for better understanding of corporate governance issues by numerous individual shareholders.

The reasons cited for poor participation levels are low stakes, low information level, lack of knowledge of the corporate vision and indifferent attitude of the investor. Majority of shareholders are perceived to be in the market only for dividend and capital appreciation. Beyond that, they are not interested and as a result, communicating through mobile phones, internet and voting through SMS is believed to be a possible solution to increase the present level of participation. Most respondents were unaware of the existence of shareholder association, this was an indication that they have poor membership base.

Generally there can only be improved participation of shareholders in

AGM If they could break their passive mood and make their presence felt. It is therefore advisable, that those who do not understand the workings of the capital market should invest through mutual funds.

Furthermore, the image of non-individual minority shareholders in the eyes of the corporate world is also very poor. Shareholders on their part have done very little to improve their image- they attend AGM / EGM not to know about the corporate affairs but mainly to receive gifts and coupons, and to enjoy the refreshments that is served at these meetings. Some of the vocal ones are known to ask for favors from the management in exchange for siding with management.

The favor can range from a job for a relative, to a sponsored stay in a five star hotel. Sometimes they want the company's product at a very high discount. They use the AGM as a platform to practice their public speaking skills and are known for their names. They often trouble the management by asking uncomfortable questions or threaten to disrupt the meetings. Company management confesses to pre AGM deals of gifts and junkets to sweeten such type of shareholders.

Most of the respondents believe that situations illustrated above are kind of embarrassing and could be averted if electronic means of

communication like the GSM and internet can be used for voting. This it is believed will do away with the necessity of physical meetings and abuse of same.

6.6 Recommendations

Creating an enabling environment for investor education and awareness, as well as legislative reforms, to include electronic means of communication will go a long way in promoting higher participation by shareholder in corporate decision-making; other recommendations on the theme of this work include the following:

A. The areas requiring legislative reform includes:

I. The review of the prospectus advertising for sale of company shares to include a clause that will provide for the membership of an institutional investor whose primary object will be to provide a unified platform where stakeholders' interest can be validly upheld when the need for it arises

II. The extension of the timing requirements of a minimum of 21 days notice to be given to all persons entitle to receive notice of General Meeting should be extended to 30 days, within which

one believes that at least 90% of subscribers must have received theirs.

iii. A review of the provision of section 220(3) of the companies and Allied Matters Act, which deems a notice sent by post effected by properly addressing and posting a letter containing the notice ,at the expiration of the 7 days. This period should also be reviewed bearing in mind the geographical terrain of Nigeria.

iv. Inclusion of a clause in a review of the Companies and Allied Matters Act to incorporate electronic means of communication such as e-ballot, e- voting and probably virtual shareholder meeting in the nearest future.

This is to ensure that notices are received through emails, internet or mobile phones bearing in mind the passion to which Nigerians" holds and own their phones" with their low readership of hard copies of information i.e. manuals and books generally. Other recommendations include:

b. A formal and systematic training for investor during their working life even if they may not be investing significantly in shares at the time or in the future. Topics related to equity investing, shareholder and their

rights should be made part of the school curriculum. Education program to facilitate the process should be made accessible through internet.

There could be a formal Securities and Exchange Commission's "training school" catering to investors spread across the country based on today's e-commerce model.

High frequency of investor awareness campaigns during advertisement for purchase of companies shares and after by regulators and exchange can benefit the masses of ordinary investors. More effective ways and alternative delivery channels for the issuance of notice of meetings have to be devised given the diverse, ethnic and cultural nature of Nigeria and their many ethnic differences.

Greater control and monitoring of the workings of shareholder Association can also yield good results, introduction of rewards for well functioning association will encourage them to expand their membership base and work with zeal toward the welfare of the shareholders. Furthermore, efforts to improve incidences of communication/interactive occasion with shareholders should go beyond the requirements of legal framework.

Regular communiqués and offers like visits to company offices/plants would help shareholder have greater bond with the company and pique their interest in its workings.

In the same vein, companies should make special effort in explaining company's governance policies, business ethics and the environment and other public policy commitments. This strategy will assist the shareholders who want to make equity investments, but do not wish to participate in decision making to evaluate the company's statements and explanations in a more significant way.

In recent times, damage has been done to the small number of shareholders who attends meetings since the general perception is that their attendance was not for the sake of participation but for the snacks/lunches/gifts offered by the companies at AGMs .Therefore, the need for greater participation by NIMs in the decision making of the listed companies cannot be undermined if the misconceived reasons by the public, for their participation is to be corrected.

6.7 Conclusion

The role of shareholder is recognized as critical for good corporate governance practice. Shareholders do not assume responsibilities for

day-to-day management of a corporation. However, they can influence the behavior of the corporation over the longer term through exercising influence on fundamental matters. This work proposed initiatives to improve communication with shareholders, and to encourage their active involvements in company meetings it also suggested some important amendments to CAMA, which the writer believes will facilitate and promote the exercise by shareholder of important governance rights[2] the suggested amendment in this area should be designed to:

1. To encourage companies to embrace technology particularly the internet, email)and other forms of electronic communication such as web casting[3] , to improve communications with shareholders particularly in the area of the distribution of notice of meeting and annual reports by using electronic means.

2. Ensuring the issuance of more comprehensive notices of company meetings so that shareholders can fully understand the contents of the notices i.e. notices should be clearly worked and presented in a concise and effective manner.

[2] being informed of company activities as well as to participate in and to vote at general meetings of the company

[3] This involves live transmissions of audio Visual Material over the internet, mass communication of information or using the internet to broadcast information.

3. Improve shareholder access to general meeting by facilitating proxy voting (in particular electronic proxy voting by permitting regulations to prescribe mechanism, which authenticates proxy appointments provided electronically.

The object of this thesis is that real shareholder participation entails actual participation in the formulation of decisions and strategies of the corporation. This is because active participation provides a vehicle through which shareholders can have input into the activities of such companies. It is believed will give all shareholders a forum through which their views could be directly fed into the corporate making decision process.

The support, for shareholder participation as a mechanism for achieving good governance practice is significant, but more needs to be done than just improved communication between the company and its shareholders. Communication alone does not provide for shareholder participation in the real sense of the word. Shareholder can “lie on the couch” and receive company announcement in the mail day after day, and still feel removed from the actual inner hub or workings of the company.

This is why we need to make concerted effort to substantially reduce the separation of ownership and control in public companies so that shareholders that wish to “get off the couch” and play a useful role in the company are given the chance to do so. We believe that though this work is a humble attempt at improving shareholders role in decision making of companies but one that is a positive step towards achieving this feat.

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APPENDIX

QUESTIONAIRE

TOPIC: AN ANALYSIS OF MEETINGS IN AS EFFECTIVE MEDIUM FOR SHAREHOLDERS PARTICPATION IN COPORATE MANAGEMENT UNDER THE COMPANIES AND ALLIED MATTERS ACT

Please kindly assist in answering and filling in your response to the following questions.

1. Age _____

2. Occupation _____

3. (a) Are you Literate ( ) (b) Non – Literate ( )

4. What is your literate level?

   (a) High ( ) (b) Medium ( ) (c) Low ( )

5. In how Many companies do you have shares?

   (a) 1–10 ( ) (b) 1 –20 ( ) (c) More than 20 ( )

6. What percentage of your income do you invest in shares?

   (a) Less than 5%( ) (b) More than 10% ( ) (c) Not consistent ( )

7. What is / are your reasons for investing in shares? (You can tick 2 0ptions)
   (a) Share appreciation( ) (b) Divided income

(c) Interest in company working ( ) (s) Other reasons( )

8. Have you attended any Annual General Meeting (AGM) of a company where you own shares?

(a) None ( ) (b) Some ( ) (c) Attended most ( )

(d) Attended all ( )

9. What is your reason for none participation at AGM?

(a)Low stake( ) (b) Management knows best ( ) (c) No time ( )

(d) Majority shareholder will take care ( ) (e) No interest ( )

(f) Do not know about us ( )

10. How early do you receive notice of Meetings?
(a) Before the date fixed for the meeting ( )
(b) After the date fixed for the meeting ( ) (c) Not at all ( )

11. Have you ever filled or returned any proxy form?
(a) Yes ( ) (b) No ( ) (c) Not sure ( )

12. Have you ever voted in an AGM meeting?
(a) Never vote( ) (b) Vote sometimes ( ) (c)Always vote ( )

13. Which of the following options will you prefer as a means of communication between your company and you?
(a) E – Mail ( ) (b) SMS / GSM ( ) (c)Telephone ( )
(d) Through Bank( )

14. Kindly provide suggestions that will encourage you to participate in company meetings

(a)Incentive like gifts and lucky draws ( )

(b)Improving accessibility / proximity of venue ( ) (c) Other

i_____

ii_____i
ii_____

15. What is your source of information about the company in which you invested?

(a) Radio ( ) (b) Television ( ) (c) Newspaper ( )

(d) GSM Internet ( ) (e) Financial statement of company

(Choose any two)

16. How often do you access the means of communication you choose above?

(a) Daily ( ) (b) Weekly ( ) (c) Monthly ( ) (d)Yearly ( )

17. Which of the following means of participation will you prefer as a voting media on a proposed resolution of your company?

(a) E - Mail ( ) (b) SMS ( ) (c) Telephone ( )

(d) Postal Ballot ( )

18. Are you aware of the existence of shareholder Organization in you locality, residential or working area?

(a) Yes ( ) (b) No ( ) (c) I don't know ( )

19. Do you belong to any shareholder organization?

(a) Yes ( ) (b) Know ( ) (c) If yes which one ( )

(d)If Know why( )

This questionnaire is a field study to determine the extent of participation in company meetings, to reduce the current seemingly

apathy as a means to proffer solutions for improve participation in company meetings.

THANK YOU.