

## AN ANALYSIS OF THE LEGAL PROVISIONS REGULATING VIRTUAL ANNUAL GENERAL MEETINGS IN NIGERIA\*

### Abstract

Companies around the world have had to adjust their modes of operation to take into account the significant business restrictions caused by the Covid-19 pandemic. In Nigeria, the laws governing corporate matters are unclear on the regulation of virtual AGM, particularly in public companies. This paper examines the sufficiency of the Nigerian corporate laws to regulate virtual annual general meetings in Nigerian companies. This examination was carried out by analyzing the provisions of the Companies and Allied Matters Act, 2020 on Virtual AGM, the CAC Guidelines and the NSE Guidance with a view to determining their adequacy in regulating Virtual AGM. The paper finds that there remain significant gaps in both the regulations and the practices regarding virtual annual general meetings in Nigeria. The paper concludes that in keeping with the global corporate governance standard, Nigeria ought to identify the current lacunae in the corporate regulatory system. The paper recommends that the CAMA 2020 and both the CAC and NSE practice directions be revised to accommodate the inclusion of virtual AGM in both public and private companies.

**Keywords:** Virtual Meeting, Annual General Meetings, Legal Provisions, Covid-19, Nigeria

### 1. Introduction

The outbreak of the Corona Virus (COVID-19) pandemic presents a huge health crisis worldwide to date.<sup>1</sup> There has been a significant economic breakdown as a result of the social distancing and lockdown measures put in place to curb and manage this health crisis.<sup>2</sup> The disruption of corporate activities has compelled organizations and corporate entities to recalibrate and alter their mode of operations to be able to conduct business as efficiently as possible. One of the prevalent issues that arose in the corporate world as a result of the pandemic is the inability of companies to hold their annual general meeting (AGM) due to established lockdown, travel restrictions and social distancing protocols. A company's annual general meeting is an integral component of corporate governance as it is a regulatory tool to ensure that the interests of the directors of the company align with those of the shareholders.<sup>3</sup> The AGM is an important mechanism to ensure accountability of the management of the company. In Nigeria, the financial statement of the company, appointment of auditors, remuneration of directors and election of directors of the company are some of the vital issues that are discussed during the AGM.<sup>4</sup> It would be safe to say that the inability of a company to hold its annual general meeting is detrimental and fatal to the wellbeing and success of the company. Companies around the world have had to adjust their modes of operation to take into account the significant business restrictions caused by the pandemic. An example of such adjustments is the holding of AGM meetings virtually to enable the companies to carry on business within the confines of the Covid-19 protocols.

### 2. Statement of the Problem

Companies around the world are holding their AGM virtually.<sup>5</sup> The rise of the digital age has put a focus on the use of technology in the business space. Companies are increasingly adopting new ways to infuse technology into their activities. This adoption has grown over the past few years from a small percentage of early adopters to a major trend across industries.<sup>6</sup> However, despite the several laudable improvements in the Nigerian corporate

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<sup>1</sup> World Health Organization, '10 Global Health Issues to Track in 2021' <https://www.who.int/news-room/spotlight/10-global-health-issues-to-track-in-2021> (last accessed on 16th of September, 2021)

<sup>2</sup> World Bank, 'Covid-19 to Plunge Global Economy into Worst Recession Since World War II' <https://www.worldbank.org/en/news/press-release/2020/06/08/covid-19-to-plunge-global-economy-into-worst-recession-since-world-war-ii> (last accessed on 16th of September, 2021)

<sup>3</sup> Agbakoba. O, 'Practicing Corporate Governance at Annual General Meetings (AGMs) In Nigeria' <https://www.mondaq.com/nigeria/shareholders/1094102/practicing-corporate-governance-at-annual-general-meetings-agms-in-nigeria> (last accessed on 17th September, 2021)

<sup>4</sup> Section 238 of the Companies and Allied Matters Act, Cap C20 LFN, 2020 (to be referred to as CAMA)

<sup>5</sup> Louise Coen, 'Virtual Annual General Meetings – A global update' <https://www.eqs.com/en-us/ir-knowledge/blog/virtual-annual-general-meetings-a-global-update/> (Last accessed on 17<sup>th</sup> of September, 2021)

<sup>6</sup> Lumi 'Global AGM Trends Whitepaper' <https://cdn2.hubspot.net/hubfs/3790001/BBDBoom%20Global%20Trends/Lumi%20Global%20AGM%20Trends%20Whitepaper.pdf> (Last accessed on the 17<sup>th</sup> of September, 2021)

regulatory system, there are still some pertinent inadequacies particularly with virtual AGM in public companies. In Nigeria, the Companies and Allied Matters Act, 2020 permits a private company to hold its general meeting electronically/virtually. Also, the Corporate Affairs Commission published the Guidelines and Procedures for holding Annual General Meetings by Public Companies in Nigeria 2020 (CAC guidelines).<sup>7</sup> One of the CAC guidelines provide that companies must seek approval before holding an AGM virtually.<sup>8</sup> On 15<sup>th</sup> April 2020, the Nigerian Stock Exchange published the Guidance on Companies' Virtual Board, Committee and Management Meetings, 2020 (NSE Guidance)<sup>9</sup> as a response to the inability of companies to physically hold board, committee and management meetings as a result of the uncertainties caused by the Covid-19 pandemic.<sup>10</sup> However, despite these guidelines and procedures, there is still a lacuna as to the possibility and validity of a virtual AGM in Nigeria, particularly the AGM of a public company. There doesn't seem to be a clear provision permitting AGMs in public companies to be held virtually.<sup>11</sup>

This paper evaluates the adequacy of the Nigerian corporate system in regulating virtual annual general meetings of Nigerian companies. The paper achieves this by analyzing the provisions of the Companies and Allied Matters Act, 2020 on Virtual AGM, the CAC Guidelines and the NSE Guidance with a view to determining their sufficiency in regulating Virtual AGM.

### **3. Statutory Company Meetings**

A company meeting is the gathering of members or officers of an incorporated company with the purpose of planning, discussing and deciding company-related matters to achieve the overall corporate goal. Meetings are conveyed to keep the members of the company informed of the company's operations and to make important decisions necessary for the smooth running of the company. These meetings are central to the idea of corporate governance. Company meeting has not been strictly defined by any Nigerian company legislation. Although, the Companies and Allied Matters Act, 2020 provides for the types of meetings a company should have. They are; statutory meetings, annual general meetings, extra-ordinary general meetings, class meetings and board meetings.<sup>12</sup>

However, the focus of this paper is on annual general meetings. The company acts through its members in the general meeting or the board of directors.<sup>13</sup> Therefore, the company's general meeting is one of the organs of the company and any decision made at the meeting is presumed to be made with the company's authority.

### **4. The Purpose of Annual General Meetings**

The annual general meeting (AGM) of a company is a yearly meeting of key officers of the company and members of the company required by law. An AGM is held to give members an opportunity of meeting to learn of the current status of the company as well as its plans. It is compulsory for all companies, whether private, public, limited or unlimited.<sup>14</sup> It is an opportunity for the shareholders to receive copies of the financial statement of the company and take any necessary action to safeguard the interest of the company. The company's Articles of Association is its Constitution and it makes specific provisions for the company's operations including annual general meetings. But, the CAMA further provides for the time frame in which the meeting should be held to ensure that they are held regularly. Section 237 (1) of CAMA states that an AGM is to be held by a company every year and not more than 15 months should pass between the date of one AGM to the next. In addition, where a company has its first AGM within the first 18 months of incorporation, it is not required to have another AGM in that year or the next year. The provision also gives power to the Corporate Affairs Commission (CAC) to extend the time in which a company can have its AGM for not more than 3 months. In the event of a default in holding an AGM, the CAC may on its own or on the application by a member of the company issue a directive that the meeting be held.<sup>15</sup>

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<sup>7</sup>Corporate Affairs Commission, 'Guidelines on Holding of Annual General Meetings' <https://www.cac.gov.ng/wp-content/uploads/2020/05/GUIDELINES-ON-HOLDING-OF-ANNUAL-GENERAL-MEETINGS..pdf> (last accessed on 17th of September, 2021)

<sup>8</sup> *ibid.*

<sup>9</sup>Nigerian Stock Exchange 'Guidance on Companies' Virtual Board, Committee and Management Meetings' NSE/REG/R&I/GTL1/CVM1/04/20

<sup>10</sup>Aluko & Oyebode, 'NSE Issues Guidance on the Conduct of Virtual Meetings Amidst Covid-19, (April 2020),' <https://www.aluko-oyebode.com/wp-content/uploads/2020/04/NSE-issues-Guidance-on-the-conduct-of-Virtual-Meetings-1.pdf> (Last accessed on 19<sup>th</sup> September, 2021)

<sup>11</sup> *Ibid.*

<sup>12</sup> Sections 235-268 and Sections 289-292 of CAMA

<sup>13</sup> Section 87(1) of CAMA

<sup>14</sup> Bhadmus H.Y, 'Corporate Law Practice' (4<sup>th</sup> edition, Chenglo ltd, 2017) at pg.274

<sup>15</sup> Section 237 (2) of CAMA

## **5. Notice of an Annual General Meeting**

A notice is required to be sent out to all members, legal representative, receiver or trustee in bankruptcy of any member, all directors, all auditors, secretary and CAC (in the case of a public company) 21 days before the meeting is to be held.<sup>16</sup> The notice of the meeting may be shorter than the specified 21 days if it is agreed by all members entitled to attend and vote. Where any ordinary business is to be conducted, it is sufficient to state in the notice that ordinary business will be conducted. The terms of a special resolution should be included in the notice if it is to be decided upon at the meeting and any business not mentioned in the notice may not be discussed at the AGM.<sup>17</sup> Every notice must inform members that they are entitled to appoint a proxy who will attend and vote on their behalf in the meeting. The notice of the meeting should specify the place, date and time of the meeting as well as the general nature of the business to be conducted.<sup>18</sup> All AGM are required to be held in Nigeria<sup>19</sup>. However, section 240(2) of CAMA permits private companies to conduct their general meetings electronically/virtually as long as the meeting is per its Articles of Association. There is no similar provision for public companies and it has led to a lot of difficulties in holding annual general meetings by public companies especially with the outbreak of covid-19.

## **6. Business and Resolutions of Annual General Meeting**

Business conducted at an annual general meeting can be grouped into ordinary and special business. Ordinary business includes<sup>20</sup>; declaring a dividend, presentation of financial statements, presentation of reports of the directors and auditors, the election of directors, the appointment and remuneration of auditors, appointment of members of the audit committee. While special business includes any other business determined at an annual general meeting except for the above<sup>21</sup>. This may include; altering the object clause of a memorandum<sup>22</sup>, altering a provision in the memorandum of association<sup>23</sup>, the name change of a company<sup>24</sup>, e.tc. On the other hand, Company resolutions are decisions made on behalf of the company at the meeting by voting. They may be ordinary or special resolutions. Ordinary resolutions are passed by a simple majority of votes in person or by proxy at the general meeting.<sup>25</sup> Examples of ordinary resolutions are appointment and removal of directors, appointment and removal of auditors etc. While special resolutions are passed by at least three-fourths majority of members voting in person or in proxy at the general meeting.<sup>26</sup> Where a special resolution is to be made at a meeting, it is required by law to be stated in the notice of the meeting sent out 21 days before to the meeting. Decisions that require special resolutions are expressly stated in the CAMA and the company's Article of Association.

## **7. Annual General Meetings as a Form of Corporate Governance**

The AGM of a company is a regulatory tool to ensure that the interests of the directors are aligned with that of the shareholders. It is the specific responsibility of each board to ensure proper disclosure, integrity in financial reporting.<sup>27</sup> It promotes the principle of transparency as the shareholders can clarify any ambiguity or doubts raised at the meeting.<sup>28</sup> Corporate Governance is the system in which companies are governed for the overall goal of the company. It is concerned with the practices and procedures for trying to ensure that a company is managed in such a way that it achieves its objectives, it is an important protection to members as it is one occasion when they can be sure of having an opportunity of meeting the directors and ensure accountability on the company's projects and finances.<sup>29</sup> The AGM gives room for the shareholders to exercise their power over the directors by appointing and removing the directors when they fail to act in the interest of the company.<sup>30</sup>

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<sup>16</sup> Section 241 and 243 (1) of CAMA

<sup>17</sup> Section 242 (2) of CAMA

<sup>18</sup> Section 242 (1) of CAMA

<sup>19</sup>Section 240(1) of CAMA

<sup>20</sup> Section 238 of CAMA 2020

<sup>21</sup> *ibid.*

<sup>22</sup> Section 51 (1) of CAMA 2020

<sup>23</sup> Section 50 of CAMA 2020

<sup>24</sup> Section 30 of CAMA 2020

<sup>25</sup> Section 258 (1) of CAMA 2020

<sup>26</sup> Section 258 (2) of CAMA 2020

<sup>27</sup> Abdul-Hamid O. Y 'The road bumps in the Enforcement of Directors' Obligations in Nigeria'

[https://www.researchgate.net/publication/236944842\\_CORPORATE\\_GOVERNANCE\\_THE\\_ROAD\\_BUMPS\\_IN\\_THE\\_ENFORCEMENT\\_DIRECTORS%27\\_OBLIGATIONS\\_IN\\_NIGERIA](https://www.researchgate.net/publication/236944842_CORPORATE_GOVERNANCE_THE_ROAD_BUMPS_IN_THE_ENFORCEMENT_DIRECTORS%27_OBLIGATIONS_IN_NIGERIA) last accessed on the 27<sup>th</sup> of September 2021 at pg.3

<sup>28</sup> Ajogwu, F. 'Corporate Governance and Group Dynamics.' Center for Commercial Law Development, (CCLD) 2013

<sup>29</sup> Gower, L.C.B, 'The Principles of Modern Company Law' Stevens and Sons London, 4th Ed.

<sup>30</sup> Agbakoba. O, 'Practicing Corporate Governance at Annual General Meetings (AGMs) In Nigeria'

<https://www.mondaq.com/nigeria/shareholders/1094102/practicing-corporate-governance-at-annual-general-meetings-agms-in-nigeria> (last accessed on 20th September, 2021)

## **8. Virtual Annual General Meetings in Nigeria**

Technology is used to connect people from all parts of the world for meetings in social and business settings alike. With the use of software technology, people can attend the meeting electronically from anywhere in the world and it allows for voting and any other activity that can be carried out in a physical AGM. A virtual meeting can be fully virtual or hybrid. It is fully virtual where all the participants attend the meeting through electronic means from multiple locations while a hybrid virtual meeting allows for participants to attend the meeting at a designated physical location and allows those who wish to attend the meeting electronically to do so. A virtual annual general meeting is the convening of a company's annual general meeting electronically through the use of any virtual platform. The members of the company and all those entitled to attend are connected to a particular software so they can see and hear one another in real-time. The platforms allow for video and audio participation, online voting and all other activities carried out in the physical annual general meeting. Some of these platforms include Zoom, Google Meet, Skype, Microsoft Teams, Slack etc. The need for the world to adjust to the new realities of the effect of the Covid-19 pandemic has contributed to a pivotal shift from traditional meetings to the use of virtual meetings. It became an impossible task for companies to hold their annual general meetings as scheduled because of the imposed restrictions by the government. Businesses all over the world have had to adapt to these changes and it has proven to be very effective.<sup>31</sup> There is also the need to adapt to modern business realities as the traditional view of what a meeting is has evolved through the advancement of technology.<sup>32</sup> The concept of a 'meeting' was extended to the meeting of minds in the case of *Bell v. Burton*<sup>33</sup>. The law in several jurisdictions has adopted a contemporary approach of allowing technology to be used in company meetings. The rationale behind this is that there are large companies with thousands of shareholders from all parts of the world and it is impracticable to have them all attend the annual general meeting of the company in one physical location. It is sufficient that they can hear and be heard in deciding matters affecting the company regardless of their locations.

### **Benefits of a Virtual Annual General Meeting**

Some of the benefits of holding a virtual annual general meeting are:

1. It makes the meeting more accessible to shareholders because it allows for participation from any part of the world
2. It removes the risk and cost involved in travelling to a physical location
3. The cost of renting and catering for a physical space is highly reduced if not eliminated
4. The online format allows for digital voting which makes the meeting transparent and no member is left feeling disenfranchised
5. It provides for a better platform for the Q&A session because shareholder questions can be submitted anonymously, which could allow shareholders to feel more comfortable asking questions.

### **Attempts at Virtual Annual General Meetings in Nigeria**

The concept of a fully virtual AGM is foreign to the Nigerian legal system. This is because our laws have not been clear as to whether or not a company can hold its AGM virtually. Up until recently, the CAMA made no mention as to whether a company can have its AGM virtually. The recently re-enacted CAMA allows for private companies to hold their annual general meeting by electronic means as long as the meeting is in accordance with the company's Articles of Association.<sup>34</sup> The Act fails to make any similar provision for public companies. Before this Act was re-enacted, the CAC provided guidelines on how public companies can hold their AGM using proxies. It is on this basis and the adoption of virtual and hybrid AGMs in other jurisdictions that some Nigerian companies have adopted the use of 'virtual AGM' during the outbreak of the Covid-19 pandemic. In May 2020, Union Bank held its first virtual AGM by having shareholders attend by proxy while streaming the meeting online for the benefit of those who were unable to attend.<sup>35</sup> FCMB also had a similar idea during the imposed lockdown by the government; the AGM of the company was held by proxy and simultaneously streamed live on their website to absent shareholders.<sup>36</sup> Okomu Oil Palm Company Plc (OOPC) also held its 40<sup>th</sup> AGM amidst the pandemic with less than 20 shareholders in attendance. The other shareholders sent in their proxy and watched the meeting

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<sup>31</sup>Cohen. L, 'Virtual Annual General Meetings - A Global Update' <https://www.eqs.com/ir-blog/virtual-annual-general-meetings-update/> (last accessed on 23<sup>rd</sup> September, 2021)

<sup>32</sup> Moses. J.E, 'Analysis of The Law On Company Meetings in Contemporary Corporate Governance in Nigeria' at pg. 66. (1993)12 ACSR 325

<sup>33</sup> Section 240 (2) of CAMA 2020.

<sup>34</sup>Union Bank 'Union Bank holds Virtual 51<sup>st</sup> Annual General Meeting' <https://www.unionbankng.com/blog/union-bank-holds-virtual-51st-annual-general-meeting/> (last accessed on 23<sup>rd</sup> September, 2021)

<sup>36</sup>Premium Times Newspaper 'FCMB Holds Virtual AGM as Shareholders Approve Dividend (April 2020)' <https://www.premiumtimesng.com/business/business-news/390541-fcmb-holds-virtual-agm-as-shareholders-approve-dividend.html> (last accessed on 23<sup>rd</sup> September, 2021)

live on the company's website.<sup>37</sup> A common point of these meetings is that members were required to attend by proxy and the meetings were merely streamed online for the absent members to watch with no form of active participation via the electronic platform.

### **Virtual Annual General Meetings in some other Jurisdictions**

The use of virtual platforms for company meetings has been adopted in many jurisdictions because of the ease and efficiency it presents to the members of the company. The company decides on which platform to use and how best to adapt it to the operations of the company. In the United Kingdom, it is possible for shareholders to attend AGM by electronic means by the Companies Act 2006.<sup>38</sup> In June 2016, Jimmy Choo Plc had the first virtual-only AGM in the UK. It was held through a conference call to enable shareholders to ask questions and it had a separate app and web browser functionality so that shareholders could follow a presentation by management and vote<sup>39</sup>. The meeting was well-received as it improved shareholder engagement. As a result, many companies proposed to change their Articles of Association but this change was not well-received in cases where it was implied that the meetings would eventually become fully virtual.<sup>40</sup> In the United States, up to 30 states allow for fully virtual meetings and as a result, most companies are generally able to hold either hybrid or fully virtual meetings without seeking shareholder approval.<sup>41</sup> The US Securities and Exchange Commission issued a guidance providing regulatory flexibility to companies that wish to switch from an in-person meeting to a virtual meeting because of Covid-19.<sup>42</sup> In Australia, there have been changes to company meetings including the use of electronic technology to hold meetings. According to section 249 of the Australian Corporations Act, a company meeting may be held at two or more venues using any technology that gives the members reasonable opportunity to participate.<sup>43</sup> The use of virtual platforms in conducting AGM in other jurisdictions has amounted to huge successes as it encourages shareholders' participation from anywhere by making the meeting more accessible.

### **9. An Examination of the Provisions of CAMA Regarding Virtual AGM**

The Act as the primary law governing corporate matters makes provisions for when and how companies should hold their annual general meetings. Section 240 (1) of the Act states that all statutory and annual general meetings of a company are to be held in Nigeria. Section 240 (2) goes further to state that a private company may hold its general meetings electronically provided it is following the company's Articles of Association. The combined reading of these two provisions shows that the concept of a virtual AGM is expressly permitted for a private company. Although it is trite law that an act that is not expressly prohibited is permitted, the use of the word 'shall' as regards the location of the meeting implies that all AGM should be held in Nigeria. Section 240(2) is then considered an exception to this general rule. Furthermore, the Act stipulates that the place, date and time of the meeting should be included in the notice sent out to those entitled to attend the meeting.<sup>44</sup> The Supreme Court in *Okotie-Ebah v. DPP*<sup>45</sup> has interpreted 'place' to mean 'any part of an enclosure or structure whether separated from the rest of the enclosure or structure by a partition fence or rope'. It is clear then that 'place' in the Act means the physical space in which the meeting is held. Some authors believe that based on the position of CAMA, a public company can hold their AGM through a virtual platform as the Act does not expressly prohibit public companies from doing same. It is considered within the bounds of the law as long as the members of the company in attendance are in Nigeria.<sup>46</sup> However, this argument cannot be adequately supported. The legal maxim '*Expressio unius est exclusion alterius*' states that when one or more things of a class are expressly mentioned, others of the same class are excluded.<sup>47</sup> The provision of the CAMA is clear as to which company can hold its AGM through virtual means. Therefore, the express mention of private companies excludes public companies

<sup>37</sup>OOPC Holds 40<sup>th</sup> Virtual AGM Amidst Covid-19 <https://www.okomunigeria.com/agm20.php> (last accessed on 23rd September, 2021)

<sup>38</sup> The United Kingdom Companies Act 2006 (C46)

<sup>39</sup> Mort. C, Wallace. A, 'Virtual General Meetings: Treading New Grounds'. Thomson Reuters Practical Law 2017

<sup>40</sup> LUMI, Global AGM Trends at pg. 5

<sup>41</sup> Ibid. pg. 4

<sup>42</sup> Securities and Exchange Commission 'Staff Guidance for Conducting Shareholder Meetings in Light of COVID-19 Concerns'

<https://www.sec.gov/ocr/staff-guidance-conducting-annual-meetings-light-covid-19-concerns> (last accessed on 23rd September, 2021)

<sup>43</sup>Hasani M. A, Zinatul A. Z, et al. 'Some Legal Uncertainties in Electronics Corporate Meetings.' International Journal of Computer Theory and Engineering, (2013) vol. 5, No.2, P. 284.

<sup>44</sup> Section 242 of CAMA

<sup>45</sup> (1962) LCN/0984 (SC)

<sup>46</sup>Adetuyi. A, Williams. N, 'Covid-19: can public companies hold virtual annual general meetings in Nigeria' Brooks and Knights LC (April. 2020) <https://www.lexology.com/library/detail.aspx?g=74f63619-4490-400b-99fe-dd9d50e84c55> (last accessed on 23<sup>rd</sup> September, 2021)

<sup>47</sup> *APGA v. Oye & Ors* (2018) LPELR-45196(SC)

from holding their AGM virtually. This exclusion has been detrimental to the wellbeing of public companies as they were unable to hold their AGM even when the time frame lapsed during the imposed lockdown.

### **10. Examining the Limitations of the CAC Guidelines to Regulate Virtual AGM in Public Companies**

In response to the directive on social distancing and restrictions placed by the government due to the Covid-19 pandemic, the Corporate Affairs Commission released Guidelines on Holding of Annual General Meetings by Public Companies using Proxies<sup>48</sup>. The guidelines are to direct public companies on how best to conduct their AGM taking advantage of the provisions of the then section 230 of CAMA (now section 254).<sup>49</sup> The guidelines make no provision for AGM of a public company by virtual means. It does not widen the scope given by CAMA. Rather, it narrows down the position of the law to the convening of AGM by proxies. Despite its best efforts, it is argued that the guidelines lack the force of law as its provisions are severely inconsistent with CAMA<sup>50</sup>. Firstly, the provision that a public company must get approval from the CAC before holding an AGM using proxies is contrary to the provision of CAMA. The Act does not provide that approval be sought before a company can hold its AGM even when using proxies. Secondly, CAC has no power to make regulations contrary to the provisions of the Act as it is permitted to conduct both ordinary and special business at an AGM.<sup>51</sup> The guidelines provide for the use of proxies to attend a company's AGM including an approved list of proxies. But, the Act expressly states that a person is entitled to use a proxy to attend an AGM if they so wish and can choose whomever (whether a member or not)<sup>52</sup>. Mandating members of a company to attend the meeting using a proxy even with the restrictions placed by the government is tantamount to disenfranchisement. Members will be forced to pick their proxies from a selected list of people who may not share the same views as them. As a result of these inconsistencies, public companies may run into a liability when they hold their AGM solely within the purview of the guidelines.

### **11. An Analysis of the NSE Guidance on Companies' Virtual Board, Committee and Management Meetings**

As a result of the legal and regulatory uncertainties that Nigerian businesses face regarding convening virtual meetings, particularly in the wake of current economic and social constraints precipitated by the COVID-19 pandemic, which underscores the need for companies to adopt a more practical style of holding meetings. The Nigerian Stock Exchange released the Guidance on Companies' Virtual Board, Committee and Management Meetings (NSE Guidance).<sup>53</sup> The Guidance is not mandatory as it seeks to alleviate the constraints placed on companies during the pandemic. It thoroughly makes provisions for the conduct of a virtual meeting and the necessary procedures the management of the company should carry out in preparation for the meeting. The Guidance tackles virtual board and management meetings only and it does not give directions on holding virtual general meetings. For the purpose of holding virtual AGM in Nigeria, this Guidance is inapplicable, although, it could be used as a guide for public companies when the law allows for a virtual annual general meeting<sup>54</sup>.

### **12. Conclusion and Recommendations**

From the foregoing, it is concluded that the laws governing company proceedings are insufficient in regulating annual general meetings conducted virtually. The Nigerian regulations on companies' proceedings must identify and resolve the gap by laying out a clear and concise procedure for virtual annual general meetings particularly concerning public companies. Despite the recent re-enactment of the CAMA, the Act is silent regarding a public company conducting a virtual AGM.<sup>55</sup> It permits private companies to conduct virtual AGMs but it makes no further provisions as to the procedure.<sup>56</sup> The CAC guidelines released to give directions to public companies further narrow the provision of the Act and are not in tandem with the provisions of CAMA. The guidelines did

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<sup>48</sup><https://www.cac.gov.ng/wp-content/uploads/2020/05/GUIDELINES-ON-HOLDING-OF-ANNUAL-GENERAL-MEETINGS.pdf> (last accessed on 23rd September, 2021)

<sup>49</sup> Section 254 (1) states that; Any member of a company entitled to attend and vote at a meeting of the company is entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him, and a proxy appointed to attend and vote instead of a member has the same right as the member to speak at the meeting, and unless the articles provide, this section shall not apply in the case of a company not having a share capital.

<sup>50</sup> Akorede. A. F, 'Evaluating the Legality of Virtual Meetings under the Companies and Allied Matters Act of Nigeria' (May 20, 2020) at pg.5 Available at SSRN: <https://ssrn.com/abstract=3637095> or <http://dx.doi.org/10.2139/ssrn.3637095> (last accessed on 23rd September, 2021)

<sup>51</sup> Section 238 of the Act.

<sup>52</sup> Section 250(1) of CAMA

<sup>53</sup> Nigerian Stock Exchange 'Guidance on Companies' Virtual Board, Committee and Management Meetings' NSE/REG/R&I/GTL1/CVM1/04/20

<sup>54</sup> Obialori. C, Ayileka. A, 'Covid-19: Virtual AGM and the Need for Business Continuity' (May 29, 2020). Available at SSRN: <https://ssrn.com/abstract=3719125> or <http://dx.doi.org/10.2139/ssrn.3719125>

<sup>55</sup> Section 240 (2) of CAMA only provides for the possibility of virtual AGM for private companies.

<sup>56</sup> Ibid.

not remedy the restrictions on annual general meetings of public companies caused by the imposed lockdown. This could have been achieved by extending the permission to host annual general meetings virtually, which was granted to private companies by CAMA, 2020. The NSE Guidance sets out the procedure for carrying out a virtual meeting but its applicability does not extend to the AGM of a public company. In addition, the Guidance is silent on the use of proxy in virtual meetings and the procedure for online voting. Though it references online voting, it fails to expatiate on how the voting can be carried out on virtual platforms. In conclusion, while the restrictions placed as a result of Covid-19 are gradually being eased, it is best that Nigeria embraces the global corporate governance standards by bridging the gap in the Nigerian corporate regulatory system.

From the foregoing, this paper identifies gaps in both the regulations and the practices regarding virtual annual general meetings in Nigeria. It is therefore recommended that the Companies and Allied Matters Act, 2020, the CAC's Guidelines and Procedures for holding Annual General Meetings by Public Companies in Nigeria 2020 and the NSE's Guidance on Companies' Virtual Board, Committee and Management Meetings, 2020 be revised to address the lacunae. It is also recommended that the CAC organize sensitization programs to curb the gap in the practice of virtual AGM. These recommendations are further elucidated below. There is need to amend CAMA to include virtual AGM for public companies: The CAMA should be amended to provide for virtual AGM by public companies. CAMA should also be revised to itemize the procedure to guide companies in convening virtual AGM. There is also need to amend the current CAC guidelines to include the conduct of virtual AGM by public companies: In doing this, it will be sufficient that the NSE Guidance be adopted and improved to suit the conduct of a virtual AGM. Revision of the NSE Guidance is also necessary. The NSE Guidance should be revised to include the procedure for online voting and the use of proxy in virtual meetings. Sensitization of companies by the CAC is equally imperative. The CAC should organize programs to assist companies, public and private, on the use of electronic platforms for company meetings.