

# COVID-19: CAN PUBLIC COMPANIES HOLD VIRTUAL ANNUAL GENERAL MEETINGS IN NIGERIA?

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## Overview

From stocks to jobs and emerging markets, COVID-19 has had significant impacts on the economies of countries all over the world. In addition, the pandemic has led to the creation of emergency lifestyle adjustments especially with the partial or total lockdowns instituted in several countries. This period is also significant. It is the period that several public companies have scheduled the conduct of their Annual General Meetings (AGMs). In Nigeria, the number of confirmed COVID-19 cases has and is seeing considerable increase. With the lockdown in many states of the Federation including Lagos and Abuja (major commercial cities in Nigeria), a pertinent issue arising at this point is the legality of a public company registered in Nigeria holding its AGM virtually.

### ***What is a virtual AGM?***

The Merriam Webster Dictionary of the English Language defines virtual as “existing or occurring on computers or on the internet.”<sup>2</sup> A virtual AGM is an AGM conducted over the internet entirely through computers and/or other electronic means and with no physical convergence of parties. As the world becomes more interconnected by virtue of the internet, meetings and other activities take place increasingly in this virtual space.

### ***Can public companies hold AGMs virtually in Nigeria?***

Whether a public company can hold its AGM virtually depends on the applicable corporate statutes and the company’s articles. The Companies and Allied Matters Act (CAMA), Cap C21, Laws of the Federation of Nigeria, 2004 stipulates that all statutory and annual general meetings shall be held in Nigeria.<sup>3</sup> The notice calling for such meetings shall also contain the venue for the meetings.<sup>4</sup> The use of the word “shall” as employed in the CAMA indicates an imperative

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<sup>1</sup> **Brooks & Knights Legal Consultants (BKLC)** is a law firm established in Lagos, Nigeria to provide bespoke legal advisory and policy consulting services to individuals, corporates, government agencies and NGOs.

<sup>2</sup> *Virtual*. Retrieved from [www.merriam-webster.com/dictionary/virtual](http://www.merriam-webster.com/dictionary/virtual) accessed on 15 April 2020.

<sup>3</sup> Section 216 of the Companies and Allied Matters Act, (CAMA), Cap 21, Laws of the Federation of Nigeria, 2004.

<sup>4</sup> Section 218 (1)



command; a duty to do. The law therefore expects every annual general meeting to be held in Nigeria.

Although the CAMA prescribes where a statutory meeting or an annual general meeting must be held – in Nigeria, it does not clearly prescribe the mode of conducting such meetings i.e. whether such meetings have to be physical or virtual. It is a cardinal principle of law that what is not expressly forbidden is permitted.<sup>5</sup> This implies that the CAMA, by not expressly forbidding any mode of conducting a statutory or annual general meeting, permits all modes of conducting a statutory or annual general meeting (whether physical or virtual) so far all the requirements of the CAMA on notices, quorum, voting etc are complied with. A meeting being held by virtual means does not preclude it from being held in Nigeria. Where members of a company, who are in their residences in different parts of Nigeria converge via an internet connected medium and application e.g. Zoom to hold a meeting, it may be said that the company is acting in compliance with the provisions of the CAMA as the intention of the law is in this case fulfilled – the meeting has been held in Nigeria.

Every internet connected device makes use of an Internet Protocol (IP) address. An IP address is a numerical label assigned to each device connected to a computer network that uses IP for communication. It serves two main functions: host or network interface identification and location addressing. Through IP geolocation, an IP address is mapped to the real-world geographic location of an internet connected device.<sup>6</sup> Thus, where the IP address hosting the meeting is in Nigeria, it is an indication of the fact that the meeting is being held in Nigeria, and in accordance with the provisions of the CAMA.

CAMA considers that where it is impossible or impracticable to call or conduct a meeting in a manner set out by the law or by the company's constitution, a company has a number of options: (1) application could be made to the Corporate Affairs Commission (CAC or the Commission) to extend the time within which an annual general meeting shall be held which shall not extend the time beyond three months; and (2) any director or shareholder of the company (who is entitled to vote at the meeting) could apply to the court to order a meeting of the company or board to be called, held and conducted in such manner as the court fits.<sup>7</sup> With regard to option 1, where the lockdown extends beyond three months, a company would have exhausted this option without having held its AGM. The issue with the second option is that court sittings have been suspended indefinitely in Nigeria and only allowed in matters that are "urgent, essential, or time-bound."<sup>8</sup>

Thus, where it is impossible or impracticable to call or conduct a meeting due to lockdown arising as a result of COVID-19, a public company can either apply to the court to hold its annual general meeting by virtual means once the court is convinced that the application is urgent, essential or

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<sup>5</sup> *Dankwambo v Abubakar & Ors (2015) LPELR- 25716 (SC) Page 77 Paragraphs B-E*- Okoro, JSC

<sup>6</sup> Where is Geolocation of an IP Address? Retrieved from [www.iplocation.net](http://www.iplocation.net) accessed on 14 April 2020.

<sup>7</sup> Section 223 of the CAMA

<sup>8</sup> Halima Yahaya, Coronavirus: Nigeria extends shutdown of courts (Premium Times, 5 April 2020), retrieved from <https://premiumtimesng.com/news/top-news/386322-coronavirus-nigeria-extends-shutdown-of-courts.html> accessed on 14 April 2020.



time-bound. The courts will consider each application before it on a case by case basis. Although the CAC currently encourages public companies to utilize the provisions of the CAMA<sup>9</sup> to make use of proxies when conducting their AGMs,<sup>10</sup> shareholders under the umbrella of New Dimension Shareholders Association have complained that that compelling shareholders to appoint proxies to attend AGMs on their behalf amounts to disenfranchisement.<sup>11</sup> Considering that virtual AGMs are not explicitly prohibited by the CAMA, the CAC can authorise public companies to hold their AGMs virtually to prevent shareholders feeling disenfranchised.

The world is currently experiencing disruptions in every sphere and in such dimensions it has never experienced and technology can offer a solution to some of the problems that will arise as a result of COVID-19. Virtual communication technology can be exploited and integrated into our corporate practices to aid the ease of doing business in Nigeria. Foreign investors resident outside Nigeria are likely to be more interested in doing business in Nigeria if there are express provisions in our corporate statutes allowing public companies to conduct AGMs virtually without the need to travel down to Nigeria for an annual general meeting. Countries like the United Kingdom<sup>12</sup>, Canada<sup>13</sup> and South Africa<sup>14</sup> amongst others have enshrined provisions expressly permitting virtual meetings in their laws.

### **Conclusion**

The amended Companies and Allied Matters Act (Repeal and Re-enactment) Bill, 2018 contains provisions expressly allowing a private company to hold and conduct its meetings virtually but preserves the provision of "holding meetings in Nigeria" for public companies. Considering the recent disruptions caused by COVID-19, it will be apt for the proposed law to expressly permit virtual meetings for public companies.

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<sup>9</sup> Section 230 of the CAMA

<sup>10</sup> On March 26, 2020, the Corporate Affairs Commission released Guidelines on holding of Annual General Meetings of Public Companies using proxies.

<sup>11</sup> Nkiruka Nnorom, *Shareholders kick against proxy AGMS*, (Vanguard, 14 April 2020), retrieved from <https://www.vanguardngr.com/2020/04/shareholders-kick-against-proxy-agms/> accessed on 15 April, 2020.

<sup>12</sup> Section 360A, Companies Act, 2006

<sup>13</sup> Section 132(4)(5), Canada Business Corporations Act

<sup>14</sup> Section 61(10), Companies Act, 2008

