



The aftermath of COVID-19 pandemic and the imperative of electronic meeting for public companies under Companies and Allied Matters Act 2020

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Abstract

The right to vote in the annual general meeting (AGM) is a crucial right of shareholders. This right is well recognised under Nigerian company law. However, the exercise of this right in the AGM is not without some hindrances which include a lack of transparency in the voting process as well as a lack of recognition of information and communication technology especially at the peak of the COVID-19 pandemic when physical meetings became almost impossible due to movement restrictions imposed by Federal and state governments. The study employed two methods of data collection, namely, a doctrinal method which obtained data from statutory provisions, case law and authored work obtained in the library while the second set of data concerns qualitative interviews conducted face to face with 10 relevant respondents in Nigeria. The findings indicate that though the current Companies and Allied Matters Act 2020 recognises electronic voting and meetings for private companies but there is no such provision for public companies. The question remained whether shareholders in a public company can exercise their voting rights electronically visa vis other constraints on access to the internet in Nigeria. Based on the report of the telecommunication industry and the opinion of respondents in this study, there is great prospect for e-voting and meetings for public companies especially after the COVID-19 pandemic that made physical meetings almost impossible. It is recommended that CAMA 2020 be reviewed to have an express provision for e-voting in public companies as a global phenomenon in corporate meetings today. Further research may consider adopting a quantitative study on the same subject.

Keywords: Annual general meeting, e-meeting, e- voting, information and communication technology, shareholders

1. Introduction

The annual general meeting (AGM) is one of the means that advance shareholder democracy through improved participation in the general meeting (Heilscher et al., 2014; Olarinde & Isem, 2020). Though, different reasons influenced shareholder participation in the AGM. Kathurima (2011) argued that shareholder information about the agenda of an AGM improves their participation. In other words, it would influence shareholders' choice to attend the meeting. Consequently, shareholders depend on AGM as an avenue to exercise their rights (Lafarre, 2014; Girard-Guerraud, Goodman & Louche, 2023).

Shareholders and the board constitute the most vital body of a company (Robert, 2015; Nelson, 2015; Ludwig & Sassen, 2022). Since the board is in charge of managing the business's operations (Chiu, 2015), it is their fiduciary duty to work in the organization's best interests (Johnson, 2016; Paul, 2013). The shareholders are the board's ultimate decision-makers (Frankle et al., 2015). On the other hand, the company's owners are thought to be its stockholders (Chassagnon & Hollandts, 2014). Sections 107 and 251 of the Companies and Allied Matters Act 2020, the main legislation governing company affairs in Nigeria, acknowledged



shareholders' rights to vote and participate in the meeting as long as they received the proper notice, as stipulated by section 244 of the CAMA 2020. Therefore, shareholders have the opportunity to examine and get ready for the meeting through the service of notice (Atte, 2015). As per the company's constitution, due notice of the meeting must be issued. Given that appropriate notice delivery is the sole requisite for a meeting to be legitimate (Baldacchino, 2016; Thornton & Tower, 2022).

Shareholder voting is very essential right that is exercised in the AGM and this right empowers shareholders to vote directors out under section 288 CAMA 2020 and elect new directors as well as to vote in favour of vital changes in the company (section 273 CAMA, 2020; Amupitan, 2013). Accordingly, voting on the AGM is generally by show of hands based on section 248 CAMA, 2020. However, a poll vote may be demanded by any of the following persons, "the chairman of the meeting, if he is a shareholder or a proxy, or at least 3 members present at the meeting (in person or by proxy), any member or members present in person or by proxy and representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or any member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right." All the above categories of persons can demand that a vote at the AGM should be conducted by poll. Nevertheless, the most widely voting pattern is by show of hands, which is argued to be lacking in transparency. One of the respondents argued that "voting by show of hand is tainted by manipulation, particularly counting of votes" (Respondent 7, Interview, 2023). Shareholders especially in public companies find it difficult to exercise this important right

without challenges sometimes due to the dispersed nature of shareholders in the country (Magaji, Yaacob & Yusoff, 2017). The aforementioned constraints hinder shareholders from participating in the AGM while utilizing their voting rights. This is owing to the lack of a provision in the CAMA that recognizes the use of ICT for electronic voting (Atte, 2015). Section 240 of CAMA 2020 only allows private companies to hold general meetings by electronic means provided the meetings will be carried out in compliance with the article of the company. This study seeks to examine various legal provisions, rules, codes of corporate governance and from the perspective of respondents on e-voting in the AGM.

2. Literature Review

Shareholder voting is very essential right that is exercised in the AGM and this right empowers shareholders to vote directors out under section 288 CAMA 2020 and elect new directors as well as to vote in favour of vital changes in the company (section 273 CAMA, 2020; Amupitan, 2013). According to Magaji, Yaacob & Yusoff (2017), shareholders are having difficulty in participating and voting at the AGM in Nigeria. However, the amendment to CAMA 1990 recognised electronic voting for private companies alone. Mahmoud & Alaya (2022) maintained that there is a significant gap in the CAMA 2020 relating to electronic meetings, especially with the COVID-19 pandemic that made it impossible for physical meetings. The COVID-19 pandemic is a pointer to the necessity for electronic/virtual meetings (Ibekwe, 2023). Emeasoba (2022) argued that, without allowing the shareholders to participate and exercise their voting rights, amounts to disenfranchising shareholders of their rights. All the previous researchers agree that there is a necessity for electronic meetings. The only recent intervention was made by the Business Facilitation (Miscellaneous Provisions) Act 2022 which



recognizes electronic voting. For example, the recognition of virtual or electronic voting is for private companies is clearly incorporated under CAMA 2020 as the principal legislation regulating companies in Nigeria. This study seeks to explore the subject by conducting a qualitative interview and focusing on public companies.

Theoretically, this study adopts shareholder theory (O'Connell & Ward, 2020) and Agency theory (Panda & Leepsa, 2017) which both view shareholders as critical stakeholders in a company, often viewed as owners. As such, shareholders must participate as a right in the decision-making of a company which is exercised through voting at the AGM.

The significance of this study is to improve the exercise of shareholder participation in running the affairs of companies even at the time of the pandemic. It is believed that shareholder participation at AGM improves accountability, transparency and good corporate governance.

3. Methodology

This study adopted a socio-legal research method (Watkins & Burton, 2013). The research employs two methodologies: fieldwork and doctrinal legal research. The library served as the location for the doctrinal portion (Yaqin, 2007; Al Amaren et al, 2020). Thus, besides other rules, regulations, corporate governance codes, and decided cases, reference was made to several Nigerian legal provisions. In contrast, ten in-person, in-depth qualitative interviews with pertinent stakeholders were conducted as part of the fieldwork. To obtain the respondents' practical experience for the area research, an interview was done as one method of gathering qualitative data (Seidman, 2013). According to Baskarada (2014), the respondents in this study were carefully selected based on their knowledge of company law and practice. They were

chosen from the fields of academia, business, the board of directors, and activist shareholder groups. As a result, themes and sub-themes that arose from the interview were used to guide the manual thematic analysis of the data in this study (Lea, 2012). According to Namey et al. (2008) and Lochmiller (2021), theme analysis emphasizes the identification and description of implicit and explicit ideas. Stated differently, theme analysis is a potent and adaptable technique for qualitative analysis that gives researchers of all stripes access to respondents' experiences in a particular field of study (Kiger & Varpio, 2020). To maintain confidentiality, all 10 respondents that were interviewed were categorized as R1 through R10. (Saljana, 2016). To maintain confidentiality, all 10 respondents that were interviewed were categorized as R1 through R10. (Saljana, 2016). The choice of 10 respondents in this study is based on the fact that no specific or prescribed number of respondents is required in a qualitative interview. According to Baker & Edwards (2012), one respondent is sufficient in a study provided he /she would give impact to the study.

4. Results and discussion

COVID-19 pandemic and physical meeting

Times of pandemic are challenging and require many adjustments since every aspect of everyday life is altered. The restriction of social activities in society, including traditional face-to-face activities, demonstrates the seemingly enormous changes. To stop the COVID-19 virus from spreading, virtual communication in some jurisdictions was used when hosting the AGM through various electronic means (Nurudin, Nurudin, & Wisnaeni, 2021). However, the use of this medium requires the use of additional technology, such as computers, internet networks, and video conference rooms. Some of the advantages



of electronic meetings include the ability to lower travel expenses that AGM participants must pay for face-to-face meetings, shorten meeting durations due to the electronic system's ability to be more efficient with time, and enhance effective communication between participants.

At the peak of the COVID-19 pandemic, significant issues in personal life, education, the job market, services, and many other areas arise from the urge to avoid face-to-face interaction with others. The public had to quickly adapt to the new circumstances, and lawmakers were crucial in easing daily living by amending various laws, rules, and guidelines. The challenges hampered the operation of the companies, especially the shareholder meetings which are the focus of this study. The legislature was compelled to amend company law to facilitate the exercise of shareholders' rights in the absence of a physical presence at meetings, as a result of the impediments to the company's proper operation (Pinior, 2022). According to Brochet, Chychyla, & Ferri (2023), virtual meetings were adopted by some companies even before the COVID-19 pandemic. Following Covid-19, e-shareholder meetings have become prevalent as no room for physical meetings (Schwartz-Ziv, 2021). Nigerian companies were not an exception to this and therefore called for the adoption of e-meeting and electronic voting at AGM in Nigeria.

In response to the growing geometric proportions of COVID-19, President Buhari signed the COVID-19 Rules 2020, exercising the authority vested in him by sections 2, 3, and 4 of the Quarantine Act. This declaration of COVID-19 as a dangerous infectious disease and the measures put in place to contain its spread was coordinated by the Nigeria Centre for Disease Control (NCDC), the government agency in charge of managing the infectious pandemic (Esavwede & Ogisi, 2023) restricted movements across the country which in essence extends to physical meetings.

Consequently, the Securities and Exchange Commission (SEC) and the Corporate Affairs Commission (CAC) as company regulators in Nigeria both released guidance for corporations in response to the difficulties faced by companies in convening AGMs due to movement restrictions imposed in Nigeria. The CAC published the "Guidelines on Holding of Annual General Meetings (AGM) of Companies Using Proxies," (the "CAC Guidelines") on March 26, 2020. These guidelines outlined the procedures for holding AGMs through proxies, to minimize attendance and guarantee adherence to health and safety regulations regarding physical and social distancing. There is also the SEC's "Guidance on Companies' Virtual Board Committee, and Management Meetings" ("NSE Guidance"), which aims to direct the capital market and other stakeholders in meeting the crucial business and corporate governance demands of firms, as well as conducting fruitful virtual meetings in an approachable, transparent, and economical manner. However, despite their admirable goals, both Guidelines have practical and legal restrictions. Firstly, the CAMA has no provision mandating companies to seek approval from the CAC before AGMs can be convened. Secondly, the CAC cannot legally limit the business to be conducted at an AGM to ordinary business only (Folarin, 2020).

The use of e-meetings has been adopted in many jurisdictions for the efficiency it presents to the members of the company. The company decides on which platform to use and how best to adapt it to the operations of the company. In the United Kingdom, shareholders are at liberty to attend AGM by electronic means under the Companies Act 2006. For example, in June 2016, Jimmy Choo Plc held the first electronic AGM in the UK through a conference call to enable shareholders to ask questions and it had a separate app and web browser functionality so that



shareholders could follow a presentation by management and vote. The meeting was well-received as it improved shareholder engagement (Mahmoud & Alaya, 2022). In Nigeria, some companies hold electronic meetings but it is only recognized for private companies.

Shareholder Voting Right

It is said that the power of shareholders to cast their ballots at the AGM is a legal remedial mechanism that allows shareholders to control the management (Bebchuk, 2005; Daniel, 2013). However, the exercise of voting rights is not as easy as it is (Martin and Graham, 2010; Hirst & Robertson, 2022). This right is well recognised under sections 107, 251 & 252 CAMA 2020. To sanction shareholders' voting rights, section 140 of the CAMA 2020 prohibits a company from issuing shares that have no voting rights. Furthermore, section 248 of the CAMA 2020 specifically recognised voting by show of hands and poll vote as the voting pattern, subject to the agreement of the shareholders. Additionally, proxy vote is recognised under section 254 of the CAMA 2020 which is the right of a shareholder to be represented by another person. However, the right of a shareholder to appoint a proxy is not within the scope of this study.

According to respondent 3, "the general rule under the CAMA is that voting should be by show of hands and this because there is the need to serve time and facilitate speedy proceedings at the meeting. Moreover, the COVID-19 pandemic has exposed the world to the imperative of having e-meetings otherwise shareholders would not have an opportunity to participate in AGMs at times of pandemic" (Respondent 3, Interview 2023). In the same vein, respondent 10 believed, "there has been complains about voting by show of hands. If you look at it, for a company with many shareholders, the counting would be rowdy, this gives room for miscalculation of votes" (Respondent 10, Interview 2023). In his response,

respondent 9 stated, "Apart from the fact that shareholders are not adequately represented, we have an issue of inconveniences of the voting process, because in voting by show of hands where members are substantial, the counting would become rowdy and as I have said, the management are always interested in protecting their interest. It is more or less a rehearsal of what the management has arranged before the meeting" (Respondent 9, Interview 2023).

Another respondent argued, "Voting by show of hand, especially for public companies is not transparent and is tedious, especially for public companies with large numbers of shareholders. Some public companies usually request certain designated staff to go around and count the votes, which takes a lot of time and exposes them to manipulation. The COVID-19 pandemic has proved that e-meeting is inevitable as long as company operations need to be sustained" (Respondent 7 Interview, 2023). In essence, 8 respondents out of 10 believed that the voting process at the AGM is not transparent. The process is tainted with manipulation by the management of the company to favour their interest against that of the shareholders. This is more obvious when the counting of votes begins. There is a need to have an alternative voting procedure that is effective and transparent. Respondents are unanimous in adopting e-meetings and e-voting at AGMs for public companies under CAMA 2020.

E-voting

Section 248 of the CAMA 2020 does not have a provision recognising the conduct of e-voting. The only rule in Nigeria that expressly recognise conducting e-voting for both private and public companies is the RRNSE 2015. The rule recognised the conduct of e-voting at general meetings subject to the provision of facilities for voting by the company. However, the availability of facilities for the successful conduct of e-meeting which includes e-



voting in Nigeria is a subject of scrutiny. Nevertheless, the perspective of the respondents indicates a good prospect for e-meeting and voting in corporate meetings especially as the COVID-19 pandemic further exposes the world to future uncertainties as no one is sure which pandemic or natural calamity will befall the world. It is only logical to have our laws dynamic to accommodate such uncertainties. In this regard, 8 respondents out of 10 believed that recognition for e-meeting under CAMA 2020 would go a long way in facilitating effective participation of shareholders at AGM in Nigeria even during the times of pandemic. One of the respondents revealed, "There are so many ways to ensure transparent voting, especially e-meeting. If you know you are going to conduct an election, electronic devices should be available, that will assist members to vote electronically from their comfort zones. E-voting will assist in that respect" (Respondent 10, Interview, 2023). According to Respondent 6, "e-voting will be the best way, and there will be no manipulations because everything will be transparent for members to see" (Respondent 5, Interview 2023). In his response, respondent 2 added, "the best way to limit manipulation of votes at the meeting is possibly to introduce electronic voting. It would be easily understood that a particular member has voted or not and at the end of the voting process, total votes for or against each resolution will be displayed immediately for all members to see" (Respondent 2, Interview, 2023). Respondent 1 added, "You can conduct electronic voting to the glaring seeing of every shareholder. However, shareholder votes are often manipulated in a vote by show of hands" (Respondent 1, Interview, 2023). All the above responses indicate that e-meeting which includes e-voting is the most feasible option that will ensure effectiveness, transparency, and improved participation of shareholders of public companies in AGM.

Lack of recognition of information and communication technology advances under the CAMA 2020

Amey and Mozley (2012) claim that using the Internet will ensure efficient communication while saving money, time, and trouble. Nevertheless, according to Atte (2015), the CAMA 2020 has no provisions that allow the use of ICT for electronic voting for public businesses. In light of this, ten respondents were asked questions on the use of ICT under CAMA, and they all agreed that both private and public companies need to embrace the usage of ICT under CAMA 2020. Here are some of the quotes from the interview. Respondent 9 states that e-meetings are not recognized by law for publicly traded firms. The use of ICT should be taken into consideration under the CAMA particularly for public companies because we should be moving with time. The COVID-19 pandemic serves as evidence of the need for our company law to be flexible enough to adapt to changing circumstances (Interview, Respondent 9, 2023). Respondent 3 further stated, "Our previous CAMA was a 1990s legislation." Since its enactment in 1990, the world has not progressed to the same degree. Consequently, it makes sense that there are no ICT-related provisions. Even so, the CAMA 2020 did not specifically acknowledge the use of ICT by publicly traded enterprises. Technology is a critical requirement today. Technology is making our lives easier in every way, and all prosperous businesses use it to streamline their operations. To acknowledge the part that ICT can play in advancing corporate management and administration in Nigeria, the legislative framework and the organizational structure of the business should likewise evolve with the times (Interview, Respondent 3, 2023).

All of the aforementioned opinions demonstrated how important it is that ICT be specifically included in the CAMA 2020 since doing so would make notice delivery easier. Nigeria's legislature has to consider



how the CAMA should include ICT-related provisions, particularly in light of the COVID-19 pandemic. Regarding this, respondent 7 said it was appropriate if the law could provide for ICT. Everyone wants more speed and ease of use. Ensure that the appropriate setting is in place (Interview, Respondent 7, 2023). Respondent 5 expressed a similar opinion, saying that "ICT application may be a gradual process, and it will be good" (Interview, Respondent 3, 2023). The above responses indicate the prospect of using ICT under the CAMA, although there may be some challenges.

The application of ICT in corporate meeting

Technology has advanced to the point where shareholders can participate in AGMs electronically, which raises the company's worth in several ways (Boros, 1999; Abdennadher & Cheffi, 2020). Nowadays, it's common practice to incorporate ICT advancements to enhance AGMs and guarantee the system's efficacy. Amey & Mozley (2012) argued that the use of the internet would help save time and costs and will ensure effective communication. In other words, the difficulty associated with shareholder participation at the AGM may be remedied by the advancement in ICT (Hayati & Hasani 2015, Magaji, Yaacob & Yusoff, 2017). Electronic communication is a necessary imperative of business today (Marthinus, 2015). Currently, electronic mail (email) is one of the most widely means that facilitates business communication (Gluck, 1994). One study, shows that 84% of communications through electronic mediums use email (Arvey, 2009). Rule 19.8(b) of Rules and Regulations of the Nigerian Stock Exchange Rules, 2015 (RRNSE, 2015) states that "a company must send the soft copies of the approved documentation to the email addresses of shareholders upon request from a shareholder and where practicable." Furthermore, Rule 19.9(a) & (b) of the

RRNSE, 2015 provides that AGM "shall be held within business hours at any venue that is reasonably accessible to shareholders or holders of other securities including persons with physical disabilities." This acknowledged unequivocally how ICT was used to disseminate pertinent documents to shareholders using email addresses they had provided to the company. One of the regulations that permits the use of ICT in corporate meetings in Nigeria is the one mentioned above. It would be implausible to assign to the legislature the intention to use ICT for the holding of e-meetings and voting by public corporations at the general meeting, yet, given that the CAMA does not recognize the holding of e-meetings by public companies (Bolodeoku, 2007). If legislation does not support the confidentiality of shareholders' email addresses, then shareholders might not be prepared to give them to the corporation (Aishah, 2013). Nevertheless, the CAMA 2020 does not specifically mention e-voting for public companies (Atte, 2015).

Internet access in Nigeria

Recognising the application of ICT for holding meetings without taking into account internet access in Nigeria will be an action in vain. Given that, it is imperative to look at the Nigerian telecommunication industry. The Nigerian telecommunication industry offers internet access to subscribers (Israel, 2015; Oladipo, 2016). There were challenges in the past relating to the slow pace of the network, low-quality service delivery, and weak infrastructure (Ndukwe & Making, 2005). According to Bolodeoku (2007), a large portion of Nigeria's shareholders are members of the working class, and the majority of them live in cities with easy access to the internet. In addition to the cost of internet data subscription, a subscriber needs a reliable electrical supply to use the internet continuously. This presents a problem because not all subscribers can afford consistent internet and energy service (Ameh, 2005). Nigeria's telecom sector is



entering a new stage of growth and service provision. This was aided by a series of reforms aimed at reforming the sector by allowing private sector participation in the business (Iwuagwu, 2014). According to Connors & Maylie (2011) and Ojo (2017), Nigeria's telecom market is among the fastest-growing in the world. The number of customers in the telecom sector has significantly increased, according to the most recent report on the Nigerian Telecommunication Services Sector, 2016 (NTSSR, 2016). According to the study, there were only 19, 519, 154 subscribers as of 2005. Nevertheless, as of December 2015, there were 151, 017, 244 subscribers (NTSSR, 2016). In addition, the study states that as of 2016 (NTSSR, 2016), there were 147, 398, 854 subscribers to the Global System for mobile communications (GSM). There are 160, 171, 125 internet users in total, according to the same report from 2023 (NTSSR, 2023). The fact that so many Nigerians now have internet access through their mobile phones suggests a bright future for the use of ICT in electronic meetings for public companies.

5. Conclusion

It is essential—and cannot be overstated—that public companies use ICT while holding their annual general meetings (AGMs) to enable shareholders to attend and participate. The purpose of corporate governance will be undermined and the company would suffer as a result if shareholders were not allowed to attend the meeting. On the one hand, the right of shareholders to vote is a fundamental right that the law must sanction its exercise. The result of this study indicates that voting at the AGM in Nigeria is not transparent particularly the counting of votes conducted by show of hands. This indicates a pressing need for the legislature to incorporate a provision under CAMA 2020 that will facilitate electronic voting. Furthermore, the aftermath of the COVID-19 pandemic

has further exposed companies on the need to adopt electronic media as a means of holding AGMs for public companies and to have in place a system recognising electronic voting as well.

Notwithstanding Nigeria's cost and internet connection issues, there is a lot of promise for the use of ICT in the annual general meeting of public companies. According to the study's respondents' opinions and a report on Nigeria's telecommunication services, the number of people using the internet is rising, with roughly 160, 171, 125 people now registered (NTSSR, 2023). This study suggests that the CAMA 2020 needs to include specific provisions that would facilitate the use of ICT in corporate meetings by public companies particularly as it relates to holding of AGM and electronic voting like the Act recognized for private companies. This would greatly improve shareholder participation in the AGM as well as facilitate the exercise of shareholder voting rights at the AGM against the current provision under CAMA 2020 that has no recognition for electronic meetings and voting. This would enable shareholders to receive notice of the AGM on time, participate and vote electronically without the necessity of face-to-face interaction. Likewise, the use of ICT under CAMA 2020 would go a long way in ensuring transparent voting at the AGM. Equally, shareholders would be certain that shareholder votes count, and resolutions would reflect the true interest of the shareholders thereby improving corporate governance especially given that most of public companies have large numbers of shareholders dispersed across the country. Though, there is recent intervention by the Federal Government in enacting the Business Facilitation (Miscellaneous Provisions) Act 2022 which recognizes electronic voting. The Act comprises amendment to 21 related laws to ease doing business in Nigeria. There is the need to incorporate specific provision



under CAMA as the principal legislation regulating companies in Nigeria that recognises virtual or electronic voting is for private companies just like CAMA made same provision for public companies. This would limit confusion in applying the law in practice because section 251(e) of the Constitution of the Federal Republic of Nigeria empowers the Federal High Court with jurisdiction to entertain cases arising from the operation of CAMA.

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