

Virtual Corporate Meetings in Nigeria A Fall Out of the COVID 19 Pandemic

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Abstract

Meetings are integral to the operations of statutory corporations and incorporated companies. However, based on the current pandemic, restrictions were placed on public gatherings which meant that corporations in Nigeria (which hitherto mostly had physical meetings), could not conveniently meet at physical venues. While it was a norm for groups to hold their meetings electronically, it is questionable if corporations in Nigeria could properly hold virtual General Meetings. This article seeks to consider the regularity or otherwise of Virtual General Meetings with regards to incorporated entities under the Corporate Affairs commission.

Keywords: Virtual Corporate Meetings, COVID 19 Pandemic, physical meetings, lockdown.

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1.0 INTRODUCTION

The Covid-19 pandemic has affected lives and economies all around the world. Over twenty-five million people around the world have been infected by the disease and over eight-hundred thousand are believed to have died [1]. The pandemic has occasioned recessions and historic unemployment of people [2]. Economies have been hit due to slowed economic activities occasioned by the lockdowns imposed to stem transmission of the Covid-19 disease.

On April 27 2020, the Federal Government [³] announced a phased easing of the lockdown imposed in FCT Abuja, Lagos and Ogun. However, it was not until August 1 2020 that the Lagos State government relaxed

restrictions on public gatherings and increased the permissible number from 20 to 50. Since then, further easing of restrictions has been announced by the Federal government and Lagos State government. However, as of the time of writing this article, there are still some forms of restriction on large gatherings.

The lockdown not only affected the daily operations of organizations and individuals but also affected meetings. Meetings are now mostly held virtually and had to be so due to restrictions on movement and on the number of people allowed to be in closed spaces.

As a result of the restrictions, several companies that had scheduled their Annual General Meetings to fall within the time that was captured by the restrictions were affected as those meetings were out rightly cancelled or held virtually.

In several other jurisdictions, virtual corporate meetings were already permitted by incorporated entities. However, in Nigeria, companies could not easily resort to virtual meetings as a result of lack of reference to it under Nigerian corporate law and uncertainty as to its propriety. Moreover, there was no precedence of an annual general meeting, especially for a public company where virtual meetings was held.

¹ Accessed from Google Covid-19 alert on 31 August 2020.

²The Global Economic Outlook During the COVID-19 Pandemic: A Changed World <https://www.worldbank.org/en/news/feature/2020/06/08/the-global-economic-outlook-during-the-covid-19-pandemic-a-changed-world> Accessed on 31 August 2020

³ The Federal Government has acted mostly through the Presidential Task Force on Covid-19 which is headed by the Secretary to the Government of the Federation.

1.1 THE ESSENCE OF CORPORATE MEETINGS BY STATUTORY CORPORATIONS AND INCORPORATED CORPORATIONS

A statutory corporation is a public body set up by an act enacted by a legislative body (federal or a state), with specific functions which, among other things, entitles the body to enjoy corporate powers typically enjoyed by a company [4]. Meetings are a critical aspect of corporate governance in both statutory corporations and incorporated corporations. The Companies and Allied Matters Act [5] and the law setting up every statutory corporation [6] make provisions for these.

Generally, companies act through their directors (who make decisions at their Board Meetings) and members (who make their decisions at General Meetings). Statutory Corporations typically act through their boards as they often do not have ‘members’ in the same sense that companies do. Exceptions may lie in cases where the statutory corporation is a product of a public-private partnership.

From the above, it can be deduced that meetings (both board and General) are essential to the development of companies and corporations.

Companies have four general meetings:

- (a) Statutory,
- (b) Annual General Meeting (AGM);
- (c) Court Ordered Meetings
- (d) Extraordinary General Meeting (EGM).

Aside General Meetings, there are also

- Separate Meetings of a class of Members
- Meetings by requisition of members and auditor
- Meetings ordered by the Corporate Affairs Commission
- Statutory Meetings

Statutory corporations typically have Board Meetings (involving executive and non-executive members). They also have management meetings which usually involve the executive board member and any other officer of the corporation occupying a management position.

⁴The Corporate Affairs Commission, Nigerian Railway Corporation, National Petroleum Corporation, Lagos Water Corporation, are all examples of statutory corporations in Nigeria

⁵Section 63 of CAMA aptly summarizes this and makes statutory the fact that companies act their boards or the members in general meetings. The powers of members are exercisable primarily in general meetings. Hence, attendance of meetings is a right of members of a company.

⁶ Section 10 of the Investments and Securities Act 2007 and Section 5 of CAMA

Companies are run on decisions and reports. Decisions may be reached by directors at a Board Meeting or by members, at a General Meeting. These decisions guide the activities of the company and ensure that shareholder value is maximized. The failure in the conduct of General Meetings means that directors will continue to run a company and not report back to the members. This will at the long run occasion havoc to the company as the directors will not be monitored and activities of the company will not be reported back to the members of the company.

Furthermore, failure to conduct an Annual General Meeting, for instance, will mean that members cannot approve dividend payment as recommended by the directors. Indeed, corporate meetings are very important. Beyond the internal functioning of the company, there is also the critical aspect of compliance. Companies are meant to file notices of decisions reached on certain post-incorporation matters, to relevant regulators.

For statutory corporations, the law sometimes prescribes the number of times meetings are meant to hold. Section 10(1) of ISA provides that “*Meetings of the Board of the Commission shall take place as often as may be required but not less than four times in any financial year of the Commission*”. Section 7 of the Schedule of the Nigerian Railway Corporation Act prescribes for the Corporation to meet not less than three times in any financial year.

The statutory meeting of a public company is expected to hold within six months from the date of the incorporation of the company [7] and failure to hold the meeting within this time is a ground for the dissolution of the company [8]. This timeline can also not be extended by Corporate Affairs Commission.

The Annual General Meeting of a company is meant to be held within 18 months of the incorporation of the company. A subsequent Annual General Meeting must hold not more than 15 months from the time of the last Annual General Meeting and even though the Corporate Affairs Commission may extend the time required, this cannot be for more than three months.

Court-ordered meetings are scheduled by order of the court and in a situation where a court had ordered one for a company prior to the lockdown, seeking a variation of such order may have been impossible due to the fact that the lockdown affected court operations.

Extra-ordinary General Meetings are convened by directors or requisitioned by members who meet the stringent requirements set in Section 215 of CAMA. The Extraordinary General Meeting is usually called for

⁷ Section 211(1) of CAMA

⁸ See Section 408b of CAMA

when there is a pressing issue that the company must address.

Timelines are man-made and may be adjusted. Hence all General Meetings with timelines may be varied by the court on just and fair grounds. However, many meetings by companies are time-bound as far as business operations are concerned. How does a company that needs its members to agree on certain key decisions and time-bound decisions meet? Will the company wait till after the lockdown before such meetings are held? Will there be waivers of penalties for companies that did not meet because of the lockdown? Can the management of the company be effective without holding the meetings statutorily provided for? These and many more occasioned the birth of Virtual Meetings by corporate entities in Nigeria during the lock down period.

2.0 VIRTUAL MEETINGS BY CORPORATE ENTITIES IN NIGERIA

“A virtual meeting is when people around the world, regardless of their location, use video, audio, and text to link up online. Virtual meetings allow people to share information and data in real-time without being physically located together [9]”.

The Companies and Allied Matters Act makes no provision for virtual meetings because at the time the law was enacted, virtual meetings (in the form in which it is feasible today) was hardly possible. One of the features of virtual meetings lie in the fact they are not affected by physical considerations of location. Hence, directors and members may be anywhere in the world but still be able to partake in a Board or General meeting, as long as they are able to connect via the internet or whatsoever other platform is utilized.

Covid-19 has exposed the reality that virtual meetings are just as effective as physical meetings and even cheaper. Religious bodies, corporate organizations and even courts, resorted to virtual platforms for meetings and proceedings. Providers of video-meeting software, like Zoom, saw huge boost in their use. According to the company, while as of December 2019, it had ten million daily users, that number had grown to peak at about three hundred million by April [10] (the time when most countries had now shutdown in some form).

Virtual meetings take two forms which are the hybrid meetings and virtual-only meetings. Hybrid

meetings are meetings where a few members of the group convene together at a physical location and (most often) control the affairs of the meeting from the physical location and host the meeting from there. For a corporate body, this could mean that the directors and secretary of the corporation are together at the company's office or some other location and from there, initiate the meeting. Other members then join in the meeting by calling a telephone line, or connecting to a link that allows-for two way communication of some sort, or join in some other way.

Virtual-only meetings are meetings where every attendee of the meeting joins the meeting from their various individual locations. In the United States, thirty states allow for virtual-only meetings and forty-two states allow for remote participation in general meetings. Nine states in the United States still preclude corporations incorporated in the States from holding virtual-only or hybrid meetings [11].

Virtual meetings also have long been touted as good for corporate democracy. One of the prompted benefits is the possibility of improving company democracy by giving more members the opportunity to participate in company meetings. The reality is that virtual meetings are cheaper to attend as travel expenses and risks are totally removed. The likelihood is therefore higher that more shareholders will attend virtual general meetings than in-person meetings [12].

The argument is however not embraced by all. There is a contrary argument to the fact that virtual meetings do not necessarily increase corporate democracy as in-person meetings are more likely to drive engagement of members with independent directors [13].

Unlike the corporate laws of most of US states and other jurisdictions [14], the wordings of Companies and Allied Matters Act relating to meetings clearly intend physical meetings [15].

Section 232 (2) of CAMA provides:

Unless otherwise provided in the articles, the quorum for the meeting of a company shall be one third of the total number of members of the company or 25

11

<https://corpgov.law.harvard.edu/2018/05/31/principles-and-best-practices-for-virtual-annual-shareowner-meetings>. Accessed 5 September 2020

12 *ibid*

13 *Ibid*

14

<https://www.dlapiper.com/en/canada/insights/publications/2020/03/virtual-shareholder-meetings-and-covid19>. Accessed 5 September 2020

15 Section 224 of CAMA Sections 216 and 218(1) of CAMA

⁹ Virtual meeting defined, Study.com, <https://study.com/academy/lesson/what-is-a-virtual-meeting-technology-strategies-quiz.html> Accessed 31 August 2020

¹⁰ <https://www.theverge.com/2020/6/2/21277006/zoom-q1-2021-earnings-coronavirus-pandemic-work-from-home>. Last assessed June 2 2020

members (whichever is less) present in person or by proxy.

Similar provisions can be seen in Section 233(1) of CAMA. *A resolution shall be an ordinary resolution when it has been passed by a simple majority of votes cast by such members of the company as, being entitled to do so, vote in person or by proxy at a general meeting.*

Restrictions are also placed by the Companies and Allied Matters Act as to the place of Statutory and Annual General Meetings which is to the effect that such meetings must be held in Nigeria [16]. The question often comes up as to what location a corporate meeting will be deemed to have been held, if it is held virtually. The consensus appears to be that as long as the Internet Protocol [17] address of the host of the meeting is a Nigerian Internet Protocol, it fulfills the requirement of Companies and Allied Matters Act that Statutory and General Meetings can only hold in Nigeria.

As laudable as this position may be, it is posited that the requirements of CAMA are overwhelmingly clear about the fact that General Meetings should be held in-person. The exception allowed by CAMA is a General Meeting held by a private company. Section 234 of CAMA allows for written resolutions passed at a General Meeting of a private company to be deemed to have been validly passed. However, this is unlikely to apply to Annual General Meetings (where beyond passing resolutions, directors must lay the financial statement before the members of the company) [18].

The only argument that appears to permit the holding of a virtual corporate meeting lies in a general rule. The rule being that where a law does not expressly preclude an activity, it means that such activity may be allowed. Corporate democracy and corporate governance is at the heart of the provisions of CAMA on meetings and resolutions. Where CAMA has clearly prescribed a way of carrying out certain actions, to do otherwise (simply on the basis that a particular action is not expressly forbidden), may be opening a company to a wasteful exercise upon an application to the court, by an aggrieved member or other stakeholder.

In the opinion of the authors, there can be no doubt that the drafters of CAMA clearly intended for

physical meetings. This is further evident in the recently assented CAMA [19].

Section 240 (2) of CAMA 2020 provides thus:

A private company may hold its general meetings electronically provided that such meetings are conducted in accordance with the articles of the company.

This provision seems too restrictive for the digital age. The law should have made an allowance for the relevant Minister, to make rules that may guide the conduct of virtual meetings by public companies. However, it is important to state that the National Assembly did not envisage the emergence of the Covid Pandemic as the Companies and Allied Matters Act 2020 was concluded before the Covid-19 pandemic.

Although CAMA is the primary legislation for corporate affairs in Nigeria, it is not finite in its provisions. It empowers certain authorities to make rules and guidelines to give effect to its provisions.

Section 552 of CAMA empowers the Chief Judge of the Federal High Court to make rules relating to winding up. Section 609 empowers the Minister in charge of trade as follows to 'make regulations generally for the purpose of this Part of this Act' [20].

Thus, even though CAMA contemplated physical meetings, it may have been possible for the Minister to make rules that will bring the extant provisions of CAMA on meetings to align with today's digital reality. Such rules could then suffice in the interim [21].

2.1 CONSTRAINTS OF VIRTUAL MEETINGS

As laudable as the idea of virtual meetings are, they are not without their challenges. Infrastructure Deficiencies (Technical issues - Internet connectivity, Downtimes): One of the major constraints of virtual meetings lie in the fact that technical issues may affect

¹⁹ The law was signed by President Muhammadu Buhari on 7 August 2020. However, the National Assembly concluded its work on the bill in March 2020. This gave rise to questions as to the validity of the signing considering the delay.

²⁰ The part referred to is Part A of CAMA, however the Section is deemed by the authors to also contemplate Parts B and C. The Companies Regulations 2012 deal with all parts.

²¹ Although CAMA 1990 is still the extant corporate law in Nigeria, it is important to note that the law has been repealed and replaced by CAMA 2020 which was signed into law by President Mohammedu Buhari on August 7 2020. However, the law has not commenced as it is yet to be gazetted. This article is, however, still largely relevant post the commencement of CAMA 2020 due to the restricted allowance of virtual meetings.

¹⁶ Section 216 of CAMA

¹⁷ Internet Protocol. In the simplest terms, it's like the house address of an application that accesses the internet.

¹⁸ See Section 345 of CAMA

the conduct of the meeting or the attendance of one or more attendees. Where a video conferencing platform experiences a downtime, it means that a meeting may not proceed at the designated time. It is easy to not contemplate the effect of downtimes because constant connectivity has become a thing and people cannot comprehend moments where they are unable to access providers and are unable to because such a provider are offline at the moment. But it does happen that for short or longer periods, a provider of an online service may be unavailable. Where such provider is a video-conferencing tool, meetings earlier scheduled for the platform may not hold.

There is also the possibility that the issue that arises may not be with the video-conferencing provider but with the internet connectivity of a director or member trying to connect with a scheduled meeting. This is particularly an issue in developing countries like Nigeria where internet penetration and quality, still leave much to be desired.

Cyber-security and Unwanted Party Interference: The great rise in the use of Zoom was accompanied by the issue of the phenomenon known as 'Zoombombing'. It entailed a situation in which a meeting scheduled for Zoom was interrupted by an uninvited and unexpected third party. Sometimes, the means of the interruption involved the sharing of obscene sexual material. Hackers can hack into the cyber space of a particular company and get information pertaining to the meeting. This will rob the corporate entity of keeping confidential information intact amidst members

Confirmation of Attendees: Corporate meetings are open only to designated stakeholders. They are not necessarily public events as the activities of courts are, and this also applies to public companies. It may be easy to determine that an attendee at a meeting is a member of the company due to self-identification. However, this may not be easy to ascertain for a virtual meeting.

CONCLUSION

Undeniably, the Covid-19 pandemic has caused countries, organizations and individuals to rethink their approaches towards various concepts. One of such is the concept of meetings. As economies begin to reopen, it is unlikely that the peak reached in the utilisation of virtual platforms like Zoom will be maintained. However, we are surely going to see the retention of these platforms as the venue for many meetings. It is important that corporate law adjusts to this reality. While the allowance of virtual general meetings by private companies, in CAMA 2020, is a welcome development, it is hoped that consideration will be given to the amendment of CAMA 2020 to give the Minister or CAC the power to permit public companies to have their general meetings virtually.

RECOMMENDATIONS

The following are the recommendations which serve as a fallout of this paper.

1. There should be an introduction of laws that will govern the activities of virtual meetings by corporate entities.
2. There should be a department in the Corporate Affairs Commission that will be in charge of regulating the activities of virtual meetings of companies to bring it to the expected level of compliance.
3. Secretaries of Public Companies should be educated as to the organization of Virtual Meetings. This can be introduced as a module in one of the courses taught in the Institute of Chartered Secretaries of Nigeria.
4. There should be a separated cyber space which will be optimally protected for use of corporate entities for their virtual meetings.
5. The venue of the Internet Protocol of every Virtual Meeting of a corporate entity incorporated in Nigeria should be restricted to Nigeria in order to avoid conflict of laws.