

## CORPORATE GOVERNANCE AND SHAREHOLDERS' DATA PROTECTION IN THE 21<sup>ST</sup> CENTURY

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### Abstract

*Corporate governance in the 21<sup>st</sup> century has metamorphosed because of technological advancements, world crises, globalization and changing shareholders expectations. These technological advancements even though beneficial, has brought along with it, challenges relating to data quality, security and privacy. Strengthening shareholder rights and engagement has being a key objective of corporate governance reforms. These reforms include among other concepts, implementing robust shareholders data management system. This Paper discussed Corporate Governance and Data Protection in The 21<sup>st</sup> Century and Protection of Shareholders Data. This paper employs a doctrinal method of legal research by examining Statutes, case laws and existing literature on the topic and finds that data has become a valuable asset of a company in the 21<sup>st</sup> century. The protection of data therefore has risen to the highest level of corporate governance. This paper finds that the Protection of Data provisions as embodied in the Data Protection Act 2023 is not adequate. This paper recommends adequate legislative framework that caters to the needs of data subjects, compliance with good corporate governance measures that will enhance data protection in Nigeria.*

**Keywords:** Corporate Governance, Data Protection, Shareholders, Companies and Allied Matters Act, Nigeria

## **1.0 Introduction**

The 21<sup>st</sup> century has witnessed significant legal reforms aimed at improving corporate governance. These reforms are driven by technological advancement, globalisation, and increasing shareholders expectations. Shareholders data management system forms part of these reform. The advancement in technology leaves with companies' huge volume of data to manage. This in turn brings along with it, challenges relating to data quality, data security and data privacy. The directors of Company are responsible for the overall management of the company including the protection of shareholders and their data. The effective management and protection of this Data becomes an issue of great significance. This paper intends to x-ray the responsibility of the directors of companies as corporate managers in the 21<sup>st</sup> century, to ensure the protection of shareholders data This paper aims to bring to the consciousness of corporate managers with the responsibility of corporate governance of the legal implication of violating the provisions as it relates the Data Protection Act 2023.

Data has become a valuable asset in the 21<sup>st</sup> Century and its protection has become imperative if industry managers are to operate in line with international best practices and line the code of corporate governance. It is important therefore to clarify concept to enable a fuller grasp of the issues.

## **2.0 Conceptual Framework**

### **2.1 Corporate Governance**

**Corporate Governance refers to the system of rules, practices and processes by which Corporations are directed and operated.**

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The Organisation for Economic Development (OECD), defined corporate governance as:

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<sup>1</sup> Tricker, B. (2015). Corporate Governance: Principles, Policies, and Practices (3<sup>rd</sup> Ed.) Oxford University Press

*“The system by which business corporations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as the Board, managers, shareholders, and other stakeholders and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structures through which the company objectives are set and the means of attaining those objectives and monitoring performance”<sup>2</sup>*

The Companies and Allied Matters Act 2020 made ample provisions as it relates to the role of the directors in enhancing corporate governance. The Act, strengthened the Board Composition and oversight<sup>3</sup> by including the appointment of three independent directors. This provision eliminates bias and ensures independent oversight over the affairs of the company. Also one person cannot serve as both Chairman and chief executive officer.<sup>4</sup> This is to ensure separation of executive powers from Board supervision. A person cannot serve in more than five boards of a public company,<sup>5</sup> the reason for this is to free up time for the directors to properly oversee the companies they are directing. The direct consequence is disclosure requirement<sup>6</sup> of other directorship to promote transparency in the system.

Apart from the above, the duties and Liabilities of directors are codified in the Act. The directors must act in good faith and in the best interest of the company.<sup>7</sup>

Corporate governance provides the structure through which the company objectives are set as well as the means of attaining and monitoring the performance of those objectives.<sup>8</sup> Quite unlike in the past their personal liability is now provided for under the Act where

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<sup>2</sup> <https://corpgovnigeria.org>. ‘Corporate Governance in the Age of Digital Transformation’ Accessed on 16<sup>th</sup> March 2025 incomplete citation

<sup>3</sup> Companies and Allied Matters Act 2020, s. 275 (1)

<sup>4</sup> Ibid. s 265 (6)

<sup>5</sup> Ibid. s. 307

<sup>6</sup> Ibid. s. 278

<sup>7</sup> Ibid. s. 305

they did not disclose personal interests in contracts.<sup>9</sup> They are equally prohibited from receipt of secret commission or bribes, whether directly or through intermediaries.<sup>10</sup>

The Act made robust provision on promoting shareholders Rights and Remedies, especially minority shareholders. A shareholder can apply to court for relief on many grounds including ‘ acts that are oppressive , prejudicial or discriminatory,<sup>11</sup> derivation action by the shareholders meant to checkmate corporate power,<sup>12</sup> access to corporate records and rights to inspect minutes of resolutions,<sup>13</sup> publication of audited Financial Statements<sup>14</sup> for public companies in the websites, disclosure of remuneration of directors in Annual returns,<sup>15</sup> introduction of registers of persons with significant control<sup>16</sup> to know beneficial owner and prevent money laundering and insider dealings and permission of virtual meetings for private companies.

The role of the secretary of Company in ensuring good corporate governance is huge.<sup>17</sup> The secretary of a company attends meetings of the company, its board of directors and committees. And take down the minutes. The secretary advises the company on compliance with applicable laws, rules and regulations. They maintain the registers and other records required to be maintained under the Act, they render returns and give notifications to Corporate Affairs Commission (CAC) as required under the Act.

These are some of the measures introduced by CAMA 2020 to ensure good corporate governance and ultimately protect the rights of shareholders.

Good Corporate governance therefore ensures participation of the shareholders and the directors alike in expressing themselves as it relates to the affairs of the Company. It is the enthronement of the rule of law which signifies absence of bias or favouritism, proper management of the competing interests with minimal cost, accountability and

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<sup>9</sup> Ibid. s. 312 (3) (B)

<sup>10</sup> Ibid.s313

<sup>11</sup> Ibid. s.343

<sup>12</sup> Ibid. s. 344

<sup>13</sup> Ibid. s. 234 -236

<sup>14</sup> Ibid. 374 (6)

<sup>15</sup> Ibid. 238

<sup>16</sup> Ibid. s. 119

<sup>17</sup> Ibid. s. 335

transparency in the management of the company. it is important as part of corporate governance that there has to be a degree of acceptability of the company's decision by stakeholders.

Despite these provisions, there are still challenges in the implementation of good corporate governance. there are challenges of ignorance of their rights by shareholders, court delays in administration of justice and imprecise definition of what “ Oppressive conduct “ and “ unfair prejudice” means. These and many more still undermine corporate governance.<sup>18</sup>

## **2.2 Personal Data**

Personal Data is defined as any information relating to an individual, who can be identified or is identifiable, directly or indirectly by reference to an identifier such as a name, an identification number, location data, an online identifier or one or more factors specific to the physical, physiological, genetic, psychological, cultural, social or economic identity of that individual.<sup>19</sup>

Personal Data Breach is defined as a breach of security of a data controller or data processor leading to or likely to lead to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored, or otherwise processed.<sup>20</sup>

Data subject is an individual to whom personal data relates.<sup>21</sup>

Data controller means an individual, private entity, public Commission, agency or any other body who, alone or jointly with others, determines the purposes and means of processing of personal data.<sup>22</sup>

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<sup>18</sup> Khayrah A. Enhancing Corporate Governance in Nigeria: The Impact of CAMA 2020 (2025), <https://www.researchgate.net> accessed 21 October, 2025

<sup>19</sup> Nigeria Data Protection Act 2023. S. 65

<sup>20</sup> *ibid*

<sup>21</sup> *ibid*

<sup>22</sup> *ibid*

Processing means any operation or set of operations which is performed on personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation, alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment, combination, restriction, erasure or destruction and does not include the mere transit of data originating outside Nigeria<sup>23</sup>

Sensitive personal Data means personal data relating to an individual's genetic and biometric data, for the purpose of uniquely identifying a natural person, race or ethnic origin, religious or similar beliefs, such as those reflecting conscience or philosophy, health status, sex life, political opinions or affiliations, trade union memberships or other information prescribed by the commission as sensitive personal information.<sup>24</sup>

### **Corporate Personality**

Once a company is incorporated, it acquires corporate personality. It becomes a legal person (artificial rather than natural) quite separate and distinct from its members.<sup>25</sup> This is the chief attribute of incorporation and it has far-reaching consequences. The company can have rights and duties quite distinct from that of its members. It can sue and be sued by the members and it can enter into contracts with them, and its property belongs to it and not to the individual shareholders.<sup>26</sup> Accordingly, if the company is unable to pay its debts, it may be wound up while the shareholders remain rich. Even if the shareholders remain but one, that person is a distinct legal person from the company. The case of *Salomon vs. Salomon*<sup>27</sup> aptly expressed the concept of legal personality.

In the same vein, in explanation of this principle, *Denning L.J in Bolton(Engineering) Co. Ltd v Graham and Sons*<sup>28</sup>, stated as follows:

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<sup>23</sup> ibid

<sup>24</sup> ibid

<sup>25</sup> Companies and Allied Matters Act 2020. S. 42

<sup>26</sup> ibid

<sup>27</sup> (1897) AC 22

<sup>28</sup> (1934) 1 K.B 57

*“A company may in many ways be likened to a human body. It has a brain and nerve Centre, which controls what it does. It also has hands, which holds the tools and act in accordance with direction from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company and controls what it does...”*

This position was further entrenched in the case of *Lennards Carrying Co. v Asiatic Petroleum Ltd*,<sup>29</sup> where Viscount Haldene L.C. said:

*“A Corporation is an abstraction, it has no mind of its own any more than it has a body of its own, its active and directive will must consequently be sought in the person of somebody who for some purposes may be called an agent but who is really the directing mind and will of the corporation, the very ego and centre of personality of the corporation.”*

Under the Act, company is an artificial person – corporate personality. The company acts through its members in general meeting, or its board of directors or through officers or agents duly appointed.<sup>30</sup>

The company’s articles should provide who exercises which power<sup>31</sup>. Acts of members in general meeting and of the board of directors or a managing director done in the course of the usual business of the company are treated as acts of the company itself and the company and the company will be civilly and criminally liable as if it were a natural person even in respect of ‘ultra vires’ act<sup>32</sup>. However there is no civil liability of a company if the third party is aware of the General Meeting of the Board or Managing Director.<sup>33</sup>

Acts of officers or agents must be authorised by the general meeting or Board.<sup>34</sup> The company is liable even if there is fraud or forgery by an officer of the company provided

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<sup>29</sup> (1915) AC 705 at 713 -714

<sup>30</sup> CAMA 2020. S.87

<sup>31</sup> Ibid. s. 88

<sup>32</sup> CAMA 2020 s. 89

<sup>33</sup> Ibid. S.89 (a)3

<sup>34</sup> CAMA 2020 S.99

there is no collusion with a third party<sup>35</sup> The Act specifically gave the Board of director the powers to manage a company without taking directions or instructions from members in general meeting, provided they act in good faith.<sup>36</sup>

### **2.3 Data Protection**

Data protection is the process of safeguarding data and restoring important information in the event that the data is corrupted, compromised or lost due to cyber-attacks, shutdowns, intentional harm or human error<sup>37</sup>. It embraces the technologies, practices and workflows that ensure rightful access to data, so the data is available when it's needed.<sup>38</sup>

Data protection provides tools and policies to actually restrict access to data. Compliance regulations help ensure that user's privacy requests are carried out by companies, and companies are responsible to take measures to protect private user data.<sup>39</sup>

The benefits of data protection in this 21<sup>st</sup> century are enormous. In a corporate world, data protection ensures fair and transparent corporate governance. Investor confidence and trust are also maintained.

The 1999 constitution of the Federal Republic of Nigeria,<sup>40</sup> ensures the preservation of the privacy of every citizen of Nigeria. Data protection preserves and protects personal and sensitive information of Citizens from being misused or sold and inappropriately used without consent. This ultimately guarantees a safe digital environment and increased virtual participation by stakeholders.

The 21<sup>st</sup> century is marked by evolution in digital landscape, cybercrimes and cyber threats of all kinds are gaining momentum. If individual data is not protected adequately, problems of financial losses, reputational damage, and identity theft can result. These risks can be checkmated by a robust data protection mechanism.

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<sup>35</sup> Ibid. s. 94

<sup>36</sup> Ibid. s. 87 (4)

<sup>37</sup> Ron K, What is Data Protection and Why is it Important? (2024) <http://www.techtarget.com>. Accessed on 21 October, 2025

<sup>38</sup> *ibid*

<sup>39</sup> *ibid*



### **3.0. Legal and Institutional Frameworks for Shareholders Protection in Nigeria**

The principal legislation for the management of a company in Nigeria is the Company and Allied Matters Act 2020. There are other laws and legislations which provides for shareholders protection in Nigeria. They include the Investments and Securities Act 2007 as amended, the Securities and Exchange Commission corporate codes which form some of those laws ensuring shareholders protection in Nigeria.

Shareholders, under the Companies and Allied Matters Act 2020 have certain rights that is aimed at protecting the shareholder. The rights are discussed below.

#### **Right to financial information.**

The shareholders have right to access financial information, annual reports and other relevant documents. This right is important as it helps the shareholder to monitor the performance of the company.<sup>41</sup> The Act,<sup>42</sup> spells out the rights of shareholders to inspect the company's books and records. It provides that a shareholder may apply to the court for an order to inspect the company's books and papers subject to certain conditions.

By the provision of the Act,<sup>43</sup> the shareholder can obtain copies of the company's balance sheet, profit and loss account, director's report and auditors report. The court can order a company to produce documents on information if it considers it just and equitable to do so.<sup>44</sup> This access to information enables the shareholders to hold the directors accountable, helps the shareholders monitor the company's performance and other relevant documents. Through the availability of these documents, companies can enhance transparency and build trust.

#### **Right to sue the Company**

Generally, where a wrong has been done against the company in the course of the management of the affairs of the company, it is only the company that can ratify the

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<sup>41</sup>Maverick J, " Why Do Shareholders Need Financial Statements? (2025) <https://www.investodia.com>, accessed on 21 October, 2025

<sup>42</sup> CAMA.2020 S.234

<sup>43</sup> *ibid.* S. 235

<sup>44</sup> *ibid.* s. 236

irregular conduct or sue to remedy the wrong. This principle was recognised in the landmark case of *foss v Harbottle*<sup>45</sup>

### Exceptions to the Rule

- A shareholder may by injunction or a declaration restrain the company from the following<sup>46</sup>
  - i. Illegality and ultra vires Act
  - ii. Irregular procedure
  - iii. Infringement of membership rights
  - iv. Fraud on minority
  - v. Impracticability to call company meeting in time to redress wrong done to the company or to the minority
  - vi. Where the directors are likely to derive a profit or benefit or have profited or benefited from the negligence or from the breach of duty.
  - vii. Any other act or omission, where the interest of justice so demands.

### Illegal and ultra vires Act

The Act<sup>47</sup> provides that a company shall not, carry on any business expressly prohibited by its memorandum and shall not exceed the power conferred upon it by its memorandum or the Act. In the event of such ultra vires acts, a shareholder may proceed to court on behalf of the company. In the case of *yalaju-Amaye v Association of Registered Engineers Commission*<sup>48</sup> a minority shareholder was allowed to sue where the purported appointment of new directors by the board was held ultra vires the board as there was no such power granted in the articles of Association.

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<sup>45</sup> (1843) 2 HARE 461, 67 ER 189

<sup>46</sup> CAMA 30209 s. 343 (a) –(g)

<sup>47</sup> *ibid.* s. 44(1)

<sup>48</sup> (1990) 4 NWLR pt . 145

**Irregular Procedure**

Where<sup>49</sup> a company purports to do by ordinary resolution any act the article of the company, or the Act requires to do by special resolution. Noncompliance would amount to irregular procedure that would give rise to an action by a shareholder

**Infringement of Membership Rights**

This refers to all acts or omission affecting the right of a shareholder as a member. The right of every member of a company are fundamental and is enforceable against the company on its infringement. These rights are numerous:

1. Failure to give meeting notice<sup>50</sup>
2. Right to inspect the company records<sup>51</sup>
3. Refusal to vote in resolution either by self or proxy<sup>52</sup>
4. Failure to admit duly appointed proxy<sup>53</sup>
5. Variation of class rights amongst other denials affecting the members in his personal relationship with the company<sup>54</sup>

**Fraud on the Minority<sup>55</sup>**

This refers to committing fraud on either the company or the minority shareholders where the directors fail to take appropriate action to redress the wrong done.

**Where the Directors are Likely to Derive a Profit or Benefit or Have Profited or Benefited from Their Negligence.**

The Act provides for an action by a minority shareholder where the directors unconscionably benefited or is likely to benefit from their breach of duties<sup>56</sup>

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<sup>49</sup> CAMA 2020 s. 343(b)

<sup>50</sup> *ibid.* s. 245

<sup>51</sup> *ibid.* s.375

<sup>52</sup> *ibid.* s.251

<sup>53</sup> *ibid.* s.254(3)

<sup>54</sup> *ibid.* s.166

<sup>55</sup> CAMA 2020 s. 343(d)

<sup>56</sup> *Ibid* s.3439f)

- **Derivative Action**

A derivative action<sup>57</sup> also known as a shareholder derivative suit is a lawsuit brought by a shareholder on behalf of a company against a third party. Often, the third party is an insider of the company such as the directors or executive officers. Per O. Adekeye, J.S.C. in *Agip (Nig) Ltd v Agip Petroleum International & 7 Ors.*<sup>58</sup> In reality, this type of action is done by the company but since it will not sue as plaintiff, the law makes provision for a minority to sue on behalf of the company and not on behalf of the shareholders<sup>59</sup>

- **Relief on Grounds on Unfairly Prejudicial and Oppressive conduct<sup>60</sup>**

Although the Act did not define what amounts to oppressive or unfairly prejudice or discriminatory conduct, the courts have over the years construed the expression of the term. In *Ogunade v Mobile Films (WA) Ltd*<sup>61</sup> Karibi Whyte J (as he then was) explaining the nature of the oppression or fraudulent conduct contemplated by section 201 of the Companies Act 1968 said inter alia-

*The oppression or fraudulent conduct of the majority must be harsh, burdensome and wrongful and must represent a consistent pattern of conduct intentionally directed at the oppressed minority over a period of time. Thus, negligence in conducting the affairs of a company, or lack of business ability or inefficiency will not be sufficient. Concisely stated, a petitioner under section 201 of the Companies Act 1968n must, in order to obtain relief, show that the oppressive conduct against him falls within the scope of one or more of the circumstances herein indicated.*

In *Re R.A Noble and sons (clothing) Ltd*,<sup>62</sup> it was held that a case falls within the scope of unfairly prejudicial conduct if:

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<sup>57</sup> Ibid. s.346(1)

<sup>58</sup> (2010) LCN/3794 (SC), (2010) 5 NWLR (Pt 1187, 348

Orojo, *Company Law and Practice in Nigeria*(5<sup>th</sup> edn. Cape Town Lexis Nexis Butterworths, 2008) 212

<sup>60</sup> CAMA.2020 S..354

<sup>61</sup> (1976) 2 FRCR 10

<sup>62</sup> (1983) BCLC 273

- It would suffice for a member to show that the value of his shareholding had been seriously diminished or, at least seriously jeopardized by a course of conduct by those who had de-facto control of the company, and
- The test of unfairness is objective and there is no need to show any conscious knowledge on the part of the controller that it was unfair, or any other evidence of bad faith. The question would be whether a reasonable bystander would regard it as unfairly prejudicial.

To merely allege that a conduct is unfairly prejudicial or illegal is not enough. The circumstances of the oppression or illegality must be shown.

#### **(d) Investigation of the Company**

Another way to protect minority shareholder is by investigation of the company by the commission. It is one of the new and unique interventions provided by CAMA to protect the rights of the minority shareholders and generally to ensure proper administration and management of the company.

#### **(e) Winding Up of the Company on Just and Equitable Ground**

Another protection afforded minority shareholders by CAMA is the right to petition the court on just and equitable ground<sup>63</sup> this is the most drastic form of shareholders relief. Winding up is the process whereby a company's life is brought to an end and its assets are administered by an official called a liquidator for the benefit of the creditors or members of the company. The liquidator assumes control of the affairs of the company, collects its assets, pays its debts where necessary and distributes any surplus among the members. In *Anakwenze v Tapp Industries*<sup>64</sup> this term was defined by Oguntade JSC as including the gathering in the assets of the company, disposing of such assets, meeting of the liabilities of the company and sharing of the balance between contributories.. Where the court orders that a company be wound up, the relevant provisions of CAMA relating

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<sup>63</sup> S. 571(f) of CAMA 2020

<sup>64</sup> (1992) 7 NWLR (pt 252) at 265

to winding up of companies applies.<sup>65</sup> In *General Aviation Services Ltd v Thahal*,<sup>66</sup> the court emphasized that:

*The words “just and equitable” in a winding up proceeding are a recognition of the fact that a limited liability company is more than a mere judicial entity, with a personality in a law of its own, that there is a room in company law for recognition of the fact that behind it or against it, there are individuals with rights, expectations and obligations inter se which are not necessarily submerged into the company’s structure.*

Also the Securities and Exchange Commission Code of Corporate Governance in Nigeria provides that board is to ensure that all shareholders are given equal treatment and minority shareholders are adequately protected from the abusive actions and controlling shareholders. In addition, there should be adequate shareholder representation on the board proportionate to the size of shareholding<sup>67</sup>

The essence of these rights as we have noted above are to promote corporate governance which ensures the protection of shareholders from the oppressive acts of the directors or majority shareholders.

#### **4.0 Legal and Institutional Framework for Protection of Shareholders Data**

##### **4.1 Nigeria Data Protection Act 2023**

This Act was enacted to safeguard the fundamental rights and freedoms and the interests of data subject as guaranteed under the Constitution of Nigeria<sup>68</sup>. The objective of the Act is the protection of personal information and the establishment of the Nigeria Data protection Commission<sup>69</sup> for the regulation of the processing of personal information. The Act also aims at the promotion of Data processing practices that safeguard the security of personal data and privacy of data subjects. The Act also aims at the protection

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<sup>65</sup> S. 355(3) of CAMA 2020

<sup>66</sup> (2004) 10 NWLR (pt 880) 50 sc

<sup>67</sup> <https://sskohn.com> “Corporate Governance 2021!SSKOHN”Assessed on 17<sup>th</sup> April 2025

<sup>68</sup> Nigeria Data Protection Act 2023, s.1(a)

<sup>69</sup> Ibid. s. 4

of Data subjects 'rights and provision of means of recourse and remedies, in the event of the breach of the data subject rights. The Act seeks the strengthening of the legal foundations of the national digital economy and guarantee the participation of Nigeria in the regional and global economies through the beneficial and trusted use of personal Data<sup>70</sup>

It appears the Act is more focused on Data controllers and processors and not Data subjects. This approach is commendable as a higher burden is placed on data controllers and processors to ensure and safeguard sensitive information. The Data subjects are those whose rights are to be protected. The directors therefore, who are the Data controllers and processors have the burden to ensure that the shareholders Data rights are protected.

The Act applies to the processing of personal data whether conducted by automated means or not.<sup>71</sup> The Act applies to a Data Controller or Data Processor who is domiciled in, resident in or operating in Nigeria.<sup>72</sup> It also applied if the Data Processing takes place in Nigeria.<sup>73</sup> The Act applies to a Data Controller or Data processor who does not reside or operate in Nigeria but processes the personal Data of a Data subject in Nigeria.<sup>74</sup> It is worthy to note that the Act does not apply if the processing of personal Data is solely for personal or household purposes provided that such processing does not violate the fundamental right to privacy of the Data subject.<sup>75</sup> The Act equally does not apply where personal Data is processed for the purposes of crime investigation, public health emergencies, national security, or the publication of matters in the public interest for journalism, educational or literary purposes<sup>76</sup> or commencing or defending legal proceedings<sup>77</sup> The Data Controller or Data Processor must however consider the privacy

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<sup>70</sup> Ibid. s.1(1) (a –h)

<sup>71</sup> Ibid. S. 2 (1)

<sup>72</sup> Ibid 2 (2)

<sup>73</sup> Ibid s. 2 (2) (b)

<sup>74</sup> Ibid 2 (2) (c )

<sup>75</sup> Ibid. 3 (1)

<sup>76</sup> Ibid 3 (2)

<sup>77</sup> *ibid*

rights safeguarded in the 1999 Constitution of Nigeria, the principles and lawful bases of personal Data processing and the requirement to appoint a Data Protection officer.<sup>78</sup>

The Commission (Data Protection Commission) has the discretion to determine, by regulation the types of personal Data and processing that will not fall under the scope of the Act<sup>79</sup>

The Act listed six principles that should regulate how personal Data is controlled and processed in Nigeria. A Data Controller or Data processor is required to process personal Data in a fair, lawful and transparent manner.<sup>80</sup> Personal Data should only be collected for specified, explicit and legitimate purposes and not used for other incompatible purposes. A Data Controller or Data Processor shall ensure that personal Data is adequate, relevant and limited to the minimum necessary for the purposes for which the personal Data was collected or further processed. Personal Data collected must be accurate, complete and up to date. Personal Data should be processed in a manner that ensures the security of Personal Data, including protection against unauthorized or unlawful processing, access, loss, destruction, damage or any form of data breach.<sup>81</sup>

In the same vein, the Act establishes six lawful bases for the processing of personal Data namely: consent, contractual necessity, legal obligation, vital interests, public interest and legitimate interests of the Data Controller or Data Processor.<sup>82</sup> Note that interests of the Data Controller or Data Processor must not violate the fundamental rights of the Data subjects, and must not be incompatible with the other lawful bases of processing or extend the purpose for which the Data subject agreed to.<sup>83</sup>

The Act required the Data Controller or Data processor to obtain the consent of Data subjects before their personal Data is collected or processed. Their right to withdraw their consent should also be made known to them.<sup>84</sup> Previous processing is not affected by the

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<sup>78</sup> Ibid 3(2)

<sup>79</sup> Ibid. s. 3 (3)

<sup>80</sup> Ibid. s.24 (1)

<sup>81</sup> Ibid. s. 24 (1) (f)

<sup>82</sup> Ibid s. 25 (2)

<sup>83</sup> Ibid. s. 25 (2)

<sup>84</sup> Ibid. S. 25 (2)



withdrawal of consent but subsequent processing would.<sup>85</sup> In the case of children, their parents or guardian can give the consent.<sup>86</sup>

There are other provisions in the Act like the requirements for Data processors or controllers to have Data Privacy Impact Assessment on Data subjects,<sup>87</sup> definition of sensitive Personal Data<sup>88</sup> and the requirement of Data controllers and processors to appoint Data Protection Officers.<sup>89</sup> The Act equally delineated the rights of a Data Subject.<sup>90</sup>

Though the Act has been applauded as a significant improvement on the Nigeria Data Protection Regulation (NDPR), It still has its drawback.<sup>91</sup> The independence of the supervisory authority as stipulated in the Act raises some concerns that could affect the smooth performance of its functions. The constitution of the governing council suggests a supervisory power of the executive arm of government, which may restrict the independence of the commission.<sup>92</sup>

The Act did not define “legitimate interest” as a ground for processing personal data. The data controllers and processors may have a challenge of interpretation as regards the meaning of legitimate interest.<sup>93</sup>

There is no timelines for certain compliance actions such as filing data, audit report, data retention, etc<sup>94</sup>

The Act limits the appointment of DPOs to data controllers and processors of major importance<sup>95</sup>

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<sup>85</sup> *ibid*

<sup>86</sup> *Ibid* 31 (1)

<sup>87</sup> *Ibid.* s. 28 (1)

<sup>88</sup> *Ibid.* s. 30

<sup>89</sup> *Ibid* s. 32 (1) and (2)

<sup>90</sup> *Ibid.* s. 34 (1) (a)

<sup>91</sup> Eke S, A Review of the Nigeria Data Protection Act, 2023, (2025) <https://spaajibade.com> accessed 21 October, 2025

<sup>92</sup> *ibid*

<sup>93</sup> *ibid*

<sup>94</sup> *ibid*

<sup>95</sup> *ibid*

The Act did not specify the amount of personal data that needs to be processed by data controllers or processors to be categorized as data controllers or data processors of major importance<sup>96</sup>

Apart from these few omissions, the Act has the capacity to regulate the protection of personal data of individuals.

### **Nigeria Data Protection Commission**

The commission was established under the Nigeria Data protection Act 2023 as the supervisory and regulatory authority for data protection in Nigeria, a function previously undertaken by the Nigeria Data Protection Bureau (NDPB). Data controllers and data processors must register with the Commission within six months after the commencement of the Act or of becoming a data controller or data processor of major importance.<sup>97</sup>

Data controller or data processor of major importance is defined under the Act to mean a data controller or data processor that is resident or operating in Nigeria and processes the personal data of more than such number of data subjects who are within Nigeria as the Commission may prescribe or such other class of data controller or data processor processing personal data of particular value or significance to the economy. Society or security of Nigeria, as the Commission may designate.<sup>98</sup>

Data controllers and processors involved in data processing or the control of data have the responsibility to develop and implement appropriate technical and organisational measures to ensure the security, integrity and confidentiality of personal data under its control. The measures include protecting the system from hackers, setting up firewalls, storing data securely with access to specific authorized individuals, employing data encryption technologies, developing organisational policies for handling personal Data, (sensitive or confidential data), protection of emailing systems and continuous capacity

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<sup>96</sup> *ibid*

<sup>97</sup> Nigeria Data Protection Act 2023. S. 44

<sup>98</sup> *Ibid.* s. 65

building for staff.<sup>99</sup> An aggrieved data subject may lodge a complaint with the commission.<sup>100</sup>

Where the commission is convinced that a data controller or processor has breached or violated or is likely to breach or violate any requirement under the Act or any subsidiary legislation, the commission may make a compliance order which may include warning to the data controller or processor to refrain from the act, require compliance as the case may be, impose sanctions, payment of compensation etc.<sup>101</sup>

A penalty or remedial fee may be an amount up to the

- higher maximum amount, in the case of a data controller or data processor of major importance; or
- Standard maximum amount, in the case of a data controller or data processor not of major importance.

The higher maximum amount shall be the greater of (a) N10, 000,000 and (b) 2% of its annual gross revenue in the preceding financial year.

The standard maximum amount shall be the greater of N2,000,000 and (b) 2% of its annual gross revenue in the preceding financial year.<sup>102</sup>

There are other sector specific legal framework for data protection like Child Rights Act 2023, Consumer Code of Practice Regulations 2007, Cybercrimes (Prohibition, Prevention Etc) Act 2015, Freedom of Information Act 2011, National Identity Management Commission Act 2007, National Health Act 2014 etc.

## **6.0 Classification of Data Protection as Shareholders Rights under the Nigerian Law**

The Nigerian Data Protection Act (NDPA) 2023 made ample provisions on how Data Controllers and processors deal with the information as regards Data subjects. The

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<sup>99</sup> Ibid. s. 12

<sup>100</sup> Ibid s.46

<sup>101</sup> Nigeria Data Protection Act 2023. S. 48

<sup>102</sup> ibid

shareholders for the purpose of application of this law to companies, are the Data subjects and the data controllers and processors of data are the directors. Companies which are primarily governed by the directors must give heed to Data principles as outlined in Nigeria Data Protection Act or face stiff sanctions on violation as provided under the Act.

The Act<sup>103</sup> laid down the principles of personal data processing. Under the Act, a data controller or data processor (who are the directors of the company) shall ensure that personal data (Shareholders data) is a) processed in a fair, lawful and transparent manner; b) collected for specified, explicit, and legitimate purposes, and not to be further processed in a way incompatible with these purposes; c) Adequate, relevant and limited to the minimum necessary for the purposes for which the personal data was collected or further processed; d) retained for not longer than is necessary to achieve the lawful bases for which the personal data was collected or further processed; e) accurate, complete, not misleading, and where necessary, kept up to date having regard to the purposes for which the personal data is collected or is further processed; and f) processed in a manner that ensures appropriate security of personal data, including protection against unauthorised or unlawful processing, access, loss, destruction, damage or any form of data breach.

The directors shall use appropriate technical and organisational measures to ensure confidentiality, integrity, and availability of personal data of shareholders.<sup>104</sup> The directors also owe the shareholders a duty of care, in respect of data processing and shall demonstrate accountability in respect of the above principle.<sup>105</sup>

The Act, envisaged Shareholders Data as personal Data. Personal Data was defined by the Act<sup>106</sup> as any information relating to an individual, who can be identified or is identifiable, directly or indirectly by reference to an identifier such as a name, an identification number, location data, an online identifier or one or more factors specific to the physical, physiological, genetic, psychological, cultural, social or economic identity

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<sup>103</sup> Nigeria Data Protection Act 2023. S. 24 (1) ((f)

<sup>104</sup> Ibid s. 24 (2)

<sup>105</sup> Ibid (3)

<sup>106</sup> Ibid s. 65

of that individual. Personal data and details of each shareholder are lodged with the Company for effective corporate governance.

The Rights of the Shareholders are explicitly delineated by the Act<sup>107</sup>. The shareholders have the right to access personal data stored by the company and details associated with it. The shareholder has right of erasure, restriction or rectification of any personal data. They have right to lodge a complaint with the commission. They have a right to know the source of their personal information if they did not provide it. Shareholders have a right to know the existence of automated decision –making, including profiling, the significance and envisaged consequences.

A shareholder can withdraw, at any time consent to the processing of personal data.<sup>108</sup> A shareholder can also object to the processing of personal data<sup>109</sup>The shareholders as has been enumerated have significant data protection rights under the Nigeria law that should be protected by the directors, failure of which attracts criminal and civil liability under the Act.

An illustrative case is the case of *Olumide Babala LP & Anor v True vSoftware Scandinavia AB and Anor*,<sup>110</sup> in that case, Olumide Gabalola LP is a Data Protection Compliance Organisation (DPCO), Like all DPCO's, it is mandated to ensure the protection of data privacy as well as compliance with the provisions of the Nigeria Data Protection Regulation (NDPR). The second applicant is a data subject who claims that his personal data has been collected and processed by the owners and operators of the software known as Truecaller App. The claim is that the 1<sup>st</sup> Respondent (Truecaller) uses the app to harvest telephone numbers of users around the world and makes them available to users of the software all over the world, including that of the 2<sup>nd</sup> Applicant, without the 2<sup>nd</sup> Applicant's consent. The Applicant's claim that the right to privacy has been bridged and hinged their suit as a fundamental human right action, while citing the provisions of

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<sup>107</sup> Ibid. s. 34 (1) (2)

<sup>108</sup> Ibid. s. 35

<sup>109</sup> Ibid. s. 36

<sup>110</sup> Suit No: FHC/ABJ/CS/14312/2018., judgment was delivered on the 19<sup>th</sup> of April, 2023 by justice J.k Omotosho of the Federal High Court.

the NDPR/ The 1<sup>st</sup> Respondent responds that is it not responsible for truecaller international LLP India is responsible.it therefore raises a preliminary objection on jurisdiction requesting its name to be struck off and the suit dismissed. The 1<sup>st</sup> Respondent stated that assuming it is in any way responsible for the Applicants, its Truecaller App does not provide services to non-users of the App, and that users of the App granted access and consent to their contact lists. It noted that there is no option for enhanced search for a person's phone number and that any contact available on its database is that of a user who gave consent for his details to be displayed by the App.

The Court held on the issue of whether a fundamental right was breached, that privacy right is not limited to the words defined in the constitution and that the right to life and privacy connotes everything about the parts of the human person's life, except as limited by the constitution itself. Thus, by the combined interpretation of the Constitution and the NDPR, the phone number of a person is part of his data. But the Court in dealing with the issue of breach of that personal data, held that the Applicants did not prove that their names can be searched on the App and their phone numbers revealed. They failed to discharge the burden on them. The court further examined the definition of "Data controller" and the meaning of "Processing" and held that the 1<sup>st</sup> Respondent did not unilaterally collect or harvest the phone numbers of the Applicants, but rather, it is the data controllers (users who downloaded the Truecaller Application) who gave consent and access to those phone numbers. and not the 1<sup>st</sup> Respondent. The application was however dismissed for lack of merit.

## **7.0 The Scope of Corporate Governance vis-à-vis Shareholders Data Protection**

Good Corporate governance has the capacity to prevent fraud and corruption. When a company have clear, written down policies, procedure and protocols in place, proper management of the company including personal Data of individuals are usually the result<sup>111</sup>

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<sup>111</sup> Dan B, How Corporate governance can Prevent Fraud and Corruption" <https://www.thecorporategovernanceinstitute.com> accessed on 21 October, 2025

Good corporate governance involves outlining roles, creating vigilant oversight and eliminating all possible opportunities for abuse. It makes room for transparency and accountability within the organisation. In specific terms, the Board of Directors should endeavour to observe the outlined responsibilities to protect shareholders data<sup>112</sup>.

### **Appointment of Head of Data Protection Officer in a company**

This position should not be confused with the position or role of an Information Technology Head (IT). This role is primarily responsible for overseeing the origination's data protection strategy, ensuring compliance with regulations and managing risks that is associated with data protection. They could report directly to the board to ensure that their concerns are considered promptly.

### **Instituting a Data Protection Committee**

This committee has the responsibility to deliberate on and consider the specific challenges and risks associated with data protection. The Head, data Protection Officer of the company ought to be a member of that committee so that they can work seamlessly.

### **Constant update and assessment of Data protection policies and procedures**

The Board of directors has the onerous task of ensuring that the company's data protection policies and procedures are reviewed from time to time. The policies and procedures should be updated to be at par with the changes in technology, laws and regulations and even business practices.

### **Continuous learning of evolving Data breaches**

The Board should ensure that management undergo trainings of various types on data management. Yearly exposure to workshops on the evolving data breaches can checkmate financial risk and ultimately protect data subjects.

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<sup>112</sup> *ibid*

**Enhancing cyber security infrastructure as of the measures to enhance Data protection.**

Investment in cyber security infrastructure cannot be over-emphasized. The hackers are continuously devising ways to create a gap in the system. The Company should invest in Cyber security infrastructure to safeguard and protect personal data in their possession.

**Ensure Transparency with Stakeholders.**

Transparency breeds trust. Board of directors should be transparent in dealing with data subjects on data issues including collection and usage. They should timeously report breach to stakeholders so that appropriate action can be taken.

**9.0 Conclusion/ Recommendation**

Safeguarding data in the 21<sup>st</sup> century has become an imperative and sacrosanct obligation. The board of directors has the duty of the management of a company. The challenges facing data protection in Nigeria ranges from

Inadequate cyber security infrastructure,

Nigeria as at today is still grappling with the challenge of having in place a robust Cyber security infrastructure. The expertise is still lacking. The resources for massive investment in cyber security is often a challenge.

Cybercrime and hacking,

Cyber criminals are all over the place. Hacking incidents are still common in Nigeria. Data breaches and ransom ware attacks are also on the increase.

Lack of robust Data Protection Regulations

Though there are legislations in place like the Act 2023 and allied laws and regulations, they are hardly adequate as we have to offer maximum protection to data subjects



Limited awareness etc.

Some data subjects are completely unaware of their data protection rights and this leads to indiscriminate abuses

In this digital age, the importance of data protection has led to enactment of laws and regulation which has brought to the fore the need to properly handle personal data. It is in the interest of data controllers and provide security, to show integrity and build confidence as regards personal data in its control. Noncompliance can lead to significant legal consequences and lack of trust.<sup>113</sup>

The directors, who are the alter-ego of a company should therefore ensure proper governance structures are available to ensure that that the risks are mitigated and legal obligations met.<sup>114</sup>

- i. The directors must ensure must oversee the compliance with the data protection law and all other laws and regulations that deal with data protection. The systems, policies and processes that enable compliance must be in place.
- ii. Data protection is a risk area for companies. The directors should collaborate with management, the IT department and the audit section to ensure that data protection risks are identified,, assessed and mitigated.
- iii. The directors should emphasize the need for data protection and ensure that data protection is part and parcel of their corporate culture<sup>115</sup>.
- iv. The directors should fashion out a robust Cyber security measures to protect personal data from cyber threats. Appropriate safety safeguards like encryption and access controls should be in place.
- v. In cases of data breach, the directors should notify affected shareholders affected and the regulators or any other way required by law. The root cause of the breach should be identified and future occurrences prevented<sup>116</sup>.

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<sup>113</sup> [www.https://michealedwards.uk](https://michealedwards.uk) “Corporate Governance in the Age of Data Privacy “Accessed on 17<sup>th</sup> April, 2025

<sup>114</sup> *ibid*

<sup>115</sup> *ibid*

The Act<sup>117</sup> provides that the data controller and processor shall implement technical and organisational measures to ensure the security, integrity and confidentiality of personal data in its possession or under its control, including protections against accidental or unlawful destruction, loss, misuse, alteration, unauthorised disclosure, or access.

The measures<sup>118</sup> to be taken in ensuring the shareholders personal data protection includes:

- i. pseudonymisation or other methods of de-identification of personal data;
- ii. Encryption of personal data;
- iii. Processes to ensure security, integrity, confidentiality, availability and resilience of processing systems and services;
- iv. Processes to restore availability of and access to personal data in a timely manner, in the event of a physical or technical incident;
- v. periodic assessments of risks to processing systems and services, including where the processing involves the transmission of data over an electronic communication network;
- vi. Regular testing, assessing, and evaluation of the effectiveness of the measures implemented against current evolving risks identified, and;
- vii. Regular updating of the measures and introduction of new measures to address shortcomings in effectiveness and accommodate evolving risks.

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<sup>116</sup> Ibid s. 40

<sup>117</sup> Nigeria Data Protection Act 2023. S. 39

<sup>118</sup> Ibis (2)(a –g)