



# **COVID 19 And The Propriety Of Virtual Corporate Meetings By Statutory Corporations And Incorporated Companies In Nigeria**

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## **ABSTRACT**

The recent COVID-19 pandemic has disrupted social and commercial interactions and necessitated emergency lifestyle adjustments globally. One of the prominent issues that have consequently arisen from this is the issue of the propriety or otherwise of Statutory corporations and the various incorporated companies in Nigeria holding their statutory and annual general meetings (AGMs) virtually in order to balance the imperatives of corporate governance and observance of the relevant company law and regulations on the one hand and compliance with the government's COVID-19 directives on the other hand. This article will explore the uncertainties surrounding virtual meetings in the above context and also highlights the true position of Nigerian law on virtual meetings by statutory corporations, private and public companies under the old and the new Companies and Allied Matters Act 2020 as well the relevant regulatory laws and bodies.

**Keywords:** Covid \_19 ,virtual and companies.

## **1.INTRODUCTION**

In December, 2019, the world was thrown into confusion by the outbreak of a new strain of the severe acute respiratory syndrome coronavirus in the city of Wuhan, China.<sup>1</sup> By 30<sup>th</sup> January 2020, the World Health Organization declared the outbreak of a Public Health Emergency of International Concern and by 11 March, 2020 WHO declared it a pandemic.<sup>2</sup> As of 28 August 2020, more than 24.4 million cases of COVID-19 have been reported in more than 188 countries and territories, resulting in more than 831,000 deaths.<sup>3</sup>

Nigeria recorded her first index case on 27<sup>th</sup> February, 2020 when an Italian Citizen who exhibited the symptoms was tested and the result was confirmed as corona virus.<sup>4</sup> On the 9<sup>th</sup> day of March, 2020, the Federal Government of Nigeria put up a presidential task force to monitor the spread of the disease, and by the 30<sup>th</sup> day of March, 2020, a lock down was initiated which restricted movements and gatherings in the country. As a result of the lockdown and subsequent restrictions put in place by the government to help curb the spread of the virus, several businesses and companies found themselves handicapped and unable to conduct their businesses in their regular manner. In a bid to still be in business, many of this companies and businesses have resorted to using technology to transact their business. Virtual meetings by statutory and other incorporated companies became the new reality. This article is therefore precipitated as a result of the repeated use of these technologies in business. The article will among other things examine the legality or otherwise of the use of this virtual meetings by incorporated companies in Nigeria.

**Corona virus disease 2019 (COVID-19);** is defined as illness caused by a novel coronavirus now called severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2; formerly called 2019-nCoV),

<sup>1</sup> [https://en.wikipedia.org/wiki/COVID-19\\_pandemic](https://en.wikipedia.org/wiki/COVID-19_pandemic) last accessed on 28 August, 2020.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*

<sup>4</sup> [https://en.wikipedia.org/wiki/COVID-19\\_pandemic\\_in\\_Nigeria](https://en.wikipedia.org/wiki/COVID-19_pandemic_in_Nigeria). last accessed on 28 August, 2020.

## 2. DEFINITION OF TERMS

which was first identified amidst an outbreak of respiratory illness cases in Wuhan City, Hubei Province, China.<sup>5</sup>

According to Merriam Webster Dictionary, **Covid-19** is a mild to severe respiratory illness that is caused by a coronavirus (*Severe acute respiratory syndrome coronavirus 2* of the genus *Betacoronavirus*), which is transmitted chiefly by contact with infectious material (such as respiratory droplets) or with objects or surfaces contaminated by the causative virus, and is characterized especially by fever, cough, and shortness of breath and may progress to pneumonia and respiratory failure.<sup>6</sup>

**Virtual meetings** are real-time interactions that take place over the Internet using integrated audio and video, chat tools, and application sharing. They offer a way to engage students in fully interactive, online learning experiences such as lectures, discussions, and tutoring.<sup>7</sup> Virtual meeting is a meeting held online with the aid of various and other information technology communication tools, in a virtual meeting, participants can join the meeting irrespective of their physical location.

**Statutory corporations** are public enterprises brought into existence by a Special Act of the Parliament. The Act defines its powers and functions, rules and regulations governing its employees and its relationship with government departments, It is a corporate person and has the capacity of acting in its own name.<sup>8</sup>

## 3. COMPANY MEETINGS

Company meetings are the lifeblood of a company. Whether of a company's shareholders/members, Board of Directors, or of their committees, meetings are an essential aspect of companies' decision making process, with firm roots in corporate governance.<sup>9</sup>

Even more so, with annual general meetings, members' active participation is important and desirable because it provides attendees with the opportunity to make enquiries, provide inputs and objective criticism, receive clarification, and be generally informed about the company's activities and wellbeing, to guide decision making. As such, companies' AGMs afford the shareholders the opportunity to consider the progress and development of the company and to take necessary action to safeguard their interest and promote those of the company.<sup>10</sup>

### **Virtual Company Meetings Under The Old Companies And Allied Matters Act 1990 (CAMA 1990)**

Generally, the legal uncertainty with regards to virtual meetings affects mainly statutory and annual general meetings. This is because, with board meetings, there is generally no fetter on the choice of venue or manner in which the directors can hold their meeting. As a matter of fact, section 263 of the Companies and Allied Matters Act 1990<sup>11</sup> ("CAMA") gives the board of directors the discretion to regulate their meetings as they think fit as long as the first one is held within 6 (six) months of the company's incorporation. The only known fetter upon this discretion appears to be Regulation 10 of the Code of Corporate Governance for Public Companies, but even that is with regards to the frequency and not the venue or manner of holding board meetings – the regulation states that the Board of Directors is mandated to hold its meetings every quarter. Consequently, it is not unusual to

<sup>5</sup> <https://www.medscape.com/answers/2500114-197401/what-is-covid-19> last accessed on 28 August, 2020.

<sup>6</sup> <https://www.merriam-webster.com/dictionary/COVID-19>

<sup>7</sup> [https://www.google.com.ng/search?ei=1HVHX5GqOKWp8gKDub-oCA&q=definition+of+virtual+meeting&oq=definition+of+virtual+meeting&gs\\_lcp=CgZwc3ktYWIQAzICCAAYBggAEBYQHjIGCAAQFhAeMgYIABAWEB46BAgAEec6BwgAELEDEEM6BAgAEEM6BQgAELEDOggIABCxAXCDAToKCAAQOIQRhD5AToFCAAQkQI6BwgAEEYQ-QFQr68GWOOrWBmDT3AZoAHABeACAACCjIAGjRJBBDTItMy43LjMuMi4xLjKYAOCgAOGqAQdnd3Mtd2l6wAEB&scient=psy-ab&ved=0ahUKEwiR5OCtgrvrAhWllFwKHYPcD4UQ4dUDCA0&uact=5](https://www.google.com.ng/search?ei=1HVHX5GqOKWp8gKDub-oCA&q=definition+of+virtual+meeting&oq=definition+of+virtual+meeting&gs_lcp=CgZwc3ktYWIQAzICCAAYBggAEBYQHjIGCAAQFhAeMgYIABAWEB46BAgAEec6BwgAELEDEEM6BAgAEEM6BQgAELEDOggIABCxAXCDAToKCAAQOIQRhD5AToFCAAQkQI6BwgAEEYQ-QFQr68GWOOrWBmDT3AZoAHABeACAACCjIAGjRJBBDTItMy43LjMuMi4xLjKYAOCgAOGqAQdnd3Mtd2l6wAEB&scient=psy-ab&ved=0ahUKEwiR5OCtgrvrAhWllFwKHYPcD4UQ4dUDCA0&uact=5)

<sup>8</sup> [https://www.google.com/search?source=hp&ei=WHdHX6jyLqnBlwTZ8LTwBg&q=definition+of+statutory+corporation&oq=definition+of+statutory+corporation&gs\\_lcp=CgZwc3ktYWIQAzICCAAYBggAEBYQHjIGCAAQFhAeMgYIABAWEB46BQgAELEDOgUllhCxZozCCC46CAgAELEDEIMBOgcIABBGEPkBUO4OWN5uYJpzaABwAHgCgAH3BIgB9EiSAQoyLTIILjQuMi4xmAEAoAEBqgEHZ3dzLXdppeg&scient=psy-ab&ved=0ahUKEwio\\_tjmg7vrAhWp4IUKHVk4DW4Q4dUDCAc&uact=5](https://www.google.com/search?source=hp&ei=WHdHX6jyLqnBlwTZ8LTwBg&q=definition+of+statutory+corporation&oq=definition+of+statutory+corporation&gs_lcp=CgZwc3ktYWIQAzICCAAYBggAEBYQHjIGCAAQFhAeMgYIABAWEB46BQgAELEDOgUllhCxZozCCC46CAgAELEDEIMBOgcIABBGEPkBUO4OWN5uYJpzaABwAHgCgAH3BIgB9EiSAQoyLTIILjQuMi4xmAEAoAEBqgEHZ3dzLXdppeg&scient=psy-ab&ved=0ahUKEwio_tjmg7vrAhWp4IUKHVk4DW4Q4dUDCAc&uact=5)

<sup>9</sup> Nigeria Stock Exchange (NSE)'s Guidance on Companies' Virtual Meetings (April 15, 2020) Available at <http://www.nse.com.ng/dealing-memberssite/Notices/NSE%20GUIDANCE%20ON%20COMPANIES%20VIRTUAL%20MEETINGS.pdf>

<sup>10</sup> Bhadmus, H. Y., "Bhadmus on Corporate Law Practice", Chenglo Limited, Enugu, 2017, P. 274.

see Board of Directors meetings taking place at venues outside Nigeria or via digital/virtual media such as telephone or video conference, as long as this is not expressly disallowed by the company's articles of association. The best international practice, however, is for at least one (1) director to be present at the physical venue stated in the notice of the meeting while the others participate virtually.<sup>12</sup> With regards to statutory and annual general meetings, a cursory reading of ss. 211 and 213 of CAMA provides that a public company must hold its statutory meeting within 6 (six) months of its incorporation and a private company must hold its first AGM within 18 (eighteen) months of its incorporation. Subsequently, all companies must hold their AGM within 15 (fifteen) months after the previous one. As regards the propriety of conducting statutory and/or AGMs virtually, while - as has been argued in some quarters - it is trite law that an act that is not expressly prohibited is permitted,<sup>13</sup> it is by all means untenable to contemplate that an Act passed in 1990 envisaged the use of digital/virtual technologies in the holding of meetings, especially when one takes a holistic approach to interpreting its various provisions. Firstly, s. 216 of CAMA provides that all statutory and annual general meetings of companies shall be held in Nigeria. And even though some argue that virtual meetings in which participants have their Internet Protocol (IP) Addresses as Nigeria fulfill this requirement<sup>14</sup>, a cursory look at s. 218 of CAMA suggests otherwise as it requires that the notice of a meeting must be sent to members specifying the "place" of the meeting. Again, this particular provision from a 1990 law does not contemplate meetings which are not held in a physical place.<sup>15</sup> Furthermore, related provisions under sections 213 - 231 of CAMA on notices, voting and rights exercisable by shareholders at these meetings make references only to a physical meeting.

#### **Virtual Company Meetings Under The Companies And Allied Matters Act 2020 (CAMA 2020)**

The new CAMA provides for remote or virtual meetings, provided that such meetings are conducted in accordance with the Articles of Association of the Company, (which contains the rules and regulations guiding the internal management of a company). This will facilitate participation from any location at minimal costs. This is especially relevant today given the disruption caused by the COVID-19 pandemic to operations around the world.

The CAMA 2020 has to large extent limited the viability of public companies in the midst of the pandemic to hold meeting as the provision of section 240 CAMA has in its legal regime a somewhat restriction on the incorporated public companies in Nigeria to conduct virtual meeting of both the statutory and annual general meetings. The Act only allowed private companies subject to the provision contained in the company articles to conduct virtual meeting. We humbly opined that this is perhaps allowed since every internet connected device makes use of an internet protocol (I.P) address. An I.P address is a numerical label assigned to each device connected to a computer network that uses I.P for communication. It serves two main functions host or network interface identification and location addressing. Through I.P geo-location, an I.P address is mapped to the real-world geographic location of an internet connected device, therefore where the I.P address hosting the meeting is being held in Nigeria, and in accordance with the provisions of the Companies and allied matter Act and to be regulated by corporate affairs commission. This innovation has not in any way assisted the public companies to flourish in the midst of the Covid 19 saga.

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<sup>11</sup> Codified as Cap C20 in the 2004 Laws of the federation.

<sup>12</sup> Emmanuel Ekpenyong, (27 May, 2020), "Legal Procedure for Convening Valid Company Meetings in the Midst of the COVID-19 Pandemic", Available at <https://www.globallawexperts.com/NewsArticle.aspx?PID=2268> (Last accessed June 12, 2020)

<sup>13</sup> See A. Adetuyi and N. Williams (2020), "Covid-19: can public companies hold virtual annual general meetings in Nigeria", Available at <https://www.lexology.com/library/detail.aspx?g=74f63619-4490-400b-99fedd9d50e84c55> (Last accessed June 12, 2020).

<sup>14</sup> Ibid.

<sup>15</sup> Even more so, the Supreme Court in *Okotie-Eboh v Director of Public Prosecutions* (1962) LCN/0984 (SC) has interpreted "place" to mean "any part of an enclosure or structure whether separated from the rest of the enclosure or structure by a partition fence or rope."

To appreciate the innovations under the new CAMA, a tabular comparison of the old and the new Act will be made.

S/N	ITEM	CAMA 1990	CAMA 2020	APPLICABLE SECTION
1	Annual General Meeting (AGM)	All companies must hold AGMs.	Small companies or companies having a single shareholder are not obligated to hold AGMs	<b>Section 237</b>
2	Place of meeting	All companies must hold their AGMs in Nigeria.  Virtual meetings were not recognized.	Except for small companies and companies with single shareholders, all statutory meetings and AGMs must be held in Nigeria  Private companies may hold virtual meetings, provided that such meetings are conducted in accordance with the articles of the company.	<b>Section 240</b>

It is worth of note that, few Nigerian regulatory bodies has taken a bold step to make guidelines amidst the pandemic to foster the fortune of the Nigerian company for instance, the Corporate Affairs Commission (“CAC”) and Securities and Exchange Commission (“SEC”) have published guidelines for companies in this regard. There is the CAC “ Guidelines on Holding of Annual General Meetings (AGM) of Companies Using Proxies”(“CAC Guidelines”)released on the 26th of March, 2020 which prescribes modalities for the holding of AGMs by proxies with the aim of limiting the number of attendees at such meetings and ensuring compliance with the health and safety measures on social/physical distancing.<sup>16</sup> There is also the SEC “ Guidelines on Companies’ Virtual Board, Committee, and Management Meetings”(“NSE Guidelines”)which seeks to provide guidance to the capital market and other stakeholders in conducting productive virtual meetings in an accessible, transparent and cost-effective manner, and meeting the important corporate governance need of the company.

#### 4. PLATFORMS FOR VIRTUAL MEETINGS

Some of the most popular platforms being employed for virtual meetings include:

- a. Zoom
- b. Teleconferencing
- c. Video conference
- d. Skype
- e. Google Meet
- f. Google Hangout
- g. Go To Meeting
- h. Slack
- i. Face time
- j. Microsoft teams etc.

<sup>16</sup>Akorede Folarin “Evaluating the legality of virtual meetings under the Companies and Allied Matters Act of Nigeria,” accessible at [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3637095](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3637095). Last accessed on 30/8/2020.

## 5. SUITABILITY OF VIRTUAL MEETINGS AMIDST THE PANDEMIC

1. Virtual meeting amidst the pandemic minimize the risk of shareholders and members from contacting Covid-19 and it reduces the possibilities of inter personal interaction within the same venue, in situation where the companies seek to hold its annual general meeting or statutory meeting in compliance with the provision of CAMA 2020
2. Virtual meetings are more cost effective compared to physical meetings. The service only requires a computer or mobile device with internet connection against conducting a company's meeting that requires time, expenses of travelling, hotel bills, and the use of virtual meeting by the statutory cooperation save an organization a lot.
3. The adoption of virtual hearing meeting by companies also makes a remarkable contribution to environmental protection as it reduces travelling by members for various corporate meetings reducing the carbon being emitted into the atmosphere and the environment.

### Challenges of Virtual Meeting of Statutory Corporations

1. With a virtual meeting, companies may filter shareholder's questions and only answer those that are convenient to them.
2. Technical issues may arise disrupting the meeting and shareholders cannot communicate as effectively as they would in a physical meeting thereby limiting the effectiveness and quality of participation generally.
3. Virtual meeting of hundreds or thousands of people will not be easy to conduct and may not be possible without technical support beyond the simple available online application.
4. The cost of data to the members of cooperate companies may act as a hindrance to the success of virtual meeting.
5. The activities of the nefarious cybercrime hoodlums which would pose serious cyber security challenges to the virtual meeting actors.
6. Lack of effective and efficient legislation in place to express permission to companies to hold virtual meetings and setting out the manner each will be held is also another hindrance.
7. The majority of member/shareholders of the company lack the technical know-how to manipulate or participate in virtual meetings and in a situation where the directors are allowed to make the decision to hold virtual meeting without any form of control, they will have known desires to protect the interest of the shareholders and where such a meeting hold the aggrieved shareholders may approach a court to set aside the decision reached at the meeting.

### RECOMMENDATIONS

- l. It is strongly recommended that all statutory corporations and incorporated companies in Nigeria should make a turning point by leveraging on digital technology to create enabling environment for virtual meetings which has been proven to greatly ease business and which is also very cost effective.
- m. The statutory provisions especially those in the CAMA 2020 which has made provision for virtual meetings in private companies should be further amended to provide for virtual meetings for public companies. This will bring it into conformity with the best global corporate governance practice currently obtainable in developed countries across the globe.
- n. Companies, whether private limited or public limited, whose articles of association do not currently permit virtual or hybrid general meetings should consider proposing shareholder resolutions to adopt the necessary updates at their next practicable annual general meeting.

### CONCLUSION

The pandemic has acted as the catalyst for the embrace of technological change by statutory corporations and incorporated companies, whilst the commentators and shareholders who are dogma in principles have highlighted values and tradition whose continued existence may be threatened by the pace of change for instance the traditional set of seating in the venue to debate company affairs is no longer tenable, it is inescapable that many of the changes wrought will become permanent and will confer considerable benefits on the companies.