

**REFLECTIONS ON THE DEPLOYMENT OF  
TECHNOLOGY IN THE HOLDING OF ANNUAL GENERAL  
MEETINGS OF PUBLIC COMPANIES IN NIGERIA.**

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**Abstract**

*The COVID 19 pandemic which assailed mankind in 2019/2020 left in its wake massive disruptions and distortions in the global supply chains, financial markets, capital markets and the entirety of the world economy. Many countries slipped into recession and some are yet to fully recover. Businesses that were used to physical deliveries were compelled by the pandemic to deploy non physical means of delivery in order to sustain the free flow in the value chain. Companies were not left out. The exigencies of the times made them to embrace and deploy remote, virtual and zoom communications for the sustenance of corporate governance. It is therefore forte of this work to reflect on this new tool of corporate communication and governance. This work will also assess the progress made so far and will suggest more pristine steps to be taken in order to better deploy technology in the annual general meetings of public companies in Nigeria.*

**Introduction**

Company meetings are indispensable in company administration and governance. A new company is bound by legislation to hold its first

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## **IBEKWE: Reflections on the Deployment of Technology in the Holding of Annual General Meetings of Public Companies in Nigeria**

board meeting not later six months after the formation of the company.<sup>1</sup>

If the company is a public company, apart from holding the first board meeting, it must also hold a statutory Meeting where it is expected to adopt the statutory report that has been made up by the board of directors.<sup>2</sup>

The statutory meeting is a form of general meeting. There are other types of general meetings. The extra ordinary general meeting and the annual general meeting are also types of general meetings.<sup>3</sup>

This paper intends to look at the entirety of matters relating to meetings, annual general meetings, deployment of technology in the holding of annual general meetings of public companies, likely challenges, suggestion and conclusion.

### **General Matters Relating to Meetings**

There are things which must be in place before the convocation of a meeting. Those things are regarded as condition precedents. They are as follows; venue of the meeting, Right of attendance, length of notice to be given to those entitled to attend and proceedings at the meeting.

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<sup>1</sup> At the first board meeting, key appointments and Resolutions that will enable the company to get off the ground are taken. The company appoints a Chairman for the board who will also doubt as the chairman of the company. Also, it designates its financial year.

<sup>2</sup> See section 235 of CAMA 2020.

<sup>3</sup> See sections 239 and 237 of CAMA 2020

### **Venue of the Meeting**

With the exception of small companies and companies having a single shareholder, all annual general meetings must be held in Nigeria.<sup>4</sup> A private company may hold its general meetings electronically provided there's a photo compliance with the provisions of its articles of association. So the venue of a company's meeting is one of the crucial things to be considered when a company is contemplating a meeting. But this position may not hold true anymore because a private company is now permitted to hold electronic Meetings.<sup>5</sup>

### **Right of Attendance**

Every person who is entitled to receive notice of a general meeting of a company is entitled to attend such a meeting.<sup>6</sup> It therefore follows that every member has a right to attend any general meeting.<sup>7</sup>

### **Length of Notice**

The length of notice required is twenty one days. Members can consent to shorter notice.<sup>8</sup>

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<sup>4</sup> See section 240 of the CAMA 2020

<sup>5</sup> Where the general meeting of a private company is to be held electronically, the minutes of the meeting shall indicate that fact. For the purposes of section 240 of CAMA, it shall suffice if the registered office address of the company is reflected as the physical venue of the meeting provided that a director and secretary shall be present at the physical venue of the meeting. Where the physical office address cannot be used, any other address in Nigeria would suffice. See also Regulation 15 Companies Regulations 2021.

<sup>6</sup> See section 252 of CAMA 2020.

<sup>7</sup> See section 107 of CAMA 2020.

<sup>8</sup> (8.... twenty one days means twenty one clear days excluding the day of service and the day of the meeting. see section 241of CAMA. A meeting called by a shorter notice must have the following ingredients; in the case of an Annual

## **IBEKWE: Reflections on the Deployment of Technology in the Holding of Annual General Meetings of Public Companies in Nigeria**

Notice is so essential that if the requisite notice is not given for a particular type of meeting, all the resolutions reached could be torpedoed by an action of an interested party.<sup>9</sup>

### **Annual General Meetings**

Annual general meeting is compulsory for all types of companies whether the company is private, public, limited or unlimited except small companies or companies with single shareholder.<sup>10</sup> It is made compulsory for companies other than a small company or a company with a single shareholder to avail the members of such company a recurrent opportunity of meeting, firstly to consider the progress and development of their company and also to take necessary action to promote their interest and that of the company.

Provisions for meetings may be made in the articles of association of a company, but in order to ensure that meetings are held at reasonable intervals, whether there is a provision in the articles of association or not, the Companies And Allied Matters Acts (CAMA) requires a company to hold an annual general meeting in each of operation, subject of course to the window of eighteen months allowed by law for the first annual general meeting to occur.<sup>11</sup>

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General Meeting, all the members entitled to attend and vote must have consented to a shorter notice, in case of other meetings, by a majority in number of members holding not less than 95 percent in nominal value of the shares of the company))

<sup>9</sup> See also *Re Hector Whaling Ltd. 1936 ch.208.*

<sup>10</sup> See section 237 of CAMA)

<sup>11</sup> Section 237 provides thus 'except in the case of a small company or a company with a single shareholder, every company shall in each year hold a general meeting to be known as Annual General Meeting in addition to any other meeting in that

There are usually two businesses transacted at every annual general meeting of a company irrespective of its status. They are the ordinary and the special businesses.<sup>12</sup>

### **Deployment of Technology in the Holding of AGMS**

The law provides for the electronic holding of the annual general meeting by a private company but there's no such provision for a public company. For a private company, for the electronic Meeting to be valid, the minutes of the meeting must so indicate.

It shall suffice if the minutes of the meeting indicate that the registered office of the company is the venue provided that a director and the secretary be present at the physical venue of the meeting.<sup>13</sup> The law also provides that the annual general meeting of every company registered in Nigeria must be held in Nigeria. For electronic meetings, it should be noted that every internet connected device makes use of an internet protocol address. An IP address is a numerical label

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year and shall specify the meeting as such in the notice calling it, and not more than fifteen months shall elapse between the date of one annual general meeting and the next. See also Yemi Badmus: Bhadmus on Corporate law Practice. 5th edition. Page 234.

<sup>12</sup> Ordinary business of an annual general meetings are six and they are, declaration of dividends, presentation of financial statements and directors reports, election of a director in place of those retiring, appointment and fixing of the remuneration of auditors, appointment of members of the audit committee and the disclosure of the remuneration of managers of a company. Some examples of the special business are alteration of the object clause of a company, re registration of companies and alteration of the provisions of the memorandum of Association of a company.

<sup>13</sup> See section 240 of CAMA 2020, see also Regulation 15 Companies Regulations 2021.

**IBEKWE: Reflections on the Deployment of Technology in the Holding of Annual General Meetings of Public Companies in Nigeria**

assigned to each device connected to a computer network that uses IP for communication. Through the IP geo location, an IP address is mapped to the real world geographic location of an internet connected device. So it follows that where the IP address hosting the meeting is a Nigerian address, the meeting will for the purposes of the Act be deemed to have been held in Nigeria. This largely satisfies the venue requirement of the Act.

For a public company, the Act did not expressly provide for deployment of technology in holding of its meetings. The Act only provides that all statutory and annual general meetings would be held in Nigeria. The Act by this, imposed a duty and an obligation on companies in Nigeria. For some unfathomable reason, it failed to provide the mode of conducting of the annual general meeting by public companies in Nigeria. A cardinal principle of interpretation of statutes in Nigeria is that courts are enjoined to adopt a wider approach as opposed to a restrictive one in the interpretation of statutes. So in this wise, whatever that is not expressly prohibited is deemed to be permitted.<sup>14</sup>

*Adetayo Adetuyi and Nanke Williams* argue that since CAMA did not expressly prohibit any mode of conducting annual general meetings, any mode be it virtual will be permissible provided that all the preconditions are met.<sup>15</sup>

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<sup>14</sup> This rule is known as the beneficial construction rule. This rule appears to be the direct opposite of the *Exclusio Unis Est Exclusio Alterius*.

<sup>15</sup> Adetayo Adetuyi and Nanke Williams; Can public companies hold virtual annual general meetings in Nigeria. Published on the 20th of April 2020. The duo are partners in Brooks and Knights.

It is opined that since virtual meetings are not expressly prohibited by Companies and Allied Matters Acts (CAMA), the Corporate Affairs Commission (CAC) can authorise public companies to hold to virtual meetings. This line of thought appears to have found expression when the CAC advisedly rolled out guidelines for the holding of Annual general meetings of public companies at the thick of the raging COVID 19 pandemic. The guidelines in the main activated the use of proxy positions by members of the company. Some of the highlights are as follows; approval must be sought and gotten from CAC before such meetings can hold. Notice of meeting and proxy forms must be sent to every member in accordance with the provisions of the Act. Quorum for the meeting is to be guided by the articles of association of the company. Only ordinary businesses shall be discussed. Any special business may be discussed provided that it is urgent and that the approval of the CAC must have been gotten. The guidelines also provide that relevant equipment's including but not limited to conference phones, call in number/ links internet connectivity, microphones must be proactively procured and made available to all attendees ahead of the meeting.<sup>16</sup> It is humbly suggested that the above guidelines though laudable, was COVID 19 specific and needs to be tinkered with. There can be no justifiable reason why a virtual AGM cannot accommodate all special businesses be they essential or not. CAC's approval before deliberations can be activated on special business is spurious and an unnecessary regulatory muscular flexing.

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<sup>16</sup> See generally, CAC's guidelines on holding of AGM through proxies - procedures.

## **IBEKWE: Reflections on the Deployment of Technology in the Holding of Annual General Meetings of Public Companies in Nigeria**

The Nigerian Exchange Ltd (NGX) has also released its own guidelines for listed companies on the bourse.

### **Advantages of Conducting Electronic AGMS for Public Companies**

A good e- AGM solution ranging from e- proxy, hybrid meetings, e- voting systems will help to facilitate conducting of the AGM leveraging on advanced technologies. A hybrid meeting is a combination of physical meeting and virtual meeting.<sup>17</sup> Shareholders can either attend physically or attend virtually through webcast and participate online and real time through online platforms.

Hybrid meetings have some benefits ranging from seamless integration of e-voting, e-proxy, online attendance and live streaming to considerable cost reduction of members who often time will travel from various destinations to arrive at the venue of the AGM. In Hong Kong, Companies Ordinance allows incorporated companies to hold hybrid meetings unless otherwise prohibited by company's articles of association. The Hong Kong institute of chartered secretaries has been promoting hybrid meetings methodologies in the past years. It is also noteworthy that the Securities and Futures Commission and Hong Kong's Exchanges and Clearing Ltd encourage listed companies/

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<sup>17</sup> One of the virtual vehicles often used is the zoom. Zoom is a product of zoom video communication and has seen its lot soar during the COVID 19 pandemic. It remains the most popular videoconferencing tool. This app was recently ranked first among free apps on apples app store ahead of whatsapp and google. This app has some down sides though, passwords are not required in order to join a call, random uninvited people could drop into zoom calls and broadcast offensive materials or contends. This has also raised privacy concerns.



issuers to explore means of reducing physical general meetings and utilize more e meetings technologies.<sup>18</sup>

### **Challenges**

Costs and technical issues associated with online meetings remain a big challenge. Companies have to make tough decision and figure out ways to increase shareholders participation which is one of the prerogatives of such meetings. Shareholders who hitherto had access to proxy voting due to their geographical location now have access to vote and ask questions directly during the meeting.

There are regulatory requirements as to timing and frequency that must be complied with when scheduling an AGM. All these if not well handled can blight the little progress that have been made using technology to hold annual general meetings.

As noted by the ICSA guidance, there remain some legal uncertainties as to whether a company can hold a wholly virtual meeting. The ICSA guidance concluded that companies can legally hold a hybrid meeting even where the articles of association did not make express provision for it.<sup>19</sup>

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<sup>18</sup> See Tricor Group: Utilising technology to overcome the challenges of conducting AGM during times of crisis July 23 2020.

<sup>19</sup> See the advisory given by GC100, a group representing the general counsel and company secretaries of the UK's largest public companies. The advisory was given in January 2021.

## **IBEKWE: Reflections on the Deployment of Technology in the Holding of Annual General Meetings of Public Companies in Nigeria**

Beyond all these is the average level of internet penetration and ICT appreciation in Nigeria. A good number of these shareholders are not internet savvy. Logging in and participating in online, real-time annual general meetings will remain daunting for many of the shareholders especially the aged ones. A study carried out by Nigerian Communication Commission put the broad band penetration at 44 percent in Nigeria as June 2022. The figure by global standards is still abysmal.

### **Conclusion and Recommendations**

Whether a company can hold a virtual AGM is dependent on the applicable laws and Regulations guiding Corporate law Practice in Nigeria as well as the articles of association of the company. The law only provides that the AGMs of companies shall be held in Nigeria without providing the mode of such meetings. It is suggested that public companies can fill this lacuna in legislation by either resorting to an amendment of its articles of association to accommodate the deployment of technology in the holding of its meetings or adopt hybrid meetings pending when the extant statute is amended to accommodate virtual annual general meetings for public companies in Nigeria.

It is suggested that dry runs could be conducted with the company secretary, chairman and other directors well in advance before the annual general meeting in order to breach a possible misstep at the day of the meeting. It will also afford an opportunity to the management staff to familiarize themselves will the ICT tools.

There may be need for portal capability check. This check is necessary to ensure that the deployed portal has capacity to support the number of expected attendees. Many portals have a limited capacity. Also principal officers are enjoined to be smartly attired even when they are joining from the comfort of their homes.