EFFECTIVENESS OF THE COMPANIES AND ALLIED MATTERS ACT, 2020 IN NIGERIA'S QUEST FOR FOREIGN INVESTMENT

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Abstract

The corporation is the major vehicle for driving economic activities within a given jurisdiction. Thus, corporate statutes in every jurisdiction provide for the regulation of corporate actors and relationships among corporate participants. Companies and Allied Matters Act (CAMA) 2020 is the primary legislation that regulates the operations of corporations in Nigeria. Shareholders are contributors to corporate capital and they are protected under corporate statutes. This paper argues that shareholders' protection is imperative for attracting investment capital and identifies protection under corporate statutes and their enforcement is fundamental to the decision to invest. The paper investigates the provisions in the CAMA for shareholders/ investors protection. This investigation reveals a major gap in the disclosure rules. The paper contends that this gap and the acknowledged enforcement deficiency in the Nigerian justice system renders the current CAMA inadequate for protecting investors. The paper suggests

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amendment of CAMA to among other thing provide timelines for the speedy resolution of cases concerning shareholders' rights.

Keywords: Corporate Law, Corporate Governance, Shareholders Protection, Foreign Investment, Corporate Finance.

1. Introduction

On Friday 7th of August 2020 the President of Nigeria signed into law the long awaited Companies and Allied Matters Act (CAMA) 2020, which repeals and replaces the Companies and Allied matters Act 1990[1] that has been regulating the operations of Nigerian companies for thirty years. This piece of legislation has been hailed by most companies and industry experts as a great charter for the ease of doing business in Nigeria.[2] The Partner and Head Tax and Regulatory Services, PricewaterhouseCoopers (PwC Nigeria), Taiwo Oyedele, who spoke in a virtual Capacity Enhancement Workshop for Journalists said that the law is "good" and he describes the law as the most important business regulation in the country with significant impact on doing business, competitiveness, attracting investment and economic growth.[3] He identified those aspects that promote ease of doing business to include the provisions for a single/shareholder company, filing of incorporation papers and annual returns, share transfer and meetings which can now be done electronically, as well as holding Annual General Meetings (AGMs) virtually.[4]

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1 Cap C20 Laws of the Federation of Nigeria (LFN) 2004.

2 O. Fasan, 'Nigeria Needs a Vibrant Third Sector but CAMA 2020 will Stifle it' *Vanguard Newspapers* (Kirikiri-Canal September 10 2020) 16.

3 C. Okereocha, "CAMA will Boost Competitiveness, Attract Investments" *The Nation Newspapers* (Lagos September 7 2020) 23.

4 *Ibid.*

The major aim for the focus of the Nigerian government on ease of doing business is to attract foreign investment. The fact that the Nigerian government desire foreign investment to drive the country's economy is obvious from the clear statement of the Nigerian Stock Exchange Listing Rules (LR).[5] For instance, rule 1.2 states that '[t]he Exchange through the Premium board aims to provide a platform for greater global visibility for eligible Nigerian entities, which will make it easier for them to attract global capital flows and reduce the cost of borrowing'.

To give further impetus to the drive to attract foreign investment the current CAMA and other ancillary legislative/regulatory reforms introduced to open up the economy since the 1990s provide for foreign participation as a strategy for bringing in foreign investment.[6] Despite the plethora of legislation/regulations put together in Nigeria to regulate the operations of business corporations', the place of CAMA as the primary legislative instrument that provides the source of regulatory rules for companies makes it a legislation of primary interest for this article.

However, the status of the CAMA as the primary legislation for regulating the operations of businesses in Nigeria raises salient questions about whether the legislative reform agenda of the

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[5] Listing Rules of the Nigerian Stock Exchange <http://www.nse.com.ng /regulationsite/IssuersRules/Rules%20for%20Listing%20on%20the %20Premium%20Board.pdf> accessed 20 December 2020.

[6] In addition to the current CAMA, other investor friendly legislation include the Nigerian Investment Promotion Commission Act, 1995, Cap N117, Laws of the Federation of Nigeria (LFN) 2004 and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act 1995. Cap F34 Laws of the Federation of Nigeria (LFN) 2004.

government is well articulated to fulfil its main goal of attracting foreign investment. This is because as some authors have argued, shareholders will only invest where their rights are protected by law.[7] In the case of Nigeria, investor protection has a major role to play with respect to attracting foreign investment because Nigeria operates the stock-market based system.[8] One major characteristic of the system is the separation of ownership and control of the corporation.[9] This separation created the potential for conflict between shareholders and managers.[10] It is based on the perception of divergence of these two interests that corporate law (at least in the common law world) focuses on the duties of managers to protect the property of the owners and maximize profits in their interest.[11]

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7 La Porta, R and others 'Investor Protection: Origins, Consequences, Reform'[1999] *Harvard Institute Economic Research discussion paper* number (188) 2; see also CA Mallin, *Corporate Governance* (5th edn., Oxford University Press 2016) 1.

8 The stock-market based system is associated with the UK and the US, and it is so classified because corporations operating under the system depend on the stock market for most of their corporate finance. Separation of ownership from control is the major highlight of this model. See Millon, D. 'New Directions in Corporate Law: Communitarians, Contractarians, and the Crisis in Corporate Law'[1993] (50)*Wash. & Lee L. Rev*; 1733; A. A. Berle and G C Means, *The Modern Corporation & Private Property* (19th Print, Transaction Publishers 2009) 66-111.

9 Berle and Means*, Ibid* 9; S M Bainbridge, *The New Corporate Governance in Theory and Practice* (Oxford University Press 2009) 4. See also CAMA sections 87(3) & (4) and 309.

10 Berle and Means *Ibid.*

11 R. Parry, "Directors' Duties within the United Kingdom" in S. Tully (ed) *Research Handbook on Corporate Legal Responsibility* (2005, Edward Elgar Publishing) 20 at 20.

Given the focus of the Nigerian government on ease of doing business as a strategy for attracting foreign investment to drive its economy, the aim of this article is to investigate this new CAMA to show how much its provisions support this important mandate. In view of the acknowledged potential for conflict between corporate managers and investors/shareholders operating under the stock-market based system, it is argued that protecting investors against corporate managers' opportunism should be at the core of any reform that seeks to attract foreign investment for a country like Nigeria.

The focus of this investigation is on large corporations: the "public" companies with numerous and constantly changing owners whose shares are traded in a public market. This is because they are the main vehicles for raising finance from the public and thus the main source for the importation of external investment capital[12] that Nigeria and other developing markets need to improve their economies.[13]There is a focus on public companies because of their peculiarities and the implications for investors/ shareholders. For example, shareholding in public corporations are atomised and dispersed, which makes it difficult for shareholders to act collectively. Secondly, ownership is always separate from management. This is unlike the situation with most private companies, where 'it is often the same people who are the owners and the controllers so that those same individuals have

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12 Giofré M. "Financial Education, Investor Protection and International Portfolio Diversification" [2017] 71 *Journal of International Money and Finance* 111 at 112-14; L E Enrique and others, 'Corporate Law and Securities Market' in R. R Kraakman and others, *The Anatomy of Corporate Law: A Comparative and Functional Approach* (3rded, Oxford: Oxford University Press 2017) 243 at 243.

13 Mallin, (n7) 1.

management and shareholder roles'.[14]These peculiarities create the environment for managerial opportunism and a basis for the conflict between corporate managers and shareholders, which some commentators argue should be the focus of corporate law.[15]

Some authors argue that investor protection is crucial because, in many countries, expropriation of minority investors and other corporate outsiders[16] by the human organs who act for the company is extensive.[17] This is why corporate statutes in many jurisdictions[18] (including CAMA)[19] provides for extensive shareholder rights and powers to rein in corporate management including the power to dismiss the board as a means of protecting themselves against expropriation by corporate managers.

Outside investors (operating under the UK model including Nigeria) rely to a large extent on mechanisms referred to as corporate governance[20] guaranteed by statute to protect themselves against expropriation by insiders. Therefore, this paper argues that a corporate statute must provide efficient corporate governance

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14 J. Birds and others, *Boyle & Birds' Company Law* (9thedn, Jordan Publishing Limited 2014) 353.

15 J. Armour, and others,, 'What is Corporate Law' in R. Kraakman, and others, *The Anatomy of Corporate Law: A Comparative and Functional Approach* (3rdedn, Oxford University Press 2017) 1, 2.

16 La Porta et all classify those who manage the company (managers and controlling shareholders) as corporate 'insiders' and others engaged in sundry relationships with the corporation as corporate 'outsiders': La porta et al, "Investor Protection' (n 7) 1.

17 *Ibid.*

18 See for example, sections 281-87, 160, 168, 170-77 UK Companies Act (UK CA) 2006.

19 See sections 248-56, 272-74, 288 CAMA 2020.

20 La Porta et al, "Investor Protection (n 7) 1.

rules and access to effective enforcement to be able to engender investor confidence. This is because some of the principal sources of opportunism that are endemic to corporations which most of corporate law respond to are conflicts between managers and shareholders and conflicts between controlling and non-controlling shareholders.[21] Thus, the premise of this paper is that such conflicts should be the focus of any corporate legal regime that seeks to attract foreign investment. This is because as some argue, investor protection is "particularly important for investors considering purchasing securities issued by a company from another country".[22]

The paper is divided into five parts including this introduction. To underscore the desire for foreign investment by the Nigerian government, part two discusses some of the foreign investor friendly legislation enacted since the 1990s as part of legislative reforms introduced to liberalise the economy with a view to attracting foreign investment. Since the article argues that statutory protection for investors is an imperative for investor confidence, part three interrogates the CAMA as the primary source of regulatory rules for companies. The aim is to show how the current regime protects investors/shareholders' interests. Nigeria's corporate legal framework being modelled on that of the UK,[23] part four undertakes a brief comparison of the strategy for protection of investors under the UK and the Nigerian regimes to provide a basis

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21 Armour et al, (n15) 2.

22 Bebchuk, L. and Weisbach, M. S. 'The State of Corporate Governance Research' [2009] *National Bureau of Economic Research Working Paper* No 15537, 18, available at: <http://www.nber.org/papers/w15537> accessed 7 December 2020.

23 La Porta, R and others 'Corporate Ownership Around the World' [1999](24)(2)*The Journal of Finance*; 471, 496; L Talbot, *Progressive Corporate Governance for the 21st Century* (Routledge 2013) 162-63.

for the criticism of the Nigerian system that follows. The aim of the criticism of the Nigerian regime is to highlight the shortcomings in the regime that necessitated this inquiry. Part five concludes the discourse.

2. Nigeria's Legal/Regulatory Reforms and Operation of Business: A New Challenge.

Corporate activities is not indigenous to Nigeria where the indigenous occupations of the people were mainly agrarian. Before the colonialists came to Nigeria, trade in the territory now known as Nigeria was mainly internal in a rural and peasant economy.[24] The British colonialists introduced the idea of using the corporation as a vehicle for carrying on trading activities in Nigeria. The relevance of the corporation as a structure useful for trading operations necessitated the promulgation of Companies Ordinances beginning with the Companies Ordinance of 1912.[25]A comprehensive programme was developed only after the World War II when a Ten-Year Development plan (1945-1955) was launched by the colonialists to develop commerce in the colony. This became necessary as the colonialists sought to create awareness of the opportunities for private enterprise.[26]

The deliberate policy of the government in post-independence Nigeria to encourage local participation in commercial activities in Nigeria accelerated commercial activities in the country.[27]Before and immediately after independence in 1960 most of the companies operating in Nigeria were foreign companies. In addition to accelerating commercial activities in Nigeria, post-independence

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[24] J. O. Orojo, *Company Law and Practice in Nigeria* (5th ed, LexisNexis 2008) 3.

[25] *Ibid.*

[26] *Ibid*.

[27] *Ibid* 4.

programs of the government were also aimed at limiting foreign participation and opening the economic space to Nigerians. Several restrictions limiting alien participation in economic activities were introduced during this period beginning with the Exchange Control Act, 1962, and the Immigration Act, 1963.[28]

As part of the reforms to promote economic activities in the country, the Companies Act 1968 was promulgated (as the Companies Decree No. 51 of 1968)[29] to replace the Companies Act of 1963. The 1963 Act itself metamorphosed from the 1954 Ordinance which was in operation in Nigeria before independence.[30] One of the major highlights of the 1968 Act was the compulsory local incorporation requirement for all foreign companies intending to do business in the country.[31] Prior to the 1968 Act foreign companies operating in the Nigerian economic space were registered in England and they were regulated under English statutes.

Most of the reforms of the 1960s opened the economic space and helped to promote local participation in commercial activities. However, the oil boom of the 1970s provided further impetus to promote local participation in economic activities as improved economic condition of the government encouraged the introduction of further restrictions to limit alien participation. The limitation of alien participation during the oil boom period was promoted through a series of Nigerian Enterprises Promotion Acts enacted

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28 *Ibid* 9.

29 Promulgated because the law was made by the Military Government.

30 H. Y. Bhadmus, *Bhadmus on Corporate Law Practice* (4th edn, Chenglo Limited 2017) 2.

31 Orojo, (n24) 17.

between 1972 and 1977.[32] The most profound in this series of legislation was the Nigerian Enterprise Promotion Act of 1977 (otherwise known as the Indigenisation Decree),[33] which mandated the transfer of businesses owned by foreigners to Nigerians.[34]

The economic challenges of the late 1980s and early 1990s occasioned in part by low commodity prices and the resultant poor foreign exchange earnings which created balance of payment difficulties and made repayment of foreign loans difficult for most developing markets including Nigeria.[35] Nigeria responded to the emerging challenges with a new liberal economic policy[36]which is driven by comprehensive legislative reform. As a result, a plethora of foreign investor friendly legislation have been put in place since 1995 with the aim of attracting foreign capital. The new CAMA has also been hailed as good law with a significant impact on attracting investment among others.[37] In addition to the CAMA, some of the other legislation relevant to the policy of trade liberalisation and foreign participation in the Nigerian economy are the Nigerian Investment Promotion Commission Act (NIPCA)

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[32] *Ibid* 5.

[33] *Ibid.*

[34] The Act prohibited aliens from starting certain reserved business as well as mandating the compulsory sales to Nigerians of all their interests in any business included in the First Schedule of the Act. The Act also mandated the compulsory transfer to Nigerians of foreign interests in excess of 40 percent of the equity with respect to companies in the Second Schedule, and the transfer to Nigerians of foreign interests in excess of 60 percent equity in companies in the Third Schedule.

[35] D. C. Korten, *When Corporations Rule the World* (2nd ed., Kumarian Press Inc. and Berrett-Koehler Publishers Inc. 2001) 163.

[36] Orojo, (n24) 9.

[37] Okereocha, (n3).

1995[38] and the Foreign Exchange (Monitoring and Miscellaneous Provisions) Act (FEA) 1995.[39] Because of the importance of the NIPCA, the FEA, the NCCG, and the CAMA in this context, they are discussed below to underscore how the underlying liberalisation policy of the Nigerian government shaped the country's legislative reform with almost exclusive focus on attracting foreign capital.

2.1 The Nigerian Investment Promotion Commission Act

The NIPCA repealed and replaced the Industrial Development Co-ordination Act (IDCA) 1988 thereby making the restrictive provisions of the IDCA inapplicable. As a result, the IDCA has been excluded from the Laws of the Federation of Nigeria (LFN) 2004. Section 17 of the NIPCA[40] expressly provided for the participation of a non-Nigerian in the operation of any enterprise in Nigeria, except that they are not permitted to participate in the operation of enterprises engaged in operations listed under the 'negative list'. The 'negative list' as defined by section 32 contains production of arms and ammunitions, production and dealing in narcotic drugs and psychotropic substances, production of military and para-military wear and accoutrement, including those of the police and customs, etc.[41]

In addition to lifting the ban on alien participation under section 17, section 19 of the Act authorises any person who intends to establish an enterprise to which the Act applies to make application for incorporation/registration in accordance with the provisions of the

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[38] Cap N117 Laws of the Federation of Nigeria (LFN) 2004.

[39] Cap F34 Laws of the Federation of Nigeria (LFN) 2004.

[40] See note 38 above.

[41] See section 32 (a)-(d) of NIPCA.

Companies and Allied Matters Act 1990.[42] Apart from removing the impediments to alien participation in enterprises in Nigeria, the Act also authorises the Commission (the Nigerian Investment Promotion Commission)[43]to grant some incentives for the purposes of promoting investment. Accordingly, section 22 provides that the Commission may, with the approval of the Government, specify incentive package for the promotion of investment as well as issue guidelines specifying priority areas for investment according to Government policy.[44]

Security of investment was also given legislative spine by virtue of investment guarantees in sections 24 and 25 of the NIPCA. Section 24 guarantees foreign investors unconditional transferability of funds through an authorised dealer in freely convertible currency, with respect to:

(a) Dividends of profits (net of taxes) attributable to the investment

(b) Payment in respect of loan servicing where a foreign loan has been obtained, in other words, a loan obtained outside Nigeria and denominated in any convertible currency;[45] and

(c) The remittance of proceeds (net of taxes), and other obligations in the event of a sale or liquidation of the enterprise or any interest attributable to the investment.

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42 Now the Companies and Allied Matters Act 2020 since the later Act repealed and replaced the prior Act.

43 The Commission is established under the Act to "co-ordinate investment; to initiate and support investment policies, promote investment and to collect and disseminate information on investment and so forth". See section 4 NIPCA.

44 Section 23 *ibid.*

45 Section 32 NIPCA.

Section 25 of the Act provides guarantee against expropriation by the government. Accordingly, section 25(1) provides that:

> [s]ubject to sections (2) and (3) of this section -
> (a) No enterprise shall be nationalised or expropriated by the Government of the Federation; and
> (b) No person who owns, whether wholly or in part, the capital of an enterprise shall be compelled by law to surrender his interest in the capital to any other person.

Further guarantee is given under section 25(2) against acquisition of any enterprise to which the Act applies by the Federal Government unless the acquisition is in the national interest or for a public purpose and under the law which makes provision for the payment of fair and adequate compensation.[46] The Act also guarantees investors right of access to court for the determination of the investor's interest or right and the amount of compensation to which he is entitled.[47] The Act further provides guarantees on the payment of the compensation without undue delay and the authorisation for the repatriation of the compensation in convertible currency where applicable.[48][49]

2.2 Foreign Exchange (Monitoring and Miscellaneous Provisions) Act (FEA) 1995.

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46 Ibid 25(2)(a).

47 Ibid (b).

48 Ibid 25(3).

49 The Exchange Control Act 1962 and the Foreign Exchange Anti-Sabotage Act have been omitted in the Laws of the Federation (LFN) 2004.

The FEA repealed and replaced the Exchange Control Act of 1962 and the Exchange Control (Anti-Sabotage) Act of 1984. The Act provides in section 37(2) that if the provisions of any other law or enactment is inconsistent with any provision in the Act, the provisions of that other law shall, to the extent of the inconsistency, be void. Accordingly, the restrictive provisions of the two pieces of legislation above (the Exchange Control Act 1962 and The Foreign Exchange Anti-Sabotage Act 1984) are no longer applicable and they have been omitted in the LFN 2004.

The FEA permits investment by any person in any enterprise or securities with foreign currency or capital imported into Nigeria through an authorised dealer by any means, including telegraphic transfer, cheques or other negotiable instruments and converted into the Nigerian currency (Naira) in the market.[50] As a means to guarantee the safety of such imported capital, section 16(1) provides that foreign capital lawfully imported into Nigeria and invested into an enterprise shall be guaranteed unconditional transferability of funds through authorised dealer in freely convertible currency relating to:

(a) dividends or profit (net of taxes) attributable to investment;
(b) payment in respect of loan servicing where a foreign loan has been obtained; and
(c) the remittance of proceeds (net of taxes) and other obligations in the event of sale or liquidation of the enterprise or any interest attributable to the investment.[51]

[50] Section 15(1) FEA.

[51] This is *imparimateria* with the provisions of section 24 NIPCA.

Further guarantee is provided under section 17(5) that "no money imported for the purpose of this Act shall be liable to seizure or forfeiture or suffer any form of expropriation by the Federal or State Government. The Act also authorises the opening and operation of a domiciliary account designated in foreign currency, and a person applying to open a domiciliary account is not required to disclose the source of the foreign currency to be deposited.[52] The Act also protects an exporter of goods who is required to open and maintain a foreign currency domiciliary account for the purposes of receiving and retaining foreign currency from the proceeds of his export.[53]

2.3 Other Legislation/Regulations Relevant to the Foreign Investment Agenda

There are three other legal/regulatory regimes that deserve some mention with respect to the Nigerian government's drive for foreign investment – the Companies and Allied Matters Act (CAMA) 2020, the Nigerian Code of Corporate Governance (NCCG) 2018 and the Investment and Securities Act (ISA) 2007.[54]Their relevance to the discussion here is in relation to foreign participation in enterprises in Nigeria. However, the connection of the NCCG in this regard is merely tangential but critically important to the focus on investor protection (as the premise of this article) because corporate governance is the driver of corporate accountability.

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[52] See sections FEA 15-25 with respect to opening, maintaining and operating of a domiciliary account.

[53] Section 19. See also 27 concerning export of goods and service with respect to the procedure and authority to maintain and operate a foreign domiciliary account.

[54] Cap 124 LFN 2004

Foreign participation in Nigeria's economy has its primary basis in the CAMA. The primacy of the CAMA in this regard is underscored by the NIPCA,[55] which provides that any person who intends to establish an enterprise to which the Act applies must do so in accordance with the CAMA 1990.[56]The relevance of ISA on the other hand, derives from the importance of 'public' corporations, which has been identified by commentators as the main vehicle for the importation of external investment capital.[57]This is because the ISA regulates the operations of the securities (public) market where the shares of 'public' companies are traded.

The significance of the two pieces of legislation to foreign participation in business in Nigeria cannot be overemphasised. In line with government policy on liberalisation the CAMA permits foreign participation in business in Nigeria "subject to the provisions of any enactment regulating the rights and capacity of aliens to undertake or participate in trade or business".[58]The ISA for its part has removed the restriction put on alien participation in the securities market under the Investment and Securities Act 1988. The 1988 Act provides in section 7for a mandatory approval by the Securities and Exchange Commission for transactions in a company in which aliens participate. This requirement has been repealed in ISA 1995 to further emphasise government's policy on trade liberalisation. This clearly shows that the trade liberalisation policy of the government is underpinned by foreign participation in trade and business in Nigeria.

55 Section 19 NIPCA.

56 Now CAMA 2020.

57 See (n 13) above.

58 Section 20(4) ibid.

It is commendable that the government offers legislative guarantees, such as the guarantee against government expropriation or nationalisation of businesses in Nigeria.[59] However, it is argued that guarantees against government expropriation as the main strategy for attracting foreign investment may not be the most appropriate strategy to solve the problem of dearth of foreign investment in a country like Nigeria. This is because the main type of expropriation that has engaged both academic commentators and policy makers since the 1990s is type that is perpetrated by "corporate insiders" against corporate 'outsiders' (especially minority and outside investors).[60]

It is as a result of insider abuse that corporate law in the major economic jurisdictions (especially in the common law world) has focused on how to ensure the fidelity of corporate managers.[61] As a result, shareholders are granted oversight and disciplinary rights in corporate statutes.[62] They are also granted rights to receive information[63] that will enable them to know how the affairs of the company is conducted. This provides a basis for them to assess the conduct of corporate managers and rein them in where necessary in exercise of their powers under the law. Apart from private enforcement such as shareholders exercising their powers to rein

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[59] See for example, section 25(1) NIPCA.

[60] S. Bloomfield, *Theory and Practice of Corporate Governance: An Integrated* Approach (Cambridge University Press 2013) 7-17; see Mallin (n 7) 1-18, for how the actions of a few corporate managers led to the collapse of major global corporations and they have affected shareholder value and brought corporate governance problem into focus.

[61] Armour and others, (n15) 2.

[62] See notes 19 & 20 above

[63] CAMA 388.

in corporate managers, some authors identified "public enforcement" by organs of the state as another strategy for controlling corporate managers.[64]Both strategies rely upon background rules that clearly define the decision-making authority and powers of corporate actors to support their operations as well as efficient legal enforcement institutions to interpret those rules.[65] This makes the availability of efficient enforcement institutions, such as courts fundamental as the institution with the ultimate jurisdiction to enforce shareholder protection.

Investor protection laws and enforcement[66] practices have been identified as major determinants of external finance for corporations.[67] Therefore, because of the Nigerian government's desire for foreign investment, it is important that Nigeria's corporate legal regime addresses both investors/shareholders rights under CAMA as well the enforcement of those rights because legal rules for investor protection may matter far less than their enforcement.[68] The CAMA 2020is interrogated in the next part to highlight the provisions that are dedicated to protecting investors/shareholders rights, and the jurisdiction of the courts to enforce shareholders rights under the regime.

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[64] J. Armour and H. Hansmann and R. Kraakman, 'Agency Problems and Legal Strategies' in R. Kraakman and others, *The Anatomy of Corporate Law: A Comparative and Functional Approach* (3rdedn, Oxford University Press 2017) 39-41

[65] Ibid, 40-41.

[66] Enforcement refers to the entire legal process in a given jurisdiction: the court system, prosecution system etc.

[67] La Porta, R and others,, 'Legal Determinants of External Finance' [1997](52)(3)*The Journal of Finance*; 1131, 1149

[68] Coffee' J. Jr, 'Privatization and Corporate Governance: Lessons from Securities Market Failure' [1999-2000](29)*J. Corp L*; 1, 2.

3. Shareholder/Investor Protection under CAMA 2020

Current scholarship has identified shareholder/investor protection as a prerequisite for attracting foreign investment.[69] Nigeria and other developing jurisdictions need foreign capital to power their economies and promote economic development.[70] The deregulation of the economies of developing countries including Nigerian economy since the 1990s with foreign investor friendly legislative/regulatory reforms[71] attest to this fact. However, the Companies Act has been identified as the primary legislation for regulating the operations of corporations as well as for regulating relationships among corporate participants. This makes the protection for shareholders/investors under the new CAMA fundamental to Nigeria's quest for foreign investment. Thus, the CAMA is interrogated here to show how the principles underlying shareholder/investor protection is reflected under the regime.

The separation of ownership and control is at the core of shareholder protection in corporate legal regimes, especially in the common-law jurisdictions[72] including Nigeria. This separation of ownership and control which is highlighted in the CAMA by the vesting of authority to manage a Nigerian company in the board of directors.[73] Although section 87(1) of the Act purportedly divides the powers to manage a company between the general meeting of

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[69] Bebchuck and Weisbach (n22) 18; La Porta et al, 'Legal Determinants' (n66) 1149.

[70] See the excellent and detailed analysis by Peter Muchlinski on the dearth of foreign investment in developing markets: P T Muchlinski, *Multinational Enterprises and the Law* (2nd edn, Oxford University Press 2007); Bebchuck and Weisbach (n22) 21.

[71] In the case of Nigeria, see the discussion above on legislative/regulatory reforms in Nigeria since the 1990s.

[72] Berle and Means (n8) 9.

[73] Section 87(3) CAMA.

the company and board of directors, the Supreme Court of Nigeria has since recognised the primacy of directors in corporate administration in Nigeria in the case of *Baffa v Odili*[74] as the persons duly appointed by the company to direct and manage the business of the company.[75]

To underscore the pivotal role of directors in the management of a Nigerian company, the CAMA further clarifies the division of management powers between general meeting and the board of directors by providing that the company shall be managed by the board of directors who may exercise all such powers except those reserved for the general meeting under the Act or the articles.[76] The separation of ownership and management is complete under CAMA with management of the corporation firmly in the hands of directors. As a result, offering protection to the owners of shares (shareholders/investors) becomes imperative. This imperative is recognised by CAMA 2020 as shareholder are granted oversight and disciplinary powers aimed at protection for their class. For example, the legal position of directors as provided in section 309(1) shows a clear intention to subject corporate managers to shareholders' interest. The CAMA puts directors legal position in the following words: '[d[irectors are trustees of the company's moneys, properties (sic) and their powers and as such must

[74] (2001) 15 NWLR (pt 737) 709.

[75] Ibid at 737. In this case the powers of the director to direct and manage the business of the company, according to the court, derives from the provisions of section 244 of the old CAMA (LFN 2004), which is contained in section 269(1) CAMA 2020, which provides that '[a] Director of a company registered under this Act is a person duly appointed by the company to direct and manage the business of the company'.

[76] Section 87(3) CAMA.

account for all the monies over which they exercise their powers honestly in the interest of the company and all the shareholders'.

To ensure directors' loyalty, shareholders are the only group that is granted powers under CAMA to control the board of directors or review its activities. The Act provides a number of legal controls necessary to achieve the envisaged protection through a broad range of directors' general duties (set out in section 305), based on equitable principles relating to fiduciary duties.[77] Section 305 provides that a company's director have a fiduciary relationship towards the company as a result of which he is required to observe utmost good faith towards the company in any transaction with the company or on its behalf.

Oversight powers granted shareholders under corporate statutes has been attributed to their position as the last in the corporate revenue distribution chain, which makes them to 'have the strongest economic incentive to care about the residual claim, which means they have the greatest incentive to elect directors committed to maximising firm profitability'.[78] CAMA recognises the need for shareholder protection as they are granted the right to attend general meetings,[79] and the right to vote at such meetings.[80]

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[77] Ojogbo, S.E. and Ezechukwu, N.V. 'Shareholder Protection: A Comparative Review of the Corporate Legal/Regulatory Regimes in the UK and Nigeria' [2020] (63) (3) *Journal of African Law*;399, 409.

[78] Bainbridge (n9) 50.

[79] See section 244 CAMA for those entitled to receive notice of meetings, and section 251 for members' right to attend any general meeting of the company. See also section 252 which provides that "[e]very person who is entitled to receive notice of a general meeting of the company as provided under section 251 of this Act, is entitled to attend such a meeting.

[80] See section 248 & 249 CAMA for voting rights and voting procedures.

This also includes the right to vote on the appointment[81] and removal of directors.[82]

In addition, CAMA provides certain safeguards and control mechanisms for shareholders to rein in directors to ensure adequate protection for their class.[83]This is ostensibly a channel through which shareholders can ensure that directors focus on promoting the interest of the company for the benefit of its shareholders. One of the major powers granted to the shareholders under the CAMA in this regard is the power to petition for relief if the company's affairs are being conducted in an illegal manner.[84] Section 354 provides the grounds upon which such application may be brought before the court. To ensure that this power is not illusory, section 355 gives the courts very wide-ranging jurisdiction to grant relief against any illegal or oppressive conduct of a company's affairs by those in charge.

As some authors argue, the ability of shareholders to exercise powers granted to shareholders under CAMA depends largely upon the quality of information they have about board activities.[85] The CAMA provides extensively for the means through which shareholders can obtain information on board activities. The primary means for making information available under the CAMA

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81 *Ibid* section 273.

82 *Ibid* section 288.

83 In addition to protecting shareholders, the CAMA also provides protection for other interest groups. One prominent group protected under CAMA is the creditor class as one of the corporate groups granted power to apply to court to redress illegal or oppressive conduct by corporate insiders. See sections 353-364.

84 Section 353 CAMA.

85 Ojogbo and Ezechukwu (n 77) 415.

is through accounting records provided for in section 374. This section explicitly mandates the board of directors to keep accounting records to show and explain company's transactions. Section 374(2) provides that:

> [t]he accounting records are sufficient to show and explain the transactions of the company and as such, are to-
> (a) disclose with reasonable accuracy, at any time, the financial position of the company; and
> (b) enable the directors to ensure that any financial statement prepared under this Part comply with the requirements of this Act as to form and content of the company's financial statement.

The accounting records are required to contain among other things, entries from day to day of all sums of money received and expended by the company and record of assets and liabilities of the company.[86]
It is instructive that the accounting records are required to be sufficient enough to show and explain the transactions of the company and also to disclose, with reasonable accuracy, the financial position of the company at any time. This is because the accounting records are the basis for preparing the financial statements which directors are required to prepare in respect of each year.[87] Except for the exemptions with respect to private companies,[88] the financial statements required to be prepared

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86 Section 374(3)(a) & (b) CAMA.

87 *Ibid*s.377(1).

88 *Ibid s* 377(3)

under section 377 shall include, statement of the company's accounting policy; the balance sheet or balance sheet as at the last day of the year; profit and loss account; notes on the accounts; the auditor's report; the director's report; statement of the source and application of fund or statement of cash flow; changes in equity etc.[89]

The financial statement required under section 377 must comply with the comprehensive format for preparing such accounts as laid down in First Schedule to CAMA.[90] CAMA mandates the inclusion of balance sheet and profit and loss account in the financial statement in the following words: '[t]he balance shall give a true and fair value of the affairs of the company as at the end of the year, and the profit and loss account shall give a true and fair view of the profit and loss of the company for the year'.[91]

In addition to the financial statement, the directors' are also required to prepare "Directors' Report" in respect of each year, which should contain a fair view of the development of the business of the company and its subsidiaries during the year.[92] The financial statement derives from the company's accounting records.[93] This is supported by the directors' report required to among other things report the financial activities of the company in the course of the year and any significant change in those activities in the year.[94] The fact that the Act imposes a duty on directors to lay and deliver financial statement before the company

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89 *Ibid* s,377(2).

90 *Ibid* s,378.

91 Section s.378(2) CAMA.

92 *Id*s.385(1)(a).

93 *Id s*.374(2)(b).

94 *Id* s.385(2)

in general meeting,[95] and grant shareholders right to obtain copies of such statements[96] shows that its purpose is primarily to inform shareholders of the state of affairs in the company.

The oversight rights and disciplinary powers granted shareholders under CAMA are the means by which shareholders control directors, and rein them in to ensure that they conduct the affairs of the company in line with their obligation to manage the affairs of the company for the benefit of the company and its shareholder. Therefore, the importance of giving shareholders information about the state of affairs in the company through the financial statement cannot be overemphasised. This is because it is only through such information that shareholders could assess directors' fealty. Some authors argue that it is on the basis of such information that "shareholders can effectively exercise their rights of supervision and control over the directors, including the power to petition for relief if the affairs of the company are being conducted in an illegal or oppressive manner".[97]

Protection for shareholders is about the rights and powers that they are granted under corporate legal regimes and effective access for their enforcement. It would appear that the oversight rights and disciplinary powers granted shareholders under CAMA provide enough protection for shareholders of a Nigerian company. Since enforcement may sometimes matter far more than legal rules,[98] it is argued that the failure of the current CAMA to pay special attention to the exercise of Courts jurisdiction in matters concerning investors/shareholders rights and relationships among corporate participants is a major gap.

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[95] *Id* s.388

[96] *Id* s.387.

[97] Ojogbo and Ezechukwu (n 77) 411.

[98] Coffee (n 68).

In view of the above, the next part briefly compares the Nigerian regime and investor protection under the UK Companies Act and follows with a critique of the Nigerian regime to highlight the weaknesses in the Nigerian regime and suggest improvements. The discussion of the UK regime is premised on the fact that the Nigerian regime is modelled on the UK model. Therefore, the fact that the UK is major financial and economic centre[99] where foreign investment is not a challenge makes it apposite to borrow from the system or find ways to address the peculiarities in the Nigerian corporate environment since the focus in Nigeria is to attract foreign investment.

4. A Comparative and Critical Analysis of Shareholder Protection under the CAMA 2020 and the Companies Act, 2006 (UK)

There are four mechanisms that embody corporate governance under CAMA that provide a basis for shareholders to protect their class. First is that they are granted sundry rights, such as the right to attend meetings and vote on critical corporate policies and decisions including the right to discipline and dismiss corporate managers.[100] Secondly, CAMA imposes a fiduciary responsibility on directors, and section 309(1) emphasises directors' trusteeship with a duty to account for all the monies over which they exercise their powers honestly in the interest of the company and all the shareholders. Thirdly, CAMA also grants access to shareholders to obtain information on how the affairs of the company is being conducted by corporate managers through the various reports[101]

[99] M. Johnston, 'The Top Three Financial Centers in the World' (October 9 2020) <www.investopedia.com.> accessed 27 November 2020.

[100] Sections 248, 249, 273 & 288 CAMA.

[101] *Ibid*, sections 374, 378, and 387.

that the board is mandated to prepare and lay before the general meeting.[102] The information concerning how the affairs of the company is being conducted is critical to the final level of engagement, which is the right to make application to the court for relief where the affairs of the company are being conducted in an illegal manners.[103]

It would appear from the above that CAMA provides sufficient protection for shareholders of a Nigerian company against corporate insider opportunism. This is because, apart from the power of shareholders to dismiss a board by ordinary resolution without regard to contractual terms,[104] they also have a right to hold directors to account by applying to court. The CAMA grants shareholders sundry rights of action against the company and its controllers. For example, a minority shareholder may bring a personal action to enforce a right due to him personally, or a representative action on behalf of himself and other affected members to enforce any right due to them.[105] A member may also apply to the Court for leave to bring an action in the name or on behalf of a company by way of a derivative action.[106] Personal action and representative action as well as derivative action are mostly used to protect minority shareholders. However, any member may petition for relief if the affairs of the company are being conducted in an illegal manner. The court has very wide-ranging jurisdiction to grant relief in this regard, including an order that the company be wound up.[107]

[102] *Ibid*, s.388.

[103] *Ibid*, s.353.

[104] Section s.288(1) CAMA.

[105] *Ibid*, section 344(1).

[106] *Ibid*, section 346(1).

[107] *Ibid,* section 355(2).

Shareholder rights, such as voting and other sundry rights and the right of recourse to the courts found in CAMA 2020 are the basic protections available to shareholders in most common law jurisdiction that operate the UK model. The UK Companies Act 2006 provides copiously for the right of shareholders to attend meetings and to vote at such meetings.[108] Disclosure rights (i.e. right to obtain information from the corporate board through financial statements, directors report etc.)[109] and the right to apply to court to enforce the rights granted them under the Act[110] are also provided for under the UK CA. The UK CA gives the court wide-ranging jurisdiction to remedy conduct of a company's affairs 'that is unfairly prejudicial to the interest of its members generally or some part of its members'.[111]

However, since the aim for granting shareholders these rights is to protect them against insider opportunism, they may be unable to realise such rights if they are unaware of the actions of controllers that prejudice those rights. The only way for bringing corporate controllers infractions to the notice of shareholders is through corporate disclosures which is the kernel of the UK corporate governance regime. In fact, current scholarship characterise the UK strategy for shareholder protection as governance-oriented because the system depends on corporate governance rules to oversee and control corporate managers.[112]This may be the

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108 UK CA s 281-87.

109 *Ibid*, s 415.

110 *Ibid*, s 994(1).

111 *Ibid*, part 30 (ss 994-99).

112 Armour, J. and Gordon, J. N. 'The Berle-Means Corporation in the 21st Century' (working paper on file, 2008) 3, cited in Bruner, C. M. 'Power and Purpose in the Anglo-American Corporation' [2010](50)*Virginia Journal of*

explanation for why the UK system mandates extensive disclosure requirement regime to be able to enhance the quality of information available to investors/shareholders.[113] The frequency and scale of financial crises since the 1990s,[114] which has been attributed to corporate governance failure necessitated enhanced disclosure rules. The UK has responded to the challenges with several far reaching amendments to 2006 Act with a view to improving the disclosure philosophy.

The need for improved disclosure philosophy in the UK cannot be overemphasised given that it depends on compliance mechanism that largely relies on intervention by principals (shareholders).[115] This provided the basis for improving disclosure requirements under the UK CA to enhance the quality of information that the board provides to investors/shareholders so they can be better informed to make effective decisions.[116] The introduction of the Business Review (BR) by section 417, which came into operation on 6 April 2008was the first attempt at providing efficient means of communicating company affairs to shareholders. As stated in the Act, the issue section 417 seeks to address is that the UK government believe

> that companies work best … where there is effective communication and engagement between directors and shareholders, and where there are efficient mechanisms for taking

international Law; 579, 617-18.

[113] Ojogbo and Ezechukwu (n77) 413.

[114] B Tricker, *Corporate Governance: Principles Policies, and Practices* (3rd edn, Oxford University Press 2015) 10-17; Bebchuck and Weisbach (n22) 6.

[115] Armour and Gordon (n112) 3.

[116] Ojogbo and Ezechukwu (n77) 414.

> decisions critical to the running of the company … Shareholders have a key role to play in driving long-term company performance and economic prosperity. Informed, engaged shareholders – or those acting on their behalf – are the means by which the directors are held to account for business strategy and performance.'[117]

Another major improvement has been made to the disclosure rules of the UK CA 2006 with the introduction of the new chapter 4A Strategic Report (SR) to replace the BR. The SR became applicable from October 2013 and incorporates the provisions of the BR with an additional requirement on directors of all companies to prepare a strategic report for each financial year.[118] The focus on enhanced disclosure philosophy is with a view to marketing UK companies to investors. This is stated in the consultation draft of the Guidance and Strategic Report issued by the Financial Reporting Council (FRC). The FRC states in the consultation draft that the Guidance and Strategic Report 'encourages companies to experiment and be innovative in the drafting of their annual reports, presenting narrative information in a way that allows them to "tell their story" to investors concisely'.[119]

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[117] Companies Act 2006 (Commencement No. 3, Consequential Amendments, Transitional Provisions and Savings) SI 2007/2194, art 6 and sched 1, para 16.

[118] The Companies Act 2006 (Strategic Report and Directors' Report) Regulation 2013, SI 2013/1970.

[119] Cited by Birds and others (n14) 504-05.

There is a consensus among academic writers that increased disclosure makes a company more attractive to investors,[120] and the example of the UK's enhance disclosure philosophy shows that it is an invaluable strategy for attracting foreign investment. One would have expected a country like Nigeria that has a liberalisation policy that is underpinned by a desire for foreign investment to manifest this desire by way of showing outside investors the operations inside their companies, but this is not the case. CAMA 2020 came into operation only in August of 2020. This is seven years since the last amendment to the UK CA 2006 on disclosure. Incidentally, the Nigerian CAMA that is based largely on the UK Act did not incorporate the later modifications on disclosure even though the focus of the Nigerian government is to attract foreign investment.

In addition to improving the means of communicating company's affairs to shareholders, the UK Act also provides for criminal sanctions for failure to comply with the requirement to keep accounting records under section 386.[121] In the case of Nigeria, an officer of the company commits an offence if he fails to comply with sections 374 and 375(1) of CAMA concerning accounting records.[122] However, a person who commits an offence under section 376 is only liable to a penalty as the Commission (Corporate Affairs Commission) shall specify in its regulations.[123]

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120 Chen, K. C. W. and Chen, Z. and Wei, K. C. J. 'Legal Protection of Investors, Corporate Governance, and the Cost of Equity Capital' [2009] (15)*Journal of Corporate Finance*; 273, 286; Bebchuck and Weisbach, (n22) 21.

121 See section 387 UK CA for the penal consequences (and the circumstances for the consequences) for failure to comply with section 386.

122 CAMA, s 376

123 *Ibid* s.376 (3)

It is argued that the serious issue of compliance with disclosure requirements cannot be guaranteed in this manner given the importance of accounting records as the primary means through which shareholders obtain information about the affairs and operations of the company.

4.1 Criticisms of the Nigerian Shareholder Protection Regime and Suggestions

In view of the sundry rights granted shareholders under the UK and the Nigerian corporate legal regimes, it is obvious that both countries adopt compliance mechanisms that largely rely on the intervention of shareholders. However, the first step in the intervention process is the awareness about the affairs and operations of the company which is the major reason for the requirement on directors to keep sundry records. The importance of accounting records was emphasised by the New Zealand Court of Appeal which held in the case of *R v Bennet*,[124] that 'the obligation to cause accounting records to be "kept" was not merely an obligation to retain and store records but also to create records conforming with the requirements of the section. This is the same as s. 386 UK CA & s 374 CAMA, which requires every company to keep accounting records to 'enable the directors to ensure that any financial statements prepared under this Part comply with the requirements of this Act'.[125]This is why this paper considers the failure of the CAMA to state unequivocally the consequences of non-compliance a major gap.

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[124] 2 NZCLC 99,279, cited by D. French and S. Mayson and C. Ryan, *Company Law* (30th edn, Oxford University Press 2013) 257.

[125] See Section 374(1)(b).

Apart from effective disclosure regime which has been identified as a major factor that influence investment decisions, enforcement of protected rights has also been identified as a major consideration in investment decision-making.[126] Providing investors with the relevant information in an effective and efficient manner would enable them to exercise their rights of control over the board to ensure directors' fealty. Corporate managers have not always been faithful to investors given that corporate board opportunism has been partly blamed for some of the recent financial crises.[127]

Since we have identified expropriation of corporate outsiders by the insiders as the most common type of expropriation in a corporate environment, it is argued that a corporate statute should pay due attention to the jurisdiction of the court in matters related to shareholders rights. This is critically important since most of the legislation enacted to liberalise the economy and encourage foreign participation emphasise the jurisdiction of the courts to determine issues involving investors' interest or rights.[128] Some may contend that the UK statute just gives the court's jurisdiction to deal with such matters without any special provisions on how the court is to provide relief. However, the Nigerian corporate and political environment presents a different challenge. Substantial non-compliance with the provisions of CAMA could harm investors. The courts are the only institution that can be called upon to redress harm to investors. The challenges in the Nigerian

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126 La Porta and others, 'Investor Protection (n7) 6; Chen and Chen and Wei, (n.120) 275.

127 La Porta and others, 'Legal Determinants' (n67) 1137.

128 See s. 25 NIPCA, and the jurisdiction of the courts under s 353 of CAMA to provide relief when the affairs of a company is are being conducted in an illegal manner.

judicial system with respect to delays in justice delivery is well documented.[129]This makes it apposite to address issues of justice administration under the Nigerian CAMA.

The right to seek relief against different heads of misconduct by corporate managers is a recognition that corporate managers are humans who may sometimes act in their own self-interest instead of the interest of the company and its shareholders as mandated by CAMA. Companies operating in stock-market based jurisdictions, especially the major common law jurisdictions of the US and the UK are acclaimed to have better access to corporate finance because of the protection that the system offers investors.[130] One aspect of such protection is access to enforce the rights granted under the corporate legal statutes. Enforcement of legal rights in Nigeria has been a major issue. The problem with justice delivery in Nigeria was well captured in the statement by the former Chief Justice of Nigeria, Walter Onnoghen, at the opening ceremony of the 2018 National Seminar on Construction Law for Judges on 30 May 2018. He expressed concern on the implication of justice delivery on foreign investors.[131] This underscores the fundamentality of legal enforcement to investor protection and the need for an efficient enforcement regime in Nigeria where the focus of the government is to attract foreign investment.

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[129] See the detailed discussion on corporate fraud and the effect of delay in justice delivery in O. Akanmidu, 'Collapsed Band CEO Cases Point to Weaknesses in Nigeria's Justice System' (5 July 2018) The Conversation, <http://www.theconversation.com/collapsed-bank-ceos-cases-point-to-weaknesses-in-nigerias-justice-system-99236> accessed 15 November 2020.

[130] La Porta et al, "Legal Determinants" (n 67) 1137.

[131] I Nnochiri, 'Delay in Justice Delivery Scaring Away Investors (CJN)' *Vanguard Newspapers* (Lagos May 31 2018) 8; cited by Ojogbo and Ezechukwu (n77) 24.

Given the acknowledged legal enforcement deficiency in the Nigerian system, one would expect a country like Nigeria in dire need of foreign investment to significantly address issues of justice administration concerning shareholders rights and relationships among corporate participants in its corporate legal regime. In fact, it would be appropriate to prescribe a timeline for dealing with those reliefs granted shareholders under CAMA since the major challenge associated with the justice system is delay in justice delivery. The suggestion of a statute-based timeline to dispose matters affecting the rights of corporate participants under CAMA is not novel because there is already a precedent under Nigeria laws.[132] For example, the Electoral Act 2010 prescribes a timeline for resolving all election disputes in Nigeria.[133]

Since prescribing a timeline for election petition has substantially resolved the problem of justice delay with respect to election matters, it is argued that imposing a timeline under CAMA for disposing of matters relating to rights of corporate participants will go a long way to addressing concerns about shareholder rights in the Nigerian corporate environment. This is because providing for shareholder rights in corporate statutes is just a first step on the investor protection ladder. The final step is usually the availability of effective and efficient legal enforcement system that can enforce those rights.

Therefore, for a country like Nigeria that desires foreign investment it might look good to simplify registration and other administrative processes needed to promote ease of doing business

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132 See Electoral Act 2010.

133 *Ibid,* s 135.

but it is more important that the corporate statute adequately address investors protection. This is important because shareholders/investors protection is an imperative for attracting external finance for corporations. In addition to a more simplified disclosure regime, the assurance that cases related to shareholder rights will not stay forever in Nigerian courts will be another way to offer a more assured protection to foreign investors. An urgent amendment to the new CAMA is suggested to provide this assurance.

5. Conclusion

Investor protection is a major determinant of finance for corporations. Nigeria operates the stock-market-based system which is acclaimed to offer the best protection to investors. As a result, corporations operating in stock-market-based jurisdictions have better access to corporate finance. Despite this acknowledged advantage enjoyed by the common law jurisdictions, developing common law countries including Nigeria suffer from dearth of foreign capital for their corporations. This has had a major impact on their economies and the underlying reason for the legislative reforms embarked upon by the government since the 1990s to address the problem of lack of foreign capital. The latest in the series of the legislative reforms is the enactment of a new corporate legal regime (the CAMA) enacted in August 2020.

Investors' protection mechanisms are copiously provided for in the CAMA. Investors are also provided for in the earlier legislation of the 1990s, such as the NIPCA and the FEA, and the courts are also given the jurisdiction to enforce shareholders/investors rights. However, poor disclosure rules under the current legal regime and legal enforcement challenges in

the country may prevent the realisation of shareholders rights under CAMA. As a result, it is argued that delay in justice delivery identified as the major challenge of legal enforcement in Nigeria's judicial system could be addressed under CAMA. The CAMA should be amended to incorporate timelines for disposing of cases involving shareholders rights in the Nigerian corporate environment.