

A Case for the Adoption of Virtual Annual General Meetings by Public Companies in Nigeria Post the COVID-19 Pandemic

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Abstract

[Purpose] The aim of the article is to make a case for Nigerian public companies to hold their annual general meetings (AGMs) on virtual platforms following the experiences during the Coronavirus Disease (COVID-19) pandemic and the physical and social distancing measures it occasioned.

[Methodology/Approach/Design] The article followed a structured review of the extant companies' regulation in Nigeria, particularly the Companies and Allied Matters Act, 2020 (CAMA 2020) drawing from the position of the law in other countries, both developing and developed countries.

[Findings] It finds that prior to and during the COVID-19 pandemic, Nigerian company regulations made clear provisions for private companies to hold general meetings online but the provisions of the regulations were inadequate to support Nigerian public companies holding their AGMs on virtual platforms.

[Practical Implications] The implication was that until recently, Nigeria public companies could only hold their AGMs physically. The Business Facilitation (Miscellaneous Provisions) Act, 2022 however amended (CAMA 2020) to provide for public companies to hold their general meeting on virtual platforms when necessary such as was the case during the COVID-19 pandemic.

[Originality/Value] Given the importance and primacy of the general meeting in corporate governance, the availability of suitable information communication technology and the need for public companies to hold their AGMs even under pandemic situation, there is a need for public companies to take advantage of the recent change in the law and hold their general meetings on virtual platforms whenever the need arises.

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INTRODUCTION

The COVID-19 pandemic had a destabilising effect globally with a heavy toll on human life. The disruption of social and business activities as a result of lockdowns, social and physical distancing and other COVID-19 control and prevention measures was unprecedented, and the effect is still being felt. Following the onset of the pandemic in March 2020, the Federal Government of Nigeria as well as various state governments announced lockdowns and movement restrictions across state borders. The government also issued directives on strict adherence to COVID-19 prevention protocols including physical distancing and restriction of gatherings. Apart from the disruptions to normal social and business activities occasioned by lockdowns and restrictions of human movements a significant consequence of the pandemic was the inability of public companies to hold their annual general meetings (AGMs) which usually entailed large gatherings of shareholders. Meanwhile, the principal company regulation in Nigeria, the Companies and Allied Matters Act 2020 (CAMA 2020) which received Presidential assent while the pandemic raged on 7 August 2020, provides that 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..."¹ The new Act contained a provision specifically permitting a private company to hold its AGM electronically provided such a meeting is held in accordance with its articles.²

The COVID-19 pandemic was a period of great uncertainty in the Nigerian corporate sector. Its curtailment measures that restricted human movements led to the challenge of organizations grappling with remote (online) work. It also created the additional complication of hosting AGMs at a time physical gatherings were restricted. With a view to resolving the latter challenge, the Corporate Affairs Commission (CAC or the Commission) issued the Guidelines on Holding of Annual General Meetings (AGM) of Public Companies Using Proxies (AGM Proxy Guidelines).³ The guidelines provide among other things, for companies to use proxies in holding their AGMs to reduce the number of persons physically

¹ Companies and Allied Matters Act No. 3 2020 (CAMA 2020) Section 237 (1).

² *Ibid*, Section 240(2).

³ Corporate Affairs Commission (CAC) "Guidelines on Holding of Annual General Meetings (AGM) of Public Companies Using Proxies" (2020) <https://www.cac.gov.ng/wp-content/uploads/2020/05/GUIDELINES-ON-HOLDING-OF-ANNUAL-GENERAL-MEETINGS.pdf>.

present at the meeting in line with directives on physical distancing and the restriction on maximum number of people at every gathering due to COVID-19 pandemic.⁴ However, the guidelines were short-lived as the Commission, by a public notice on 21 November 2022 announced that guidelines would cease to have effect after 31 December 2022 and advised public companies that have been granted approval to hold their AGMs using proxies to do so not later than that date.⁵

This article examines the relevant provisions of Nigeria's company regulations, particularly CAMA 2020 and the AGM Proxy Guidelines (while it lasted) with a view to determining whether they provide adequate legal framework for public companies in Nigeria to hold their AGMs electronically. It argues that prior to the signing into law of the Business Facilitation (Miscellaneous Provisions) Act, 2022⁶ (Business Facilitation Act) in February 2023 the provisions of the company regulations in Nigeria were inadequate to support Nigerian public companies holding their AGM on virtual platforms. The Business Facilitation Act was promulgated to promote the ease of doing business in Nigeria, and amended section 240 (2) of CAMA 2020.

EVOLUTION AND PRACTICE OF VIRTUAL COMPANY MEETINGS IN SELECTED JURISDICTIONS

In a physical AGM, as the name implies, the meeting is held physically in a designated location and there is no provision for remote attendance. A webcast AGM is where a physical meeting has add-on features whereby the meeting proceedings are broadcast online and/or via telecommunications link. Participants observe proceedings and may not be able to fully participate by asking questions or voting. In a hybrid AGM, the meeting is held in a physical location with provision for remote participation via electronic means while a VAGM is conducted solely online with electronic presentations, deliberation and voting.⁷

The growth and evolution of the Internet significantly altered how companies connect and communicate with their shareholders, and has thus affected corporate governance. In the United States of America (US), businesses started integrating technological tools to support in-person meetings in the mid to late 1990s. Online webcasts replaced simultaneous satellite broadcasts of annual

⁴ Ibid.

⁵ CAC "Guidelines on Holding of Annual General Meetings (AGM) of Public Companies Using Proxies" (2022) <https://www.cac.gov.ng/guidelines-on-holding-of-annual-general-meetings-agms-of-public-companies-using-proxies>.

⁶ Act No. 5 2022.

⁷ L. Freeburn and I. Ramsay, "Virtual Shareholder Meetings in Australia" (2021) 32(2) *International Company and Commercial Law Review* 53.

shareholders meetings. Shareholders who participated virtually at these meetings were able to send questions to management via email during the meeting.⁸

Increasingly, most aspects of annual meetings can be carried out virtually, including but not limited to notices to shareholders, shareholder and proxy virtual participation and voting in meetings. The groundwork of the latter was laid when in 2007, the US Securities and Exchange Commission revised the proxy solicitation rules to permit e-proxies.⁹ Delaware was the first state to change its law in 2000 to allow for virtual shareholder meetings subject to the approval of the board of directors. After this, Boards of Delaware corporations, which make up sixty-eight per cent of Fortune 500 companies,¹⁰ were able to hold shareholder meetings in any of three ways: in person at a physical location; only on virtual audio and/or video platforms, where in-person attendance is not possible; or in a "hybrid" format, where shareholders can attend in person or virtually. Several states subsequently adopted statutes that permit various types of remote participation at shareholder meetings.¹¹ Following Delaware's 2000 revision of its General Corporation Law¹² allowing virtual meetings, Inforte Corporation convened the first virtual-only shareholder meeting in 2001.¹³

The American Bar Association amended the Model Business Corporation Act in 2016. The amendment was modelled after, but not identical to Delaware's law and allowed shareholders to participate in shareholder meetings remotely. Remote participation is permitted in some form in forty-four states and the District of Columbia as of 1 January 2020. Thirty states permitted entirely online shareholder meetings while six states permit only in-person shareholder meetings.¹⁴

Following the declaration of COVID-19 a pandemic by the World Health Organization on 11 March 2020, majority of US states issued orders restricting movements and businesses adopted virtual shareholder meetings. The percentage of virtual shareholder meetings organized by the Standard and Poor's 500 (S&P)

⁸ Y. Nili and M. W. Shaner, "Virtual Annual Meetings: A Path toward Shareholder Democracy and Stakeholder Engagement" (2022) 63 (1) *Boston College Law Review* 124 at 154.

⁹ *Ibid.*

¹⁰ The Fortune 500 is an annual list compiled and published by Fortune magazine that ranks 500 of the largest US corporations by total revenue for their respective fiscal years. See Fortune "Fortune 500" (2022) <https://fortune.com/fortune500>.

¹¹ Nili and Shaner (n 8) at 155.

¹² Act of 23 June 2000, Ch. 343, § 7, 72 Del Laws 619, 619–20.

¹³ L. A. Fontenot, "Public Company Virtual-Only Annual Meetings" [2017-2018] 73(1) *The Business Lawyer* 35.

¹⁴ Nili and Shaner above note 8 at 155.

500 index increased from twelve per cent in the first quarter of 2020 to eighty per cent.¹⁵

In the United Kingdom (UK), Section 360A of the Companies Act 2006 does not prohibit virtual-only shareholders meetings.¹⁶ The first electronic annual shareholder's meeting in the UK was hosted in 2016 by the luxury fashion brand Jimmy Choo.¹⁷ The meeting which was reportedly hosted without any significant technical issues, was available via a customized computer application service management which could be used on a smartphone (iOS or Android), tablet, laptop, as well as via conference call.¹⁸ Participants could obtain information for the meeting, broadcast through the application and participate in proxy voting, vote and evaluate presentation materials from their access points.

With the advent of the COVID-19 pandemic in 2020 and as an interim measure to mitigate the health risk pending the coming into force of crisis regulations, the UK government prohibited public gatherings. This resulted in companies adopting the exigency of written votes or hybrid meetings if permitted by their articles.¹⁹ The UK Secretary of State initially declared on 28 March 2020 that crisis legislation would be enacted as few corporations had provisions in their articles of association allowing for VAGMs. In due course, the UK Parliament passed retroactive overriding legislation essentially legitimising all electronic meetings held after 26 March 2020²⁰ and initially up to 30 September 2020 and subsequently up to 31 March 2021.²¹

In South Africa, section 10 of the Companies Act, 2008 provides that every shareholders meeting of a public company must be reasonably accessible within the Republic for electronic participation by shareholders in the manner contemplated in section 63(2), irrespective of whether the meeting is held in the Republic or elsewhere.²² Section 63 (2) provides as follows:

¹⁵ L. A. Fontenot, R. Bivans and J. Nix, "Public Company Virtual Annual Meetings: The 2020 Watershed and Path Forward" [2021] 76 *The Business Lawyer*, 927 at 928.

¹⁶ D. A. Zetzsche, L. Anker-Sørensen, R. Consiglio and M. Yeboah-Smith "Enhancing Virtual Governance: Comparative Lessons from COVID-19 Company Laws" [2021] 22 (1) *Journal of Corporate Law Studies* 115 at 129 ff 47.

¹⁷ EQS Group UK "The UK's First Electronic AGM: How Jimmy Choo Broke the Mold in 2016" available at: <<https://www.eqs.com/en-us/ir-knowledge/case-studies>> (last accessed 13 December 2022).

¹⁸ *Ibid.*

¹⁹ Zetzsche, Anker-Sørensen, Consiglio and Yeboah-Smith (n 16) at 131.

²⁰ Corporate Insolvency and Governance Act, 2020, Sch. 14, art. 5 "Extension of Period for Qualifying Body to Hold Annual General Meeting".

²¹ See Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) Regulations 2020 (UK), S.I. 2020/1031 and Corporate Insolvency and Governance Act 2020 (Coronavirus) (Suspension of Liability for Wrongful Trading and Extension of the Relevant Period) Regulations 2020 (UK) S.I. 2020/1349.

²² Companies Act 71 of 2008

“Unless prohibited by its Memorandum of Incorporation, a company may provide for:

(a) a shareholders meeting to be conducted entirely by electronic communication; or

(b) one or more shareholders, or proxies for shareholders, to participate by electronic communication in all or part of a shareholders meeting that is being held in person, so long as the electronic communication employed ordinarily enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate reasonably effectively in the meeting.”

Section 63 (3) of the Act states that:

“If a company provides for participation in a meeting by electronic communication, as contemplated in subsection (2):

(a) the notice of that meeting must inform shareholders of the availability of that form of participation, and provide any necessary information to enable shareholders or their proxies to access the available medium or means of electronic communication; and

(b) access to the medium or means of electronic communication is at the expense of the shareholder or proxy, except to the extent that the company determines otherwise.”

In Kenya, section 283 of the Company’s Act 2015 indicates that hybrid and virtual meetings fall within the purview and intendment of the Act by providing for publication of notices of hybrid and virtual general meetings on companies’ websites. Also, section 285 of the Act provides that the contents of notices of general meetings and the means of joining and participating in the meetings need to be specified in the case of a hybrid or virtual meeting.²³ The above statutory provisions were supplemented by the High Court Order under *Miscellaneous Application No E680* delivered at Nairobi on 29 April 2020. The High Court ordered and directed that issuers be allowed to hold general meetings through virtual/electronic means, or any hybrid means subject to a request for a “no objection” from the Capital Markets Authority.²⁴

In Ghana, pursuant to section 378(2) of the Companies Act 992 of 2019, the Registrar General Department on 14 May 2020 issued guidelines on holding of AGMs of companies electronically.²⁵ Pursuant to the above, the Ghana

²³ Companies Act 17 of 2015.

²⁴ *In the Miscellaneous Application Number E680 of 2020.*

²⁵ Guidelines on Holding of Virtual Annual General Meetings of Companies Bulletin No. 1 of 2020 (2020) <https://rgd.gov.gh/docs/COMPANIES%20BULLETIN%20ON%20VIRTUAL%20AGM.pdf>.

Securities and Exchange Commission issued the Guidelines on Holding of Electronic or Virtual Annual General Meetings by Issuers and other Capital Market Operators to allow Issuers and other Capital Market Operators to hold electronic or VAGMs with no physical meeting location.²⁶

From the foregoing, it can be surmised that the gamut of regulation and interpretation with respect to VAGMs ranges from innovative and forward-thinking provisions preceding the COVID-19 pandemic to interpretation of extant regulations, path dependency, best practice and ultimately, crisis regulation as a result of the COVID-19 pandemic and the need to comply with safety protocols.

ADVANTAGES AND DISADVANTAGES OF VIRTUAL MEETINGS

Virtual meetings provide significant advantages including broader accessibility in an increasingly globalized corporate world with dispersed shareholders. They are also less expensive to organize than physical meetings. They encourage shareholder participation by eliminating travel and logistics expenses. Virtual meetings, particularly virtual only meetings have however been criticized as not providing the same level of interaction by shareholders as physical meetings.²⁷ In what has been referred to as “the fallacy of the virtual meeting”, a review of the 2020 annual meeting season identified issues with participation, access, and format at virtual-only meetings. Many were left with the impression that shareholder participation had either been accidentally neglected or purposely minimized.²⁸ The absence of interpersonal interaction during virtual meetings, according to critics, is especially obvious in contentious meetings where activist shareholders are presenting shareholder resolutions and dissenting shareholders are trying to remove or call board members to order.²⁹ The reality is that in virtual meetings, the shareholders attending virtually may not be afforded a panoramic view of proceedings to enable them to assess the body language of directors. Their view of proceedings may be limited and the normal interactive dynamics of physical meetings may be lacking.

Furthermore, in what has been described as lack of horizontal democracy, shareholders are unable to confer amongst themselves and spontaneously form pressure groups. They may be unable to view who is asking or responding to questions during the meeting and the meeting may be reduced to no more than a webinar where shareholders do little more than listen and view proceedings

²⁶ Securities Industry Act 929 of 2016, Sections 3 and 209

²⁷ Fontenot (n 13) at 36.

²⁸ Report of the 2020 Working Group cited in Nili and Shaner “Virtual Annual Meetings: A Path Toward Shareholder Democracy and Stakeholder Engagement” [2022] 63 *Boston College Law Review*, 125 at 160.

²⁹ Nili and Shaner (n 9) at 191.

through a very limited prism.³⁰ This view was re-echoed by a cross-section of shareholder groups and independent shareholders in Nigeria against the continuation of VAGMs “immediately the COVID-19 is contained” on a number of grounds, including that they are devoid of what they described as “the excitement of the real shareholders’ meeting.”³¹

It has been observed that companies have used proxy voting and selection of inconvenient venues for AGMs as a stratagem for disenfranchising shareholders by making it difficult for them to attend AGMs. Abugu is of the view that these are aspects of corporate governance not readily amenable to statutory regulation.³² However, this position was expressed prior to the advent of the COVID-19 pandemic. With the pragmatic shift towards VAGMs in the light of immanent realities, the concerns about disenfranchising shareholders through choice of inconvenient venues would appear to have been addressed.

VAGMs have been described as a solution to the apathy exhibited by largely dispersed retail investors who have hitherto shown little or no interest in attending AGMs by giving them an opportunity to make their voices heard.³³ Virtual shareholder meetings may be particularly advantageous to retail investors who may not otherwise be able to attend or to engage with the company year-round, providing a convenient and affordable platform for such investors to interact with management and the board directly.³⁴ Virtual meetings generally leverage on technology to achieve increased efficiency and cost savings. Add-ons offered by virtual meeting platform providers can provide enhanced features including attendance tracking, identity verification, recording and automatic post-meeting summaries.

VAGMs may present a challenge for retail investors who lack the technical resources or skills to participate in online meetings or who simply just prefer traditional meetings.³⁵ This particularly resonates in countries and jurisdictions such as Nigeria with dispersed retail shareholders. Nigeria’s internet penetration rate stood at 51.0 per cent of the total population at the start of 2022 with 109.2 million internet users. Most of these connections are on mobile devices. This can be contrasted with the level of internet connection in the United Kingdom which stood at 96% as at January 2020.³⁶ Broadband penetration has increased in Nigeria

³⁰ Ibid at 192.

³¹ C. Obienyi, "Operators, Shareholders Kick against Virtual AGMs" *The Sun* (11 May 2020) <https://sunnewsonline.com/operators-shareholders-kick-against-virtual-agms>.

³² J. E. Abugu, "Directors' Duties and the Frontiers of Corporate Governance" [2011] 22 *International Company and Commercial Law Review* 322 – 340.

³³ Nili and Shaner (n 8) at 192.

³⁴ Fontenot (n 13) at 42.

³⁵ Freeburn and Ramsay (n 7) at 57.

³⁶ Data Reportal "Digital 2022: Nigeria" (2022) <https://datareportal.com/reports/digital-2022-nigeria>.

with the deployment of 3G and 4G and more recently 5G coverage. However, there is room for improvement with regard to end user adoption. This can be traced to a number of reasons such as access to and affordability of smartphone devices, speed and quality of service. Access to such services beyond major urban areas remains a challenge as a result of infrastructure deficit in rural areas with concentration of same in urban areas.³⁷

Even with internet access, challenges such as difficulty logging on and remaining logged on for the duration of the meetings due to unstable internet remain issues of concern.³⁸ Effective VAGM entails that the shareholders should have internet access and a stable connection. Low bandwidth and high data cost are also challenges. The shareholders also need to have access to desktop computers, laptop or internet enable devices as well as being computer literate.

VAGMs provide increased safety for attendees in environments and areas with security concerns.³⁹ In areas of conflict or with high risk of insurgency attacks or kidnapping in parts of Nigeria for instance, VAGMs ensure the safety of participants as they would not have to travel to risk prone areas. Also, when AGMs are held virtually, there is no risk of on-site protests, and shareholders are unable to disrupt the meeting.⁴⁰

Generally, corporate lawyers view their experience with VAGMs in a positive light and are of the view that the advantages outweigh the disadvantages.⁴¹

STATUTORY PROVISIONS ON VIRTUAL COMPANY MEETINGS IN NIGERIA

In Nigeria, CAMA 2020 was signed into law when the COVID-19 pandemic was still raging, although the lockdowns and restrictions were progressively being reduced. The new Act repealed CAMA 2004 in its entirety. Relating to the subject of discourse in this article, it provides that a private company may hold its general meetings electronically provided that such meetings are conducted in accordance with the articles of the company.⁴² While this could be seen as a welcome development, it fell short of expectations as no mention was made of general meetings being held electronically in respect of public companies. Therefore, prior to and during the COVID-19 and until fairly

³⁷ Federal Ministry of Communications and Digital Economy "Nigerian National Broadband Plan 2020 – 2025" (2020) <https://www.ncc.gov.ng/documents/880>.

³⁸ Fontenot, Bivans and Nix (n 15) at 938.

³⁹ Fontenot (n 13) at 43.

⁴⁰ Ibid.

⁴¹ Fontenot, Bivans and Nix (n 15) at 939

⁴² CAMA 2020 Section 240 (2) .

recently, general meetings of public companies still had to be held physically, or at best in accordance with the proxy window provided by the AGM Proxy guidelines.⁴³ The guidelines among other things required the approval of the Commission to be obtained before such a meeting is held and that CAC may send a representative(s) as observer(s) to the meeting, failing which the company shall send a detailed report to the CAC after the meeting.⁴⁴ Several publicly listed companies were subsequently granted approval by the CAC to hold their AGMs in accordance with the guidelines.⁴⁵

It has been argued that the requirement for CAC approval to hold the AGM and the restriction of the meeting deliberation to special business is superfluous. Also, the right of the CAC to limit, modify or circumscribe the right of a shareholder to appoint proxies or attend the AGM by proxy as indicated in the guidelines is questionable as it runs counter to the right of a shareholder to attend and vote in person or by a proxy appointed by him or her at AGMs elaborately conferred under section 254 (1) of CAMA 2020.

The Companies Regulations 2021 released supplemental to CAMA 2020 provide that a resolution put to the vote of a general meeting shall be decided on a show of hands unless a poll is duly demanded in accordance with the articles provided that in the case of an electronic meeting, voting may be done electronically or by count of voice concurrence.⁴⁶ No distinction is made between private and public companies. Stating that voting may be done electronically or by count of voice concurrence, could ordinarily be interpreted to mean that this would be at a hybrid or virtual meeting. It is unclear if this was inadvertent or reflects the true intention of the framers of the Company Regulations 2021. This uncertainty only exacerbated the already identified gap in the principal legislation and needed to be addressed.

It was recommended rather at the time, that companies that had scheduled their AGMs and published their details should postpone their AGMs until after Covid-19 is brought under control.⁴⁷ It was further recommended that any public company yet to fix a date or communicate same to stakeholders, should delay any

⁴³ See CAC “Guidelines on Holding of Annual General Meetings (AGM) of Public Companies Using Proxies” (n 3).

⁴⁴ AGM Proxy Guidelines, Paragraphs 1 and 2.

⁴⁵ O. E. Anyamele, O. Okunrinboye and A. Odukoya, “Impact of COVID-19 on Board and General Meetings of Companies in Nigeria” (2020) <http://www.ajumogobiaokeke.com/wp-content/uploads/2020/04/IMPACT-OF-COVID-19-ON-BOARD-AND-GENERAL-MEETINGS-OF-COMPANIES-IN-NIGERIA.pdf>.

⁴⁶ Companies Regulations 2021, Regulation 55 (2021) <https://www.cac.gov.ng/wp-content>.

⁴⁷ B. Ayeku (2020) “How to Manage the Unintended Consequences of the Guidelines Issued by the CAC on Holding of AGMs of Plcs Using Proxies” <https://icsan.org/guidelines-issued-by-cac>.

meeting announcement until such a time when there is clarity on the level of success achieved in efforts to control the pandemic. Finally, that public companies wishing to proceed with their AGMs under the CAC Guidelines after the expiry of the restriction could consider using their offices for the AGMs with live television coverage and opportunity for shareholders to dial-in. Alternatively, companies could stream the AGM proceedings live with provision for shareholders to participate by communicating their views.⁴⁸

This paper argues that these recommendations while well intentioned, were not the optimal approach and did not represent the best practice and options in view of available technological innovations on the global stage. Also, the reality is that mankind is learning to live in the new normal.⁴⁹ Therefore, any solutions proffered should ideally be long-term and guided by global best practice.

The much needed panacea was provided by the signing into law of the Business Facilitation Act which amended section 240 (2) of CAMA 2020 by deleting the word “private.” Accordingly, section 240 (2) of CAMA 2020 as amended, now reads as follows; “A company may hold its general meetings electronically provided that such meetings are conducted in accordance with the articles of the company.” By virtue of this, public companies in Nigeria can now hold VAGMs.

The Business Facilitation Act, in sections 12 and 13 respectively, makes further provisions in respect of electronic notices and electronic voting. Pursuant to the Act, the United Bank for Africa Plc, the fourth bank by assets⁵⁰ held its 61st Annual General Meeting (AGM) virtually on 27 April 2023.⁵¹

PRACTICAL CONSIDERATIONS IN HOSTING VAGMS

With globalization, a company’s shareholders may be dispersed across different continents and time zones. Although physically separated by thousands of kilometres, they can meet on virtual platforms created by information technology. Such technological innovations have rendered the concept of a “meeting” in corporate governance as a physical gathering of participants in one location otiose and in need of reconceptualization. An AGM provides a forum for the board to present the company strategy, financial performance and other

⁴⁸ Ibid.

⁴⁹ McKinsey and Company, “COVID-19: Where We’ve Been, Where We Are, and Where We’re Going” (2022) <https://www.mckinsey.com/featured-insights/coronavirus-leading-through-the-crisis/COVID-19-Where-weve-been-where-we-are-and-where-were-going>.

⁵⁰ F. Balogun, “Here are Nigeria’s 10 biggest banks by assets” *Business Day* (8 May 2023) <https://businessday.ng/market-intelligence/article/here-are-nigerias-10-biggest-banks-by-assets/> (access 30 June 2023).

⁵¹ “UBA holds 61st AGM” (2023) <https://www.ubagroup.com/uba-holds-61st-agm> (accessed 26 June 2023).

matters to the shareholders and for the shareholders to interrogate issues of concern through questions, answers and deliberations aimed at holding the board accountable. Shareholders must also be able vote on issues raised after due consideration. Unarguably, a physical meeting provides the best forum for such interaction but in the context of the dispersion of investors/shareholders in public companies in today's globalized world, a strict requirement of physical general meetings becomes an impediment to participation in such meeting by shareholders. It would be impracticable to expect shareholders from around the world to gather physically at the same time and in one venue at considerable cost and inconvenience. The situation was aggravated by COVID-19 restrictions. To enhance inclusiveness and participation of more shareholders, there should be a conceptual shift with the realization that virtual shareholders meetings are part of "the new normal."⁵² The UK Financial Reporting Council (FRC) has urged businesses to embrace new technology to maximize shareholder participation.⁵³ The FRC has enunciated a number of principles for successful hosting of VAGMs which covers communication and practical engagement before the meeting; provision of relevant updates, real-time questions and answers and ability to vote during the meeting; and transparency, including allowing follow-up questions and answers on outstanding issues, provision for recording of the meeting for the benefit of those who could not attend and provision of continuous update to shareholders on company matters.⁵⁴

In March 2020, the Chartered Governance Institute (CGI) UK and Ireland released a guide note for online board and committee meetings. The guide offers advice on how to conduct virtual meetings successfully and handles practical and legal concerns. The topics covered include selecting the appropriate technology and communication channels, structuring meetings in a user friendly format, ground rules, preparation, and good boardroom practices.⁵⁵ The CGI guide includes notes for the company chairman and company secretary respectively. The notes for the chairman addresses issues including the role of the chairman, access arrangements, familiarity with and optimising the technology, meeting management, and managing technical issues. The notes for the company secretary include access, agreeing with the chairman on hosting of the meeting, holding

⁵² Zetsche, Anker-Sørensen, Consiglio and Yeboah-Smith (n. 16) at 28.

⁵³ FRC "Good Practice Guidance for Company Meetings" (2022) https://www.frc.org.uk/getattachment/3501347c-2394-4ec4-94c8-9cd62b62d1fe/FRC-Good-Practice-Guidance-for-Company-Meetings_July_2022.pdf.

⁵⁴ K. Brewer, "7 Principles for Better Annual General Meetings" *Financial Management* (22 July 2022) <https://www.fm-magazine.com/news/2022/jul/7-principles-better-annual-general-meetings.html>.

⁵⁵ The Chartered Governance Institute, UK and Ireland "Good Practice for Virtual Board and Committee Meetings" (2022) [https://www.cgi.org.uk/assets/files/pdfs/guidance/good-practice-for-virtual-board-and-committee-meetings-web1-002\(1\).pdf](https://www.cgi.org.uk/assets/files/pdfs/guidance/good-practice-for-virtual-board-and-committee-meetings-web1-002(1).pdf).

practice sessions, ICT support, ground rules, time agenda, taking notes, communication during the meeting admission and exit of presenters from the meeting. Also included are notes for presenters and ground rules for participants generally.⁵⁶

In South Africa, shareholder activists under the auspices of Just Share, a not-for profit organization, took the initiative by coming up with the Best Practices for South African Virtual Annual General Meetings prepared as a guide for listed companies and shareholders to ensure compliance with the law and enhance shareholder participation.⁵⁷ The guidelines reiterate the position of the law in South Africa that if a VAGM is held and shareholders are not allowed to ask questions in real time, without moderation, or requires all questions to be submitted in advance, that meeting will not constitute an AGM for the purposes of the South African Companies Act, 2008. Furthermore, notices to shareholders, directions on access to the meeting and meaningful question and answer sessions are also covered in the guidelines which also reiterate that they are in compliance with principle 16 of the King IV Code on Corporate Governance⁵⁸ with regard to engagement of shareholders at AGMs, equitable treatment of shareholders and response to shareholder queries on governance issues.

RECOMMENDATIONS AND CONCLUSION

Technological solutions for virtual meetings have evolved significantly prior to the COVID-19 era. The solutions have become more user friendly and affordable over the years and can be downloaded from the Internet. In Nigeria, the most utilized virtual meeting solutions include Zoom, Google Meet, Microsoft Teams, Skype and GoToMeeting.⁵⁹ Companies can subscribe to the business versions of these programs to avoid restrictions on numbers of participants and duration of the meetings. There are also several bespoke virtual meeting applications available in the growing virtual meeting solutions market.

There is, however, is a crying need for risk based legislation. This can be achieved through risk assessment and risk management training which should include risk analysis, etc. The practice of wholesale borrowing of legislation or being reactive can never achieve optimal results. The jurisdictions that

⁵⁶ Ibid at 11.

⁵⁷ Just Share “Best Practices for South African Virtual Annual General Meetings” (2020) <https://justshare.org.za/wp-content/uploads/2020/05/Just-Share-Virtual-AGM-Guide.pdf>.

⁵⁸ The King Code is a set of guidelines for business governance used in South Africa. First issued in 1994, the code is periodically revised and updated and is now in the fourth edition.

⁵⁹ I. .F Mahmoud and Y. U. Alaya, “An Analysis of the Legal Provisions Regulating Virtual Annual General Meetings in Nigeria” [2022] 2 *International Journal of Law and Clinical Legal Education* 32 at 35.

incorporated provisions for virtual or electronic participation in meetings before the advent of the COVID-19 pandemic were vindicated in their perspicacity.⁶⁰

The question has been raised as to what will become of the crisis regulations as result of the COVID-19 pandemic. The reality is that the possibility of a new pandemic cannot be wished away. It is therefore incumbent on lawmakers to redraft shareholder meeting rules to fully reflect changes necessitated by the new normal.⁶¹

It is also recommended that public companies in Nigeria take advantage of the Business Facilitation (Miscellaneous Provisions) Act, 2022 and adopt virtual or hybrid annual general meetings as an optimal approach in view of increased globalization and identified efficiencies of VAGMs.

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⁶⁰ Fontenot (n 13) at 44.

⁶¹ Freeburn and Ramsay (n. 7) at 58.

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LEGISLATION

Nigeria

Business Facilitation (Miscellaneous Provisions) Act No. 5 2022 Companies and Allied Matters Act No. 3 2020
Companies Regulations 2021

Other Countries

Companies Act 17 of 2015 (Kenya)
Companies Act 71 of 2008 (South Africa)
Corporate Insolvency and Governance Act (UK), 2020
Corporate Insolvency and Governance Act 2020 (Coronavirus) (Extension of the Relevant Period) Regulations 2020 (UK), S.I. 2020/1031
Corporate Insolvency and Governance Act 2020 (Coronavirus) (Suspension of Liability for Wrongful Trading and Extension of the Relevant Period) Regulations 2020 (UK) S.I. 2020/1349.
General Corporation Law (Delaware, USA) Act of 23 June 2000, Ch. 343, § 7, 72 Del Laws 619
King IV Code on Corporate Governance (South Africa)
Securities Industry Act 929 of 2016 (Ghana)

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