

**MINORITY SHAREHOLDERS
PROTECTION IN NIGERIA:**
THE CASE FOR AN INSTITUTIONALISED ARBITRATION

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Abstract*

Minority shareholder disputes in Nigeria, particularly within the corporate structures, presents a complex interplay of legal frameworks and dispute resolution mechanisms. As minority shareholders often find themselves at a disadvantage due to their limited voting power, the potential for disputes is significant, especially in the context of corporate governance and financial transactions. Arbitration, specifically tailored for protecting minority interest, emerges as a pivotal mechanism for resolving such disputes, offering a structured and efficient alternative to traditional litigation.

This paper delves into the intricacies of minority shareholder protection in Nigeria, with a focus on the role of an institutionalised arbitration platform for the resolution of the disputes. The Nigerian legal Framework, primarily governed by the Companies and Allied Matters Act (CAMA) 2020 and the Investments and Securities Act 2025, provides the foundational rights and protections for minority shareholders. However, the enforcement of these rights often necessitates a robust dispute resolution mechanism, where arbitration plays a crucial role.

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1. Introduction

The protection of minority shareholders in Nigeria's corporate landscape has witnessed significant legislative and regulatory developments over the past decade. The enactment of the Companies and Allied Matters Act (CAMA) 2020, coupled with enhanced Securities and Exchange Commission regulations and corporate governance codes, has established a comprehensive legal framework designed to safeguard minority interests. However, the effectiveness of these protections is fundamentally dependent on the availability of efficient, accessible, and reliable dispute resolution mechanisms.

Despite the robust legal framework, minority shareholders in Nigeria continue to face substantial challenges when seeking redress for grievances against company management or majority shareholders. The traditional reliance on court-based litigation as the primary dispute resolution mechanism has proven inadequate in addressing the unique characteristics and urgent nature of minority shareholder disputes. These challenges have created a significant gap between the theoretical protections afforded by law and the practical ability of minority shareholders to enforce their rights.

2. Legal Framework for the Regulation/ Protection of Minority Shareholders in Nigeria

Shareholders' disputes are closely linked to the protection of their rights. The Companies and Allied Matters Act (CAMA) 2020, the principal legislation governing corporate entities in Nigeria, provides the framework for protecting an individual minority shareholder. This deviates from the common law principle established in the *Foss v Harbottle*¹ rule. Emphatically, these exceptions are borne out of the consideration that, as a provider of capital, a shareholder should be entitled to the right to legal action to protect his rights directly or to enforce the directors' duty, which will indirectly protect his rights. The CAMA provides that a minority shareholder has the following protection;

- a. ***Right to Sue for Unfair Prejudice***²: Minority shareholders (individual or as a class) can apply to the court for relief if they believe that the company's affairs are being conducted or have been conducted in a manner that is oppressive or unfairly prejudicial to their interests.

¹ (1843) 2 Hare 461, 67 ER 189

² Section 354 of CAMA 2020

- b. **Members Direct Action³:** A minority shareholder can file a personal action against the company or its controlling members for a personal wrong, aiming to enforce their individual rights. A minority shareholder can also bring a representative action for themselves and other shareholders when a common right is breached. This includes personal representatives of deceased members or individuals to whom shares have been transferred by law.⁴ Remedies available in personal and representative actions include damages, injunctions, or declarations. Additionally, courts may award costs to the shareholder, regardless of the success of the action.⁵
- c. **Derivative Actions:** Minority shareholders can apply to the court for leave to bring an action in the name or on behalf of a company to intervene in an action to which the company is a party, for the purpose of prosecuting, defending or discontinuing the action on behalf of the company or the company's subsidiary. Typically, and in practice, the minority shareholders will bring an action against directors for wrongs done to the company or intervene in an ongoing suit for which the company is a party and where the directors have refused to defend the suit. This is particularly useful when the wrongdoers are in control of the company, and the company is unwilling to act.⁶
- d. **Investigation by Corporate Affairs Commission⁷:** The Commission may, upon the application of members holding at least one-tenth of the class of shares issued in a company that has a share capital or in a company not having a share capital, on the application of at least one-tenth of its members, or upon the application of the company, appoint one or more inspectors to investigate the affairs of a company and make a report of its findings.
- e. **Application for Injunctive or Declarative Reliefs⁸:** Any member of the company may apply to the court for injunctive or declarative reliefs to restrain the company or its officers from entering into any transaction which is illegal or *ultra vires*; where the directors are likely to derive a profit or benefit, or have profited or benefited from their negligence or from their breach of duty; any act or omission affecting the applicant's individual rights as a member; committing fraud on either the company or the minority

³ Section 344 CAMA 2020

⁴ Section 345 CAMA 2020

⁵ Sections 344(3) and 344(4) CAMA 2020.

⁶ Section 346 (1) CAMA 2020

⁷ Section 357 CAMA 2020

⁸ Section 343 of CAMA 2020

shareholders where the directors fail to take appropriate action to redress the wrong done amongst others.

- f. ***Petition for Winding up***⁹: Shareholders are also allowed to go to court for relief when the company's affairs are being conducted in an oppressive or unfairly prejudicial manner.

The Securities and Exchange Commission (SEC) also protects minority shareholders, particularly in public companies. The SEC Code of Corporate Governance for Public Companies in Nigeria, 2011 (SEC code), provide guidelines on corporate governance and the conduct of directors, ensuring transparency and accountability. Specifically, the SEC code stipulates that the board should ensure that shareholders' statutory and general rights are protected at all times.¹⁰ The board should ensure that all shareholders are treated equally. No shareholder, however large his shareholding, nor whether institutional or otherwise, should be given preferential treatment or superior access to information or other materials.¹¹

The SEC code has also made it the board's responsibility to ensure that minority shareholders are treated fairly at all times and are adequately protected from abusive actions by controlling shareholders.¹² Even though the SEC code has not particularly enumerated that protection for minority shareholders like CAMA 2020, it has made it part of the board's responsibility to ensure that the rights of minority shareholders are adequately protected.

In light of the above frameworks, it is necessary to determine the forum for the resolution of shareholders' disputes. When the law confers rights upon legal and natural persons, the standing to enforce these rights is essential to confer jurisdiction on the adjudicating institution. The CAMA, 2020, has specifically pointed out the appropriate forum for adjudicating these disputes as the Courts. According to the SEC code, any dispute arising between a minority shareholder and the company or board of directors should be discussed with the board and the company's shareholders first before it is brought to the SEC for determination and whenever the SEC determines that a company in breach, it shall notify the company concerned

9 By section 354 of CAMA 2020

10 Section 22.1 of the SEC code of corporate governance for public companies in Nigeria, 2011

11 Section 22.2 of the SEC code of corporate governance for public companies in Nigeria, 2011

12 Section 22.3 of the SEC code of corporate governance for public companies in Nigeria, 2011

specifying the areas of noncompliance or non-observance and the specific action or actions needed to remedy the non-compliance or nonobservance.

3. Challenges of the Litigation

Despite the existence of legal protections, minority shareholders continue to encounter significant challenges. These protections, while well-established, are largely tied to the adjudicatory processes of the formal court system, which remains the dominant avenue for dispute resolution. However, the inherent limitations of this system underscore the need for alternative dispute resolution mechanisms—arbitration, which now form an essential component of the broader justice system.

The current dispute resolution landscape (court-room proceedings) for minority shareholder conflicts in Nigeria is characterised by several systemic inefficiencies that undermine the very protections the legal framework seeks to provide. Some of these challenges include but are not limited to incessant adjournments as a result of power issues, leading to an unconducive environment for hearing of proceedings; absence of the judge due to 'official assignments'; lack of adequate technology to conduct virtual proceedings (in cases where primary witnesses reside outside Nigeria); congestion of the court and the need to clear significant backlogs of cases; industrial actions; transfer and elevation of judges; lack of diligence on the part of counsel and judicial officials and the general lack of trust in the judicial system.

Particularly in the case of minority shareholders protection, litigation has become more of a clog than a conduit as the complexity of corporate governance disputes, combined with the technical nature of many minority shareholder claims, requires specialized knowledge and expertise that is not always readily available within the traditional court system, leading to inconsistent interpretation and application of minority shareholder protection provisions and the process of executing judgments can be subject to further delays and procedural obstacles.

4. The Case for an Institutionalised Arbitration

Given these challenges, there is a need for a specific institution to enforce the rights to which shareholders are entitled. To this end, an institutionalised arbitral tribunal, having the same function as the traditional judiciary presents a compelling alternative for resolving minority shareholder disputes in Nigeria for the following reasons;

- a. ***Investment Friendly Means of Dispute Resolution:*** One fundamental reason an institutionalised arbitral tribunal for the resolution of minority shareholders dispute is that Arbitration protects the immediate interest of investors. Arbitration is investment friendly. Investors refrain from litigation due to its protracted nature but opt for a friendly dispute resolution technique instead. Arbitration can allow investors who are minority shareholders to circumvent the delay and lengthy adjudication experienced and witnessed in the courts.¹³
- b. ***Autonomy of Parties:*** Furthermore, another vital merit of an institutionalised arbitration for the resolution of minority shareholders dispute is that it gives parties independence. This means that the parties, by agreement, can decide how the proceedings should be run. One of the fundamental principles of arbitration is party autonomy. Through party autonomy, the parties can limit court interference, save for enforcing the award.
- c. ***Knowledge and experience in minority shareholder disputes:*** One significant way arbitration exercises the party autonomy principle is the ability of the parties to choose/ select individuals with requisite knowledge/ experience in minority shareholders-related disputes to adjudicate over the dispute. Parties in arbitration also have the liberty and privilege to select a neutral third party who is an expert in the corporate Law terrain. Thus, by the appointment of a neutral third party who is a specialist in the Nigeria corporate Law field particularly minority shareholder disputes, it is believed that the outcome will be more effective and accurate when compared with the decision attained in litigation.

¹³ U Akpan, 'Nigerian SEC and Arbitration', https://www.academia.edu/4571890/Nigerian_SEC_and_Arbitration

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- d. **Confidentiality:** Arbitration guarantees corporate stakeholders the opportunity to have their disputes resolved confidentially and privately. The connotation of this is that corporate disputes can be resolved through a private and confidential forum. In litigation, everything done by parties, from the commencement to the end of the proceedings, is open to the public. This is basically because litigation is a public dispute resolution technique where all done is open to the general public. This is also necessary considering the peculiarity of the Nigerian corporate market, the sensitivity of its activities and the possibility of an adverse effect on the shares of the company involved in the dispute.
- e. **Cost:** Another reason why arbitration is suitable for corporate disputes is the need to conserve the cost of adjudication. While we understand that minority shareholders may not have the wherewithal to pay for an arbitral proceedings, we should bear in mind that minority shareholders are a special class of shareholders and the reason various regulations are in place to protect the right of minority shareholders is because those rights can be easily infringed upon. It is, therefore, incumbent on and our recommendation that the establishing body of the arbitral institution should take into consideration the cost aspect of the proceedings depending on the annual turnover of each company.
- f. **Protection of the Reputation Parties:** The confidential nature of a minority shareholder arbitration not only benefits the minority shareholder but also the organisation affected. In this regard, the public nature of litigation leaves room for anyone to be privy to the litigation proceeding and even make some publications about rulings or orders granted by the court. This can have an adverse on the reputation of the company and can potentially affect the share value or operations of such a company. This is where the benefit of the confidentiality in arbitration comes in. While the arbitral tribunal set up adjudicate the dispute, the company can carry on its operations without fear of a reputational damage or stakeholder backlash.
- g. **Time:** It goes without saying the months and years spend in litigation is significantly minimised by arbitration. In this regard, the parties involved can bring to an end, speedily, their disputes and carry on their business. The value of resources is preserved by this timely resolution of disputes.
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As Nigeria's corporate markets continue to mature and attract increasing foreign investment, the need for sophisticated, efficient dispute resolution mechanisms becomes more pressing. International investors, who are minority shareholders in particular, often expect access to arbitration as a standard feature of their investment protection framework. The absence of systemised or institutionalised arbitration mechanisms for minority shareholder disputes may impact Nigeria's competitiveness as an investment destination.

5. Comparative Insights from Other Jurisdictions

In the previous sections of this paper, we have discussed the legal jurisprudence of the Nigerian Law on resolving minority shareholders dispute in Nigeria, considering the applicability of arbitration. In addressing this point, we have also highlighted some inherent risks or challenges that are currently being faced or may be encountered when advocating for arbitration. To address some of these local concerns or improve Nigeria's approach to resolving minority shareholder disputes through institutionalised arbitration, we have considered it imperative to consider practices in other jurisdictions with robust legal and arbitration laws. This section of the paper compares the United Kingdom, Singapore, and Canada, whilst focusing on their legal protections, arbitration practices, and lessons for Nigeria.

A. United Kingdom

The UK's Companies Act 2006 makes provisions for the protection of minority shareholders.¹⁴ There's remedies allow minority shareholders to seek relief for oppressive conduct or to sue on behalf of the company for wrongs by directors. Our review of the UK legal regime on the protection of minority interest does not reveal any express legislation endorsing arbitration.¹⁵ However, arbitration is increasingly used, supported by cases like *Fulham Football Club Ltd v Richards*¹⁶ which affirmed the arbitrability of unfair prejudice claims.

Additionally, the London Court of International Arbitration (LCIA) offers specialized expertise, and arbitration clauses are common in shareholder agreements. We have noted however that the high costs of arbitration can

¹⁴ There exists provisions for unfair prejudice petitions (s.994) and derivative actions (s.260-264)

¹⁵ Aceris Law LLC, 'Arbitration of Shareholder Disputes' (17 November 2024) <https://www.acerislaw.com/arbitration-of-shareholder-disputes/> accessed 17 May 2025.

¹⁶ [2011] EWCA Civ 855, [2012] Ch 333.

discourage minority shareholders, addressed through legal aid or cost-sharing in some cases. Nigeria can adopt the UK's statutory recognition of arbitration and encourage arbitration clauses in corporate constitutions¹⁷.

B. Singapore

Similar to the provisions in Nigeria and the UK, the Singapore's Companies Act¹⁸ also codifies the rights of minority shareholders to seek remedies for oppression or unfair acts of the majority members of the company¹⁹. In addition to the customary minority rights, the Courts in Singapore²⁰ have affirmed the arbitrability of minority interests.

Furthermore, the Singapore International Arbitration Centre (SIAC) makes provisions for a robust platform, incorporating rules required for resolving corporates disputes²¹. Singapore's pro-arbitration attitude, flexibility, and experienced arbitrators enhance efficiency. Some of the challenges include power imbalances, mitigated by SIAC's cost management rules. Nigeria may learn from Singapore's pro-arbitration jurisprudence and establish similar institutional support through the Lagos Court of Arbitration (LCA).

C. Canada

Consistent as present in the other jurisdictions previously discussed, Canada's Business Corporations Act (CBCA) offers an oppression remedy²², allowing shareholders to seek relief for conduct prejudicial to their interests. The Courts²³ apply a “reasonable expectations” test, providing clarity absent in Nigeria's jurisprudence. Arbitration is used in shareholder disputes, particularly under shareholder agreements, with support from institutions like the ADR Institute of Canada²⁴. Canada's strengths include clear judicial guidelines and arbitrator expertise, but limited precedential value of arbitral awards poses a challenge. Nigeria can adopt Canada's structured approach to assessing oppression and train arbitrators in corporate governance disputes.

17 Aceris Law LLC, 'Arbitration of Shareholder Disputes' (17 November 2024) <https://www.acerislaw.com/arbitration-of-shareholder-disputes/> accessed 17 May 2025.

18 Section 216

19 Team Farallon, 'Minority Shareholder Oppression in Singapore' (Farallon Law Corporation, 1 September 2024) <https://fl.sg/resource/minority-shareholder-oppression-in-singapore/> accessed 17 May 2025.

20 Tomolugen Holdings Ltd v Silica Investors Ltd [2015] SGCA 57, [2016] 1 SLR 373 and L Capital Jones Ltd v Maniach Pte Ltd [2017] SGHC 23, [2017] 4 SLR 149.

21 Nicholas Lingard and others, 'Navigating the SIAC Arbitration Rules 2025' (Freshfields Bruckhaus Deringer, 25 March 2025) <https://riskandcompliance.freshfields.com/post/102k5da/navigating-the-siac-arbitration-rules-2025> accessed 17 May 2025.

22 Canada Business Corporations Act RSC 1985, c C-44, s 241

23 BCE Inc v 1976 Debentureholders [2008] 3 SCR 560.

24 J Brian Casey, 'Arbitration of Corporate Disputes in Canada' (2019) 36 Journal of International Arbitration 553.

6. Lessons for Nigeria

These jurisdictions demonstrate the value of statutory recognition of arbitration, specialized arbitration institutions, and judicial support. Nigeria should amend CAMA 2020 to explicitly permit arbitration for shareholder disputes, establish SEC/NGX-backed arbitration panels, and promote arbitration clauses in shareholder agreements. Cost-sharing mechanisms, inspired by the UK and Singapore, can address power imbalances, ensuring accessibility for minority shareholders in Nigeria.

We also opine that a strong juridical support will further strengthen the enforcement processes of Arbitration awards thereby resulting in more trust and faith in the arbitration process. The role of training and aware cannot be underestimated in creating awareness. The SEC and the NGX may headline training programs for arbitrators and provide more clarity to the stakeholders in the sector. This approach may be curled from the Canadian structured awareness campaigns organised to increase entrepreneurs' disposition towards arbitration.

Additionally, the Corporate Affairs Commission (CAC) in Nigeria, established under the Companies and Allied Matters Act (CAMA) 2020, plays a key role in regulating corporate governance, including the protection of minority shareholders. The Administrative Proceedings Committee (APC) of the CAC has jurisdiction to address complaints related to corporate misconduct, particularly those affecting minority shareholders, as outlined in Part X of CAMA.

The powers and jurisdiction of the APC include investigating and sanctioning companies for oppressive or unfairly prejudicial conduct that disregards minority interests, such as unfair dividend policies or discriminatory practices by majority shareholders or directors.

The APC's authority empowers it to act on behalf of shareholders and the public, ensuring compliance with corporate governance standards. It can initiate proceedings to protect minority shareholders when their rights are violated, such as through mismanagement or exclusion from decision-making in the “one share, one vote” system. However, the APC's intervention powers remain underutilized, and its effectiveness is hampered by vague definitions of “oppressive” and

“unfairly prejudicial” conduct, relying heavily on judicial discretion. Strengthening the APC's role through clearer guidelines and enhanced enforcement mechanisms is crucial to bolstering minority shareholder protections, fostering investor confidence, and promoting a robust corporate structure in Nigeria.

Tabular comparative analysis of the three jurisdictions considered above:

Jurisdiction	Legal Framework	Arbitration Practices	Strengths	Challenges	Lessons for Nigeria
United Kingdom	Companies Act 2006 (Section 994) – Unfair prejudice remedy	Arbitration supported by Fulham Football Club Ltd v. Richards (2011); LCIA expertise; Common arbitration clauses	Judicial support, Specialized arbitrators, Enforceable awards	High Costs may discourage shareholders	Cost-sharing Mechanisms and the Statutory Recognition of this nature of Arbitration
Singapore	Companies Act (Section 216) – Oppression remedy	SIAC's robust platform; Courts affirm arbitrability (Tomolugen Holdings); Flexible procedures	Pro-arbitration jurisprudence, Cost management, efficiency	There exists power imbalances between the parties	There could be established the SEC/ NGX arbitration panel. Nigeria could also adopt SIAC's cost rules
Canada	CBCA (Section 241) – Oppression remedy with “reasonable expectations” test	ADR Institute of Canada supports arbitration; Common in shareholder agreement	Clear guidelines, Arbitrator expertise, accessibility	There is a limited precedential value of awards	Clear oppression guidelines. We could also train arbitrators in corporate governance

7. Conclusion and Recommendations

Nigeria has made significant strides in establishing a legal regime for the protection of minority shareholders, particularly with the enactment of CAMA 2020 and various corporate governance codes. The Administrative Proceedings Committee (APC) of Nigeria's Corporate Affairs Commission (CAC), under the Companies and Allied Matters Act (CAMA) 2020, has jurisdiction to address corporate misconduct, protecting minority shareholders from oppressive or prejudicial actions like unfair dividend policies or exclusion from decision-making. However, its effectiveness is limited by vague definitions and underutilized powers, requiring clearer guidelines and stronger enforcement to enhance minority shareholder protections and boost investor confidence.

In addition to above, we recommend that the SEC and NGX establishes a specialised Arbitration Panel, similar to Singapore's SIAC or Canada's ADR Institute. Cost sharing or subsidised arbitration fees for minority shareholders should also be considered, learning from the practices in UK and Singapore. The “reasonable expectations” test adopted by Canada should also be considered by Nigeria in assessing claims of oppression during arbitration.

The development of corporate disputes specific arbitration will be essential in ensuring that these protections are not merely theoretical but practical and effective. As Nigeria's corporate industry continues to mature, strengthening minority shareholder protection remains crucial for building investor confidence and promoting sustainable corporate growth.

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