



GUIDELINES FOR HOLDING VIRTUAL CORPORATE MEETINGS

INTRODUCTION

Company meetings are key to the decision-making process of a company. Management, Board, Committee(s) and General Meetings are avenues through which a company deliberates and makes decisions bordering on its management, control and administration. Thus, it is imperative that these meetings are convened in line with the protocols and procedures stipulated in the relevant statutes; mainly the Companies and Allied Matters Act 2004 (“CAMA” or the “Act”), applicable rules, regulations and/ or guidelines depending on the industry where a particular business/company operates.

All corporate entities in Nigeria (*companies, business names, incorporated trustees, partnership*), are primarily governed by CAMA, however, the focus of our discourse are the limited liability companies be it public or private. CAMA expressly provides for the elements of a valid meeting, which includes the issuance or circulation of meeting notices that clearly state the date, time, venue and agenda of the meeting. Even though these statutory provisions have served the corporate world in Nigeria for close to three (3) decades, the events of the past few months have put to question the sufficiency of these legal procedures, especially now that companies may be unable to convene a physical meeting due to circumstances beyond their control.

The outbreak of Covid-19, presents one of such situations which has prompted the government (at all

levels) to pronounce and implement policies such as the lockdown orders, social distancing, and travel restrictions to curb the spread of the disease. In response to this emergency, employees of some companies are forced to work remotely and as such; companies have had to put to test their business continuity plans to ensure that there is minimal disruption in their services and engagement with their stakeholders. This approach (“work from home”), is a paradigm shift in the Nigerian work culture where company executives are used to travelling across borders to attend business meetings and other statutory meetings such as Board Meetings and Annual General Meetings (AGM).

Regulators, such as the Nigerian Stock Exchange (NSE) have acknowledged the challenges posed by the Pandemic on corporate gatherings and meetings of all kinds and have recognized the need to adapt to our present-day business realities. On April 15th 2020, the NSE released its “Guidance on Companies Virtual Meetings”.¹

This article aims to provide an overview of key points to consider in convening a virtual corporate meeting as provided in the NSE Guidance notes amongst others.

What is a virtual meeting?

A virtual meeting² can be defined as a prescheduled meeting of people in diverse physical locations on an online platform to discuss issues, share information,

members of the members are physically present while some are participating virtually

¹ www.nse.com.ng

² Virtual meetings maybe hybrid or completely virtual. A hybrid meeting means that some of the



data or ideas in real-time. The online platform may include features which provide visual and/or audio participation, casting of votes online in a secure manner etc. Examples of such online platforms include Skype, Zoom, Face Time, Microsoft Teams, Google Hangout, etc.

Statutory and Regulatory Considerations

Section 263(1) of the CAMA requires directors may meet for the dispatch of business, adjourn and otherwise regulate their meetings as they think fit. It is therefore possible for the directors to have virtual meetings as long, as the Articles of Association does not disallow such meetings.

For AGMs on the other hand, Section 216 of CAMA simply provides that the company's AGM must be held in *Nigeria*. To address the Pandemic, the Corporate Affairs Commission (CAC) also issued its Guidelines³ to guide companies on the modalities for holding their Annual General Meetings (AGM) by proxies, on the condition that the approval of the CAC must first be obtained. The CAC guidelines simply aims to limit the number of attendees at such meeting and ensure compliance with the health and safety measures on social/physical distancing and ban on gatherings above ten persons.

Key considerations in organizing virtual meetings

i. Venue of the meeting

It is important to determine the venue of a meeting, even when it is a virtual meeting for documentation purposes. It is easy to assume that the platform used to hold the particular virtual meeting such as Zoom or Skype should be designated as the venue of the

meeting, however, this assumption is not true as such platforms are just technological infrastructure or at best, communication tools/channels or medium used to broadcast the meeting to the attendees. Although the mode of holding the meeting is virtual, the venue of the meeting must remain a physical location. The Institute of Chartered Secretaries and Administrators (ICSA) in its capacity as the leading voice in promoting the ethos of Corporate Governance within organizations, recently issued a guidance to address the question of the venue of virtual meetings⁴. For Board Meetings and AGMs, the ICSA guidance recommends that the registered address of the company should be stated as the venue of the meeting, particularly, as the Act expressly provides that all statutory and General Meetings must be held in Nigeria.⁵ Likewise, where the Articles of Association of the company provides for the venue of a meeting, or where the meeting is usually held at a particular venue, such place will be deemed as the venue of the meeting. On the other hand, in the case of a hybrid meeting, the venue of the meeting should be where the physical participants of the meeting are situated.

ii. Attendance

The Company Secretary must devise a way of registering or documenting the attendance of virtual attendees. Although the virtual attendees will not be able to sign an attendance register, most virtual meeting platforms provide means of recording the identity of the participants of the meeting and it could be used as evidence of participation/ attendance.

³ <https://www.cac.gov.ng/3956-2/>

⁴ ICSA's guidance on the venue of a virtual meeting

⁵ Section 216 of CAMA



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iii. Participation

The virtual meeting platform must guarantee an audio and video, or audio participation of all members of the meeting in an orderly fashion. Every member of the meeting should be allowed to speak and vote at the right time and in the right manner during the meeting.

iv. Quorum

Like physical meetings, it is possible for participants to get distracted and leave the meeting for various reasons. Where their reason for withdrawal is considered insufficient by the Chairman. The Chairman is allowed to continue the meeting with the number of persons and whatever decision made at the virtual meeting will be binding on all the members provided all protocols for holding a meeting (as prescribed by the CAMA) have been observed. However, where the members leave for a valid reason, the Chairman may adjourn the meeting to the same time in a week's time and if there is still no quorum at the adjourned time, the members present will be the quorum and their decision shall bind all the members⁶.

The quorum for General Meetings shall be one-third of the total number of members of the company; or 25 members (whichever is less) present in person or by proxy provided that the number of members is not a multiple of 3 and where members are 6 or less, quorum shall be 2.⁷ And for Board Meetings, the Act prescribes 2 members where there are not more than

6 directors but where there are more than 6; one-third of their number⁸.

Roles of the Company Secretary in organizing a virtual meeting

• Circulation of Notices and Invitations

The Company Secretary must ensure that proper notices are sent to all the members of the company entitled to attend the meeting stating that the meeting will be held virtually, the platform that would be used and the link or access to such platform. It should also include the time and date of the meeting, email address to entertain/deal with complaints from persons who have problems subscribing to the platform. Upon delivery of the notices, the Company Secretary should inform the Chairperson of the meeting and persons who have indicated interest to ensure that the meeting is structured to accommodate them.

• Prompt distribution of meeting materials

The Company Secretary must ensure that all materials (meeting papers/reports) required by the attendees for the seamless running of the meeting are circulated to the attendees on time to allow for study of the materials before the meeting, and to enable them make reasonable contributions during the meeting.

• Information Security

To ensure a seamless meeting, the Company Secretary should seek assistance from technology experts to ensure that the chat room or meeting platform is

⁶ Section 232 (5) CAMA

⁷ Section 232(2) CAMA

⁸ Section 264 (1) CAMA



secure. It is also important to ensure that the access links are only sent to the current and correct emails or telephone numbers of the intended attendees. At reasonable intervals, the Company Secretary should check and confirm that only those invited have access to the meeting platform and that the meeting has not been infiltrated by strangers. To prevent a breach of information security, the meeting log-in details may only be sent after an attendee has indicated that he would be available for the meeting and he should be cautioned against sharing the details.

- **Set up / Constitution of a Technical team**

To achieve a successful and hitch free meeting, it is good that the Company Secretary collaborates with the Technical team (IT) to firm up the meeting logistics. The technical team would be required to make themselves available on the day of the meeting to support the attendees with any issues/glitches they may encounter on the platform. They could also help to record the attendance at the meeting as well as ensure that materials being reviewed/discussed are projected on the platform for easy reference and to prevent distractions. Usually, the Company Secretary moderates the meeting logistics and as such, is charged with the responsibility of monitoring and coordinating messages from the attendees during the meeting as regards questions, comments or complaints they have during the meeting and taking requisite actions

Roles of Virtual Attendees

- **Adequate Preparation**

Attendees should promptly notify the Company Secretary of their intention to attend the virtual meeting. In turn, the attendees are expected to make adequate preparations for the meeting by

familiarizing themselves with the virtual meeting platform and the tools required for a seamless meeting. This may include downloading the application to be used, ensuring that they have sufficient data and contacting the Company Secretary for assistance where they encounter trouble navigating through the platform before or during the meeting.

- **Participation**

All attendees must also avoid distractions and give adequate attention to the matters discussed during the meeting. When required to make presentations, a virtual attendee must manage his allotted time as well as ensure that other participants are following his presentation by giving them time to take down notes or identify important materials.

- **Maintaining Decorum**

During the meeting, a virtual attendee must maintain decorum. He must limit all background noise by muting speakers and signify his intention to make comments and ask questions by agreed modes of doing so. All virtual attendees must also refrain from interrupting the speakers or speaking generally until they have been signaled or called upon to do so.

- **Confidentiality**

Virtual attendees must choose a secure place for meetings and adhere to all information security and confidentiality protocols. They must also restrict access of uninvited persons to the meeting and keep uninvited persons away from hearing distance.

Roles of the Chairman

- **Enforcement of Order and Decorum**



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Just like physical meetings, the Chairperson is responsible for spelling out and enforcing the rules of engagement with regard to when to speak, the mode of indicating intention to speak, the time allotted for each speaker etc. for the smooth running of the meeting.

- Ensuring Participation of attendees

The Chairman should ensure that virtual attendees are attentive and participate fully in matters discussed during the meeting. He should also keep a list of the attendees and their phone numbers for easy reach in the event of a technological glitch during the meeting. The Chairman should encourage the attendees to share comments relating to the matters discussed during the meeting and feedbacks on the organization of the virtual meeting to ensure improvement in the future.

CONCLUSION

It is without any iota of doubt that the Guidance published by the NSE is a step in the right direction for holding corporate meetings during this lockdown. We however recommend that in the spirit of “ease of doing business”; certain provisions of the proposed Companies and Allied Matters Bill should be further amended to take cognizance of the current realities presented by the Covid-19 Pandemic to accommodate virtual meetings in situations where it is impossible to convene a physical meeting. Incorporating same into the Bill, would definitely provide a more structured and binding framework for the conduct of virtual meetings in Nigeria. Organizations are also encouraged to amend their Articles of Associations, Board and Committee

Charters to accommodate virtual meetings and invest in technology infrastructures that would ease and facilitate secured and seamless meetings online.

Furthermore, we recommend that the amendment should be extended to validate the circulation of notices by electronic mails (e-mails) or other electronic platforms.

Disclaimer: This article is for general information purposes only, does not constitute legal advice and does not purport to be comprehensive. If you have any questions or require any clarification on how this guidelines can be implemented in your business, or require the services of our company secretariat or business advisory team, please contact: info@topeadebayollp.org.

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