



Covid-19 Pandemic and Legal Conundrums in Virtual Corporate Meetings by Public Incorporated Companies in Nigeria

*Rahmatulshaq Ahmed**, *Ibrahim Mohammed***, *George R.C. Ibekwe****

Nigerian Law School, Nigeria

ABSTRACT

For as long as Covid-19 lingers and even after it has stopped being a pandemic, the world in general and Nigeria in particular has learned to appreciate more the place of technology in our life dealings. Companies' Boards and members who met periodically in furtherance of corporate governance have now deployed virtual communications to ensure adherence to governance principles and business continuity. Nigerian business framework should embrace the advantages of technology. The contemporary nature of virtual corporate meetings globally is what motivated this article to analyze Covid-19 Pandemic and Legal Conundrums in Virtual Corporate Meetings by Public Incorporated Companies in Nigeria. This article observes that virtual company meeting is clearly provided for in Nigerian Apex Company Legislation, but only for private companies. This article's position is that, for public companies, although not explicitly provided, virtual meetings can be validly held in extreme circumstance like the Covid-19 Pandemic if companies adhere the conditions that validates meetings. This article recommends among other things, the need for Corporate Affairs Commission to build on the regulations allowing public companies hold Annual General Meetings using proxies, by prescribing the forms a corporate meeting can take, including virtual meeting for Public Companies in Nigeria.

INTRODUCTION

Corporate entities take decisions at meetings. These meetings could be that of board of directors (involving all directors of a company) or general meetings (involving members of the company). Meetings are usually formal gathering which may entail physical presence of persons attending the meeting or by written resolutions¹ in case of private companies where it is allowed to take decision without formal gathering but it may still entail physical presence of each signatory to append his/her signature to the resolution.

At the wake of the Covid-19 global pandemic which affected every facet of life, restrictions were imposed by government at all level to curb the spread of Covid-19. Chief among the restrictions was partial or total "lockdown"², meaning no movement from one point to the other except when in case of partial lockdown, movement is allowed for some hours to enable the acquisition of necessities. Another restriction is that of physical/social distancing, which restricts/prohibits gathering of people, since the Covid-19 disease is said to be communicable. These two restrictions among others, affected on the holding of meetings generally and particularly as is pertains the theme of this article- corporate meetings, being that the circumstance makes it difficult if not impossible for directors and shareholders to even access the venue of the meeting.

Considering corporate virtual meetings instead of physical meetings due to Covid-19 pandemic, the article will look at the propriety of virtual corporate meetings by Public Incorporated Companies in Nigeria

* Rahmatulshaq Ahmed, Senior Lecturer, Nigerian Law School, Kano Campus, email: ranwal11@hotmail.com, 08033577775

** Ibrahim Mohammed, Deputy Director (Academics), Kano Campus, email: ibraheemmad@yahoo.com

*** George R.C. Ibekwe, Senior Lecturer Nigerian Law School, Kano Campus. email: kamsibekwe@gmail.com

¹ Section 259 CAMA 2020

² restriction on movement of its citizens through the declaration of states of emergency and lockdown orders of the 29th of March, Nigeria joined global efforts to curb the pandemic by enacting the COVID-19 Regulations 2020 ("Regulations") made pursuant to the Quarantine Act 2004.

CORPORATE REGULAION IN NIGERIA

While there are other extant laws that influence impact on corporate management directly or indirectly in Nigeria³, the Companies and Allied Matters Act 2020⁴ (also known as CAMA 2020) is the principal legislation that generally regulates the incorporation and management of companies in Nigeria. It administered by Corporate Affairs Commission,⁵ a Commission that is amount others responsible for regulating and supervising the establishment, management and winding of companies in Nigeria.⁶In order to ensure smooth management of companies and entrenchment good corporate governance, CAMA contains provisions regulating different types of companies, appointment, duties and removal of directors of companies, company meetings, financial statements of companies, composition and duties of audit committee etc. The Act also empowers the Commission to make regulations for administering the provisions of the Act⁷.

CORPORATE MEETINGS

The CAMA 2020 provides for the various types of corporate meetings to be held by a company, be it private or public. It also regulates the businesses to be transacted at such meetings, whether the meeting should be held in Nigeria or can be held elsewhere, the need to issue notice of meeting to those entitle, and proceedings at the meetings including quorum at meetings and so many more. The various type of meetings includes the first Board of Directors meeting which must be held within six months of the incorporation of the company, Statutory Meeting for Public Companies, Annual General Meeting and Extraordinary Meeting.

Board Meeting

The meeting of the board may be called for the dispatch of their business, may be adjourned and otherwise regulated as they think fit, and the first meeting of the directors shall be held not later than six months after the incorporation of the company.⁸

The directors may elect a chairman for their meeting and unless the articles otherwise provide, any question arising at the board meeting is decided by a simple majority of votes, and in case of an equality of votes, the chairman has a second or casting vote.⁹

Unless otherwise provides by the articles, a notice of 14 days is required to be given to all directors entitled to receive notice of meeting and failure to give such notice invalidates all proceedings at the meeting.¹⁰

In board of directors meeting, written resolutions are valid and as effective as a resolution passed at a meeting duly convened and held.¹¹

Unless the articles provide otherwise, the quorum necessary for the transaction of the business of directors are two where there are not more than six directors, but where there are more than six directors, the quorum is one-third of the number of directors, and where the number of directors is not a multiple of three, then the quorum is one third to the nearest number.¹²

³ To mention a few, laws like Investments and Securities Act 2007 which is regulated by Securities and Exchange Commission. It is the apex regulatory institution of the Nigerian Capital Market with a view to protecting the interest of all investors in the Nigerian market. It also regulates all offers of securities by Public Companies as well as registers securities of Public Companies in Nigeria.

Nigeria Investment Promotion Commission Act 2004, regulated by Nigerian Investment Promotion Commission, with its functions as contained in s. 4 NIPCA – to be the agency of the Federal. Government. to co-ordinate and monitor all investment promotion activities in Nigeria. National Office for Technology Acquisition and Promotion Act, 2004, regulated by National Office for Technology Acquisition and Promotion under the Ministry of Trade Industry and Investment and its major function is to monitor on a continuing basis, the transfer of foreign technology into Nigeria. Stamp Duties Act, regulated by Federal Inland Revenue Service, to charge *advalorem*, statement of amount that forms the nominal share capital of a company and any increase thereof.

⁴ The 2020 Act replaces the CAMA Cap. C20 LFN, 2004. The 2020 Act was signed on 7th August, 2020 and becomes operational in January 2021. Sourced at <<https://businessday.ng/news/article/buhari-signs-amended-companies-and-allied-matters-bill-cama-2020-into-law/>>. It is the principal law for registration of business and non-business organizations in Nigeria.

⁵ Established by section 1 CAMA 2020. The commission's head office is located in the Federal Capital Territory, Abuja with offices in each state of the federation

⁶ See Section 8 CAMA 2020 for the functions of the commission.

⁷ See section 867 CAMA 2020 which provides that the commission may, with the approval of the Minister, make regulations for the purpose of administrating the provisions of the Act.

⁸Section 289 (1) CAMA 2020

⁹ Section 289(2) CAMA 2020

¹⁰ Section 292 CAMA 2020

¹¹ Section 289 (8) CAMA 2020

Statutory Meeting

CAMA 2020 provides that statutory meeting must be held by every public within six months from the date of its incorporation.¹³

The business of this type of meeting is to consider the statutory report which must be sent to members of the company 21 days to date for holding the statutory meeting.¹⁴

Annual General Meeting

Except in the case of a small company or any company having a single shareholder, every company shall in each year hold a general meeting as its annual general meeting in addition to any other meeting in that year, and specify the meeting as such in the notices calling for it; not more than 15 months shall elapse between the date of one annual general meeting of a company and the next: Provided that so long as a company holds its first annual general meeting within 18 months of its incorporation it need not hold it in that year or in the following year;¹⁵ but for subsequent Annual general meetings which must be held within 15 months, the Commission shall have power to extend the time within which any annual general meeting shall be held, by a period not exceeding three months so that not more than 18 months shall elapse between the date of the last annual general meeting and the date of any meeting so extended.

Annual general meeting is made compulsory to afford the members of company recurrent opportunity of meeting, firstly to consider the progress and development of the company, and secondly to take necessary action to safeguard their interest and to promote those of the company.¹⁶

Where a company resolves that a meeting shall be treated as its annual general meeting, a copy of the resolution shall, within 15 days after the passing, be filed with the Commission.¹⁷

Where a company entitled to hold an annual general meeting fails to hold its Annual General Meeting within the stipulated time, the company and every officer of the company are liable to a penalty in such amount as the Commission shall specify in its regulations.¹⁸

All businesses transacted at annual general meetings are deemed special business, except declaring a dividend, presentation of the financial statements and the reports of the directors and auditors, election of directors in the place of those retiring, the appointment, fixing of the remuneration of the auditors, appointment of members of the audit committee and disclosure of remuneration of managers of a company, which are ordinary business.¹⁹

A private company may hold its general meetings electronically provided that such meetings are conducted in accordance with the articles of the company.²⁰

Extraordinary General Meeting

Extraordinary general meeting is not compulsory for any type of company but it can be held by any type of company, be it private or public company where there arises a matter of urgency that cannot be delayed till the next annual general meeting to be resolved.

The board of directors may convene an extraordinary general meeting whenever they deem fit, and if at any time they are not within Nigeria, sufficient directors capable of acting to form a quorum, any director may convene an extraordinary general meeting.²¹ Member or members of a company may also requisition an extraordinary general meeting.²²

¹² Section 290(1) CAMA 2020

¹³ Section 235(1) CAMA 2020

¹⁴ Section 235(2) CAMA 2020

¹⁵ Section 237(1) (a) CAMA 2020

¹⁶ Bhadmus H. Y., *Corporate Meetings (Principles and Practice)*, (Enugu: Chenglo Publication, 2009) p.18

¹⁷ Section 236 (4) CAMA 2020

¹⁸ Section 236(5) CAMA 2020

¹⁹ Section 238 CAMA 2020

²⁰ Section 240 (2) CAMA 2020

²¹ Section 239(1) CAMA 2020

²² See section 239 (2)-(7) CAMA 2020

Only special businesses are transacted at an extraordinary general meeting,²³ and extraordinary general meetings can be held outside Nigeria.²⁴ A private company may hold its general meetings electronically provided that such meetings are conducted in accordance with the articles of the company.²⁵ This provision includes extraordinary general meeting, since it is a form of general meeting.

Notice of Meetings

The notice required for all types of general meetings is 21 days from the date on which the notice was sent out. Although, looking at the provision of subsection two (a & b) of this section, it must be noted that it is possible to give a shorter notice.²⁶

The notice of a meeting shall specify the place, date and time of the meeting, and the general nature of the business to be transacted in sufficient detail to enable those to whom it is given to decide whether to attend or not, and where the meeting is to consider a special resolution, set out the terms of the resolution²⁷.

No business may be transacted at any general meeting unless notice of it has been duly given to any member entitled,²⁸ to notice of the meeting, the notice shall contain, a statement that a member has the right to appoint a proxy to attend and vote in his/her stead and that the proxy need not be a member of the company.

The law provide for means by which service of notice of meeting can be effected which are by personal service, by sending to members by post to their registered address or any address supplied to the company by a member,²⁹ and in addition, to these means, notice may also be given by electronic mail to any member who has provided an electronic mail address to the company.³⁰

Failure to give notice of any meeting to a person entitled to receive it invalidates the meeting unless such failure is an accidental omission on the part of the person giving the notice.³¹

VIRTUAL MEETINGS

Virtual Meetings are meetings conducted in space (virtual environment), which no physical venue and not face-to-face. Virtual meetings are conducted using technology to allow participants to collaborate through an Internet connection. These virtual meeting platforms generally have an audio and video component where participants can communicate effectively during pre-scheduled teleconferences, web conferences, or video conferences.³²

Virtual meetings can be held anywhere there is an Internet connection, it is used to bring together people who would not normally have the opportunity meet one another physically.³³

MODES OF VIRTUAL MEETING

Depending on the type of meeting and the number of participants, different applications can be utilized for a virtual meeting. These applications are downloaded and installed on a participant's device be it smart phone, ipad, tablet or a computer system. When the meeting is scheduled, a link is generated which gives the participants access to the meeting once they click on to it. The applications enable the participant listen to others and also communication with others. Where the video is enabled (and this happens during meetings), participants see each other and they way they conduct themselves in their various venues. The following applications can be used, to amongst other things, to conduct virtual meetings.

²³ Section 239 (8) CAMA 2020

²⁴ Section 240(1) CAMA 2020

²⁵ Section 240 (2) CAMA 2020

²⁶ Section 241(1) CAMA 2020

²⁷ Section 242 (1) CAMA 2020

²⁸ See Section 243 (1) for persons entitled to receive notice of meeting

²⁹ Section 244(1) CAMA 2020

³⁰ Section 244(3) CAMA 2020

³¹ 245. (1) CAMA 2020

³² Virtual Meetings: 99 (Best)Tools, Ideas and Tips, www.eventmanagerblog.com. See also Streamsowers & Kohn, Barristers, Solicitors & Arbitrators, "A Practical Guide on the Conduct of Virtual Meetings For Public Companies", <https://sskohn.com/a-practical-guide-on-the-conduct-of-virtual-meetings-for-public-companie-2/>, accessed on 27/7/22

³³ *ibid*

1 Skype

Skype is a free application that uses a voice-over-IP service used by its registered users to communicate online. The application is downloadable on play store (android) as well as Appstore (apple). Users registered under Skype can communicate online by way of online video calling, that allows registered users to communicate online via online video calling, messaging, mobile chat. While doing video call using skype, users can share screen so the participants can view the screen of the presenter in their various destinations as though they are gathered at a formal meeting. Skype application's service is available for smart phones, notebook, tablet computers, desktop computers and other mobile devices³⁴

1. Hangouts Meet

Google Hangouts is a default application inside google, the moment a person has a google account, he/she can access hangouts. This application has been in use since its introduction in 2013. An enterprise-friendly version of the application was launched in 2017, focused on business solutions and video conferencing under the name Hangouts Meet. Hangout Meet platform can be used by up to 50 participants for video chats and conferencing.³⁵ The app can be accessed on play store and App store, it is compatible with Gmail, therefore, a participant can link up with the scheduled meeting directly from a calendar entry or email. On the other hand, all participants must have a Gmail account to be able to link up and also to invite others. The platform lacks some of the enterprise functionality of other more complicated meeting software.³⁶ One of which is the limitation of participants, the App does not account more than 50 participants, hence, it will be difficult for a public company to hold virtual Annual General Meeting via the App. This is so because membership of companies is limitless³⁷, and no member can be denied access to a meeting³⁸ due to limitation of an Application's acceptance of participants.

4. Zoom

Zoom is a video communications software that is used for virtual meeting and video calls. The software offers a range of options persons hosting meetings, webinars or conferences, it can be accessed freely or various pricing plan depending on the features required from advance functionality to cleaner interface.³⁹ Zoom can handle up to 200 participants with unlimited cloud storage (in its large enterprise plans).⁴⁰ Zoom application is downloadable on multiple devices of an individual since the application can be synchronized across platforms.

Participants using zoom application in a virtual meeting can share screens to show designs and content projects.⁴¹

Other online meeting software/applications include Join Me, Microsoft Teams for Business⁴²

RECENT CONDUCT OF VIRTUAL MEETING BY PUBLIC COMPANIES IN NIGERIA

During the Covid-19 Pandemic, the Corporate Affairs Commission issued a guideline for Public companies to hold Annual General Meeting by Proxy also the Nigerian Stock Exchange (NSE), recently renamed Nigeria Exchange Group (NXG), released the Guidance on Companies' Virtual Board, Committee, and Management Meetings (the Guidance) to aid listed companies in complying with the provisions of statutes when holding their meetings during the COVID-19 pandemic.⁴³

Guidelines on holding of Annual General Meetings of Public Companies using Proxies

The Corporate Affairs Commission on 26 March 2020 issued guidelines for public companies to hold their Annual General Meeting (AGM) by

³⁴ Skype: What is Skype? www.edu.gcfglobal.org, accessed on 28/7/2022

³⁵ Virtual Meetings: 99 (Best) Tools, Ideas and Tips, www.eventmanagerblog.com, accessed on 26/7/2022

³⁶ Ibid

³⁷ Only a private company has the limitation of 50 members, see section 22 CAMA 2020

³⁸ See. Section 245. Failure to give notice of a meeting to a person entitled shall invalidate the meeting unless such failure is due to accidental omission on the part of the person giving the notice. See also section 252 CAMA 2020, that every person entitled to notice of a general meeting is also entitled to attend the meeting.

³⁹ <https://zoom.en.softonic.com/mac>, accessed on 30/7/22

⁴⁰ op.cit fn. 34

⁴¹ **Opcitfn 38**

⁴² Opcit fn. 34

⁴³ Streamsowers & Kohn, Barristers, Solicitors & Arbitrators, "A Practical Guide on the Conduct of Virtual Meetings For Public Companies", <https://sskohn.com/a-practical-guide-on-the-conduct-of-virtual-meetings-for-public-companie-2/>, accessed on 27/7/22

proxies pursuant to Section 230 of CAMA 2004, now section 254 CAMA 2020⁴⁴. The guidelines are as follows:

1. The company must seek for and obtain the approval of the Commission before holding such a meeting.
2. The Notice of meeting in a prescribed form⁴⁵ must be sent and delivered to all entitled⁴⁶ to such notice.
3. In the notice, all members must be advised that in view of the Covid-19 pandemic, attendance shall only be by proxy with a list and particulars of persons willing to act as proxies for them to select therefrom.
4. Computation of what constitutes the quorum for the meeting shall be as stipulated in the company's Articles of Association or provisions of CAMA⁴⁷.
5. The Commission shall representative(s) to observe the conduct of the meeting, failing which, the company shall send a detailed report to the Commission, after the meeting.
6. The company shall transact only ordinary businesses of Annual General Meeting.⁴⁸ Where any Special business is considered very urgent and necessary, an application shall be made to the Commission.⁴⁹

Guidance on Companies' Virtual Board, Committee, and Management Meetings

The Nigerian Stock Exchange now the Nigerian Exchange Group (NXG),⁵⁰ on 15 April 2020, published the "Guidance on Companies' Virtual Board, Committee, and Management Meetings" (the "Guidance") in response to the legal and regulatory uncertainties occasioned by the COVID-19 pandemic and the current inability of companies' board, board committees and management teams to hold physical meetings.⁵¹

The reasoning behind the Guidance is to serve as direction for companies on the best practices and procedure to adopt while conducting virtual meetings.⁵²

The Guidance outlines requirements for organizing virtual meetings, various provisions in relation to the preparation for virtual meetings, which includes complying with the conditions that validates corporate meetings under CAMA⁵³ technical know-how, complying with virtual protocols, attitude of participants and other relevant matters.⁵⁴ For an effective authorization of virtual meeting by a company, its Board, its Committee and management, the company's Articles of Association and Management Charters or Terms of Reference must provide for, or be altered to that effect.⁵⁵

In other to conduct a seamless virtual meeting, the NSE's (now NXG) recommendations includes the following:

1. The company secretary must draft an agenda setting out the matters to be considered, and circulate all meeting materials ahead of time in line with CAMA and the Board/Committee or Management's Charter or Terms of Reference.⁵⁶
2. All persons entitled to attend must be served with notice of the meeting and the must confirm that they intend to participate in the virtual meeting either themselves or through authorized proxies. This to enable the company utilize a software platform that can accommodate all attendees.⁵⁷

⁴⁴ The section provides 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".

⁴⁵ For the prescribed form of notice of meeting in accordance with the provisions of CAMA 2020, see sections 241, 242, 244, 246 & 254 CAMA.

⁴⁶ See section 243 CAMA 2020.

⁴⁷ See section 256 CAMA 2020.

⁴⁸ See section 238 CAMA 2020.

⁴⁹ See <https://www.cac.gov.ng/wp-content/uploads/2020/05/GUIDELINES-ON-HOLDING-OF-ANNUAL-GENERAL-MEETINGS..pdf>, accessed on 1/8/22

⁵⁰ Nigerian Exchange Group (NGX Group) Plc is a leading integrated market infrastructure in Africa, championing the development of Africa's financial markets. NGX Group provides a wide range of services including listing and trading securities, licensing, market data solutions, ancillary technology, regulation, real estate, and more through its wholly-owned subsidiaries. See <https://ngxgroup.com/>, accessed on 1/8/22

⁵¹ Aluko Oyebo & Co., "NSE Issues Guidance On The Conduct Of Virtual Meetings Amidst COVID-19", <https://www.aluko-oyebode.com/insights/nse-issues-guidance-on-the-conduct-of-virtual-meetings-amidst-covid-19/>, accessed on 1/8/22

⁵² Olumide, A and Akinkugbe O, 'NSE's Guidance on Virtual Meetings-What Listed Companies should know', <https://ao2law.com/nse-guidance-on-virtual-meetings-what-listed-companies-should-know/>, accessed on 1/8/22

⁵³ These conditions include service of notice of meeting to those entitled, additional notice published in National Daily (only for a public company), quorum, proxy etc.

⁵⁴ *opcit*, fn. 42

⁵⁵ *Ibid*.

⁵⁶ *Ibid*.

⁵⁷ Example where the participants are likely to be close to 200, it will be advisable for the company to use Zoom software. See our subtopic on

3. Presentations during the meeting should be prioritized in such a way that external participants will make their presentation first and exit the meeting in order to give members space to focus other programs on the agenda.
4. The attendees should dress decently and ensure that activities going on around their remote work place are decent considering that other attendees can view his/her work space.
5. The Chairman should ensure that all virtual attendees are actively engaged and given audience to contribute towards the discussion.
6. The company must ensure that necessary equipment that will facilitate virtual meetings is made available to attendees before the commencement of the meeting.
7. In order to ensure confidentiality of information during the meeting, companies must devise means of protecting virtual meetings from being hijacked, eavesdropped on, infiltrated, or manipulated.

CHALLENGES OF VIRTUAL MEETINGS

Holding of virtual meeting is not without its challenges since it electronically regulated, there are technical difficulties mostly due to network disruptions, that can log people out thereby making full participation in the meeting difficult, also depending on the number of participants at the meeting, it may be difficult to accept all participants, that is why when trying to log into some virtual meetings, it says “ the members have reached maximum capacity”. Another challenge of virtual meeting is that it does not aid in appreciating the participant’s body language like the face to face interaction, it is also difficult to manage participants’ attentiveness towards the presentations at the meeting. There is also the challenge of skepticism by a shareholding population that is not ICT savvy towards attending the meeting as well as the challenge of non-familiarization with electronic signatures.

ARE PUBLIC COMPANIES EMPOWERED TO CONDUCT VIRTUAL MEETINGS IN NIGERIA?

Having carefully looked at the provisions of CAMA 2020 on the various types of corporate meeting that can be conducted by companies in Nigeria, we will consider it appropriate, conduct of virtual meetings private companies, looking at provisions where it is explicitly provided that a private company can conduct an electronic meetings as well as other instances where holding of virtual meeting can be justified in the light of Covid-19 pandemic.

For a private company, CAMA 2020 clearly provides that a private company may hold its Annual General Meeting electronically provided it is contained in the articles of association of the company.⁵⁸ Here, virtual annual general meeting is explicitly allowed on the condition that the articles of the company provides for it. Hence, any such conduct is justifiable.

For the meeting board of directors of a company, CAMA 2020 in section 289(1) empowers the board to regulate it as they think fit. Although, CAMA also provides that in board meetings “written resolutions are valid and as effective as a resolution passed at a meeting duly convened and held”⁵⁹, written resolutions require each director appending his/her signature physically, hence, taking the risk of visiting different directors to get them to append their signatures. Covid-19 Pandemic awareness advises visitation only when it is absolutely necessary and there is no alternative means of achieving the aim of the visitation. In this light, if the directors are empowered under section 289(1) CAMA, to regulate the meeting as they deem fit, holding a virtual board meeting can be within the contemplation of CAMA.

For statutory and annual general meetings of a public company, they have two things in common, hence, we will classify them as general meeting of a public company. First, CAMA 2020 provides that they are both meetings be held in Nigeria, second, both are compulsory for public companies, especially since annual general meeting of public companies is distinguished from that of a private company in the sense that it is clearly provided that annual general meeting of a private company can be held by electronic means.

In considering whether Public companies are empowered hold general meetings virtually, recourse must be made to the provisions of CAMA. It is not enough to have guidelines for holding annual general meeting of public companies by proxies, as sanctioned by CAC and guidance on companies' virtual board, committee, and management meetings for listed companies, because these are not empowering all public companies and they are not implying that Public companies could utilize these avenues for all times. It is only where clearly, CAMA provides that: “the articles of association of a public company can provide for virtual annual general meeting of the company”, or a section of CAMA clearly provides that a “unless otherwise provided by the articles, a public company can hold an annual general meeting by electronic means”, it cannot be clearly said that public companies are empowered to hold virtual annual general meetings.

modes of virtual meeting.

⁵⁸ Section 240(2) CAMA 2020

⁵⁹ Section 289 (8) CAMA 2020

Another point why CAC guidelines for holding annual general meeting of public companies by proxies, can not be seen as empowering all public companies to hold annual general meeting (as contemplated by CAMA) virtual, is that unlike the guideline, a public company cannot be compelled to hold meeting by proxies. The CAC Guidelines are built upon the existing prerogative of members of a company eligible to attend and vote in a meeting, to appoint a proxy, whether a member of the company or not, to attend the meeting on their behalf. The CAC Guidelines, however, require the AGMs to be held solely by proxy attendance, among others.⁶⁰ Empowering the public company to hold annual general meeting should also mean allowing members of the company in their personal capacity participate virtually and where they wish to appoint proxies, they are at liberty to.

CONCLUSION

The Covid-19 pandemic has altered our way of life but has also created more memorable moments for us to relish upon, it has made us work and transact businesses from home and inevitably using technology to achieve most things we would have travelled far and wide to achieve. It has also made us to interact more using technology than we do physically. No wonder it was one of the pandemic's attribute that "we show love by keeping away". This also applies to the business world and for companies as a legal personality. Meetings can be successfully conducted without physical assembly in so far as the articles of the company can provide for it, and consider the number of members to form the quorum of company meetings among other things. This is because, from all the virtual meeting platforms we have seen, the maximum capacity is set and knowing that quorum validates any resolution reached at meetings, it has to be formed even during virtual meeting.

Covid-19 has come to stay with us and we have to learn to modify our social and business lives to deal with it. However, considering that CAMA 2020 is a new law that recently came into existence after series of crucial and painstaking amendment, we should not be thinking of another amendments yet. We therefore recommended that the Corporate Affairs Commission acting under its inherent power pursuant to section 8 of CAMA 2020 could make it possible for public companies to hold virtual meetings. The Commission can build on the regulations it made for public companies allowing them to hold Annual General Meetings using proxies, by prescribing clearly a regulation that allows public companies to hold virtual annual general meeting by conforming to conditions provided for holding a valid annual general under CAMA. This will be more in tune with situations like the Covid-19 pandemic and other unforeseen exigencies of life.

⁶⁰ Guidelines on Holding Annual General Meetings Using Proxies, www.cac.gov.ng, accessed on 1/8/22