

THE INTERNATIONAL JOURNAL OF BUSINESS & MANAGEMENT

Shareholder Access to Place of Meeting under Companies and Allied Matters Act 1990: e-Meeting in Prospect

Shamsuddeen Magaji

Ph.D. Candidate, School of Law, College of Law, Government and International Studies,
Universiti Utara, Malaysia

Nurli Yaacob

Senior Lecturer, School of Law, College of Law, Government and International Studies,
Universiti Utara, Malaysia

Zuryati Mohammed Yusoff

Senior Lecturer, School of Law, College of Law, Government and International Studies,
Universiti Utara, Malaysia

Abstract:

The right of shareholders to participate at the AGM depends on whether the place of meeting specified in the notice will be convenient for the shareholders to attend and exercise their voting right. The Companies and Allied Matters Act 1990 (CAMA 1990) provides that the place for holding all classes of meeting shall be in Nigeria. However, considering that share ownership in Nigeria is widely dispersed across the 36 states and the Federal Capital Territory, Abuja it is difficult to have a place of meeting that will be suitably accessible for all the shareholders to attend. This calls for an examination of relevant law, code of corporate governance and other rules relating to shareholder access to the place of meeting in Nigeria with a view to introduce ways that will facilitate greater participation of shareholders to the place of meeting. Two methods of data collection were adopted. First is the doctrinal which was conducted in the library while the second method involved field work (qualitative interview). The findings indicate the need for CAMA 1990 to include provision that will facilitate rotation of the place of annual general meeting (AGM) across various states of Nigeria. Similarly, there is need to incorporate provision that will facilitate holding electronic meeting (e-meeting). This will facilitate shareholder access to the place of meeting without difficulty in terms of geographical access to the place of meeting as shareholders can participate from any part of the world.

Keywords: *place of meeting, right of shareholders, rotation, e-meeting*

1. Introduction

The Nigerian Companies and Allied Matters Act, 1990 (CAMA 1990) is the principal legislation governing company affairs in Nigeria (Anthony 2007) in addition to the Code of Corporate Governance for Public Companies in Nigeria, 2011 (CCGPCN 2011). The CCGPCN 2011 made laudable provisions on corporate governance in relation to public companies which include shareholder access to the place or venue of meeting. Furthermore, there are rules and regulations governing the affairs of public listed companies in Nigeria. These include the Securities and Exchange Commission Rules and Regulations, 2013 (SECRR 2013), Rules and Regulations of the Nigerian Stock Exchange, 2015 (RRNSE 2015). All the above-mentioned law, rules and regulations have particular provision about place/venue of shareholder meeting. On the one hand, the Corporate Affairs Commission (CAC) is a regulatory body established to monitor the enforcement of the CAMA 1990 including compliance with provisions for calling and the conduct shareholder meeting. Furthermore, there is the Securities and Exchange Commission (SEC) as well as the Nigerian Stock Exchange (NSE) which were established by the Investment and Securities Act, 2007. These regulatory bodies have powers regarding both the private and public listed companies in Nigeria. However, this study concerns place of AGM for public listed companies.

In the case of (Credit Development Pte Ltd v IMO Pte Ltd [1993] 1 SLR 68) the court held that the board of directors and the shareholders at the general meeting are two vital organs of a company because, it is not possible for all the shareholders to participate in running the affairs of the company. The board of directors has a fiduciary duty to act in the best interest of the company (Ajoku, 2004). The board is obliged to protect the interest of all the shareholders (Anandarajah, 2001), and oversees running day to day activities of the company. As such, the board is accountable to the shareholders at the general meeting.

Consequently, the word meeting has not been defined under the CAMA 1990. However, meeting was considered in the famous English case of (Sharp v. Dawes [1974] 1 WLR 1133) to mean the coming together of two or more persons with the aim of discussing and acting upon some matter(s) in which they share a common interest. In another word, meeting represents a gathering of two or

more people to discuss and address some issues (Guaranty Trust Bank Plc. & Anor v. Udoka Anyanwu [2011] LPELR-4220 CA). The importance of shareholder's meeting cannot be over emphasised, because it is the only medium that enable shareholders to meet and pass certain resolutions affecting a company as a whole (New Resources International Ltd & Anor. v. Oranusi [2011] 2 NWLR, Pt 1230, 102). From the above expressions, meeting generally involved the gathering of more than one person. However, Lord Coleridge CJ stated that, "it is of course possible to say that the word 'meeting' has meaning different from the ordinary meaning," (Sharp v. Dawes [1876] 2 QBD pg.29). In view of the above, there must be a place/venue for shareholders to meet. Although, with the development in technology, shareholders do not need to meet at a physical location to conduct a meeting. This aspect will be discussed later in this study.

There are various provisions that recognised shareholder's right to participate at annual general meeting (AGM). Their participation depends on receiving proper notice of meeting which specify the place and date of the meeting (Re Green Valley Investment Ltd [2003] 2 HKLRD 915). The rationale behind serving notice is to enable shareholders an opportunity to scrutinise and planned for the meeting (Atte, 2015). Section 216 of the CAMA 1990 only provides that the place of meeting shall be in Nigeria and it stops there. However, Rule 19.9(a) RRNSE 2015 added that the meeting shall take place within business hours at a place that shall be affordable and accessible to shareholders of the company or majority of the shareholders. The board of directors should make sure that shareholders are not disenfranchised from attending AGM based on place of meeting (Rule 23 CCGPCN). The board of directors is equally required to facilitate attendance of shareholders with physical disability by providing a place of meeting that is easily accessible (Rule 19.9(b) RRNSE). The above rules have clear and explicit provisions that requires the management of a company to fix a meeting at a place that will be easily accessible to shareholders in terms of geographical location. However, the main provision under section 216 of the CAMA is silent on whether the place of meeting should be accessible to the shareholders. In practice, access to the place of AGM to shareholder participation at AGM in Nigeria because section 216 of the CAMA 1990 does not recognised the use of ICT (Atte, 2015) talk less of holding of e-meeting. Amey and Mozley (2012) believed that use of internet in company meeting save time, costs and facilitates effective communication between shareholders and the company. It is against the above challenge this study seeks to examine the relevant laws, code of corporate governance, other rules and the perspective of the respondents regarding place of meeting in Nigeria, with a view to improve shareholder access to the meeting.

2. Materials and Methods

Socio legal research methodology was used in this study. This includes doctrinal methodology and field work. The doctrinal methodology is generally carried out in the library and therefore, allows a researcher to analyse fact and legal principles in a coherent way (Yaqin 2007) and suggest ways of improving current provision (Smits, 2014). On the other hand, the field work in this study contained 17 in-depth interviews. The respondents were chosen based on their expertise in company law and practice. The respondents were chosen from the academic discipline, corporate practitioners, board of directors and shareholder representatives.

The analysis of result/data in this study was conducted based on themes and sub themes that emerged from the study. This is known as thematic analysis (Lea, 2012). One author explained, "Thematic analysis moves beyond counting explicit words or phrases and focuses on identifying and describing both implicit and explicit ideas. Codes developed for r themes are then applied to raw data as summary markers for later analysis (Namey et al., 2008 p.138). In this study, all the respondents interviewed were coded as "R1 to R17" to ensure that their identities are kept confidential. The theme was developed based on the study question on the analysis of provisions on place of shareholder meeting in Nigeria. The need for rotation of place of meeting and the possibility of introducing e-meeting.

3. Results and Discussion

3.1. Access to the Place/Venue of Annual General Meeting

In this regard, out of the 17 respondents interviewed, 11 were of the view that the place of meeting is not conveniently accessible to many of the shareholders in Nigeria. Some of the excerpt from the interview are quoted and analysed below. According to R7 "Only insignificant number of shareholders attend the AGM. Many of the shareholders are not attending. Location is a serious problem," (Respondent 7, Interview 2016). In his response, R10 stated "Even if shareholders received the notice of meeting on time, the place of meeting might be difficult for them to access," (Respondent 10, Interview 2016). According to R3 "The provision in the Code of Corporate Governance regarding affordability and accessibility of venue for AGM is very laudable. It is a very good provision, but I think is not enough in the sense that, the Code itself has an enforceability vacuum. There is no legal machinery to enforce its provision," (Respondent 3, Interview 2016). Based on R3 above, the code of corporate governance cannot be enforced in a court that is why the requirement that the place of meeting shall be accessible will hardly be respected by the company. Adding his view, R1 maintained that "A company can fix the venue to unsuitable place like Maiduguri (where there has been insecurity) so that people won't be able to attend. It is because of the politics played by the directors in order to continue to perpetuate their interest. The management knows that it is at the meeting that they can be removed because every year there must be election of directors by shareholders and it is where shareholders consider whether a director is to be re-elected or not," (Respondent 1, Interview 2016). The management always know how to tactically deprive its shareholders from attending the AGM due to inconvenience of the place of meeting. According to R11 "The truth of the matter is that, accessible in terms of affordability is completely absent to a large extent, you have shareholders scattered all over the country. Like I said, most of the AGMs are usually held in Lagos or Abuja, so many members that cannot afford to pay and come down to Abuja, and for those that can afford to pay they don't have place to stay; paying hotel bills and at the end of the day they are not being paid. It is a challenge at the moment that a lot of shareholders cannot access the

venue, even though Abuja and Lagos is accessible, but the way to reach these places and actually participate at the AGM is not in place,” (Respondent 11, Interview 2016).

On the one hand, 2 respondents out of 17 that were interviewed believed that the place of meeting is accessible to the shareholders. However, 4 respondents out of 17 argued that the place of meeting is neither accessible nor inaccessible. Taking majority opinion, it can be said that there is a challenge of accessibility to the place of AGM. In his response, R12 believed “The issue of accessibility is not a problem because wherever we are holding a meeting we ensure that every shareholder can go there without any difficulty. An example is, during the Boko Haram insurgency, we used to have our AGM in Abuja, we held at Transcorp Hilton, which is a five-star hotel in Abuja, and almost everybody knows where it is. We always make sure that the environment for our meetings is conducive and accessible to all our shareholders,” (Respondent 12, Interview 2016). According to R12 access to the place of meeting is not a problem. However, going by the majority view, access to the place of meeting hinders shareholder participation at the AGM and there should be away forward.

3.2. Rotation of the Place of Meeting

The respondents were asked whether rotation of the place of meeting to various states in Nigeria would improve shareholder access to the place of AGM. Majority of the respondents believed that rotation of place/venue of meeting will go a long way in improving participation of shareholders at the AGM. Some of the excerpt from the interview are presented below: According to R14 “I think the law should make provision for rotating the AGM across the six geo political zones in the country (particularly to be at states with majority shareholding). That will improve member’s participation,” (Respondent 14, Interview 2016). In his response, R16 stated “Rotation issue will be a welcome idea. Some of these aggrieved shareholders, their interest will be taken care of because the company’s AGM will be going around since they have shareholders everywhere in the country,” (Respondent 16, Interview 2016). Another respondent, R17 added “The issue of rotation will enable companies to reach out many of its shareholder. There is also the issue of greater part of shareholders residing in one zone. If the meeting is in that zone, there is actually going to be a greater participation,” (Respondent 17, Interview 2016). All the above views were in support of rotating the place of AGM to various geo political zones of the country depending on where a company has great percentage of shareholders.

3.3. e-Meeting

In this regard, respondents were asked about whether incorporating e-meeting under the CAMA 1990 will facilitate greater access to place of meeting by the shareholder. Majority of the respondents supported the view for incorporation of e-meeting under the CAMA 1990. From the excerpt of the interview R3 believed “We need to be moving with time, even though I alluded to the fact that our country is undeveloped (technologically), we have now reached the point of having e-meetings, where you don’t need to walk from Abuja to Lagos or from Kano to Lagos to attend the meeting. This is what we called e-meeting that you could be able to express yourself and be visualized as part of those that were in the meeting and anywhere in the world and wherever you are, you can participate in the meeting. We need to strengthen the legal framework in this country to recognise the shift technologically so that we don’t rely on physical meetings only,” (Respondent 3, Interview 2016). Adding his view R6 added stated “We are heading towards electronic AGM in the future, we are looking at it where by you would just connect to the venue, and you can now ask questions, you can vote electronically,” (Respondent 6, Interview 2016). All the above views supported the incorporation of e-meeting. Adding his support on the introduction of e-meeting R13 believed “It will be a welcome development, but it has to be a gradual process. This will certainly improve greater participation of shareholders in corporate meetings,” (Respondent 13, Interview 2016). Correspondingly, R9 stated “It is a fantastic idea, and it is the best thing that will happen to corporate law. Personally, it is very acceptable to me, and for every company secretary I think it is very important,” (Respondent 9, Interview 2016). All the above views are in support of the incorporation of e-meeting under the CAMA 1990.

4. Conclusion

It is the fact that no matter how accessible and convenient the place of meeting could be, some shareholders will not attend. This study examined relevant provisions under CAMA 1990, the CCGPCN 2011 and the RRNSE 2015 as relates to place of shareholder AGM. The study reveals that, although CAMA stipulates that AGM shall be held in Nigeria, some shareholders find the place/venue in accessible in terms of geographical location. On the one hand, the requirement that the place of meeting be affordable and accessible under the CCGPCN 2011 lacks legal enforceability, although it was a laudable requirement. To remedy this, the CAMA 1990 should incorporate such provision on making the place of meeting accessible to the shareholders or greater part of them. It is concluded that, there is need to rotate the place of AGM across various regions in Nigeria, so that shareholder participation at AGM in Nigeria would be improved.

On the one hand, while the majority view from the perspective tilted towards the incorporation of provisions that facilitate the conduct of e-meeting, there may be certain challenges in Nigeria that may hinder the effective conduct of e-meeting including access to internet, power supply, shareholder awareness among other reasons. The prospect of conducting e-meeting is still bright in the future. Thus, the Report of the Nigerian Telecommunication Services, 2016 shows a great improvement in terms of subscription of mobile lines. The report shows about 151,017,244 mobile subscribers at 2015 ending which indicate an increase of about 13,149,809 every year (NTSSR, 2016). This show that Nigerians (including shareholders) are getting more access to mobile phones which by extension bringing access to the internet closer. It is hope that rotation of place of AGM to various states in Nigeria is one way to improve shareholder access to the place of meeting while incorporation of e-meeting will be another way that will ensure gradual conduct of meeting in an electronic space.

5. References

- i. Ajoku, O. O. (2014). Demythification of the organic theory of company law through the lens of corporate governance jurisprudence: Revisiting shareholder's activism (case study of Nigeria's company and allied matters act, 2004).
- ii. Anwarul, Y. (2007). Legal research and writing. Malaysia: LexisNexis.
- iii. Amey JH. & Mozley, E.D. (2012). Online shareholder participation in AGMs, HLS Forum on Corporate Governance and Financial Regulation.
- iv. Atte B. (2015). Enhancing shareholder's participation in company meetings in Nigeria through application of information technology. *Journal of Humanities and Social Science* 20(9).
- v. C.A.M.A. (1990). Companies and allied matters act.
- vi. C.C.G.P.C.N. (2011). Code of corporate governance for public companies in Nigeria.
- vii. Credit Development Pte Ltd v. IMO Pte Ltd. (1993). 1 SLR 68.
- viii. Crutchley, C. E., & Hansen, R. S. (1989). Test of the agency theory of managerial ownership, corporate leverage, and corporate dividends. *Financial Management* 18(4), 36-46.
- ix. Mahesan & Ors v. Ponnusamy & Ors (1994) 3 MLJ 312.
- x. Dunlop Nigerian Industries Ltd. v. Forward Nigeria Enterprises Ltd. & Anor (1976) A. L. R Comm 243.
- xi. Guaranty Trust Bank Plc. & Anor v. Udoka Anyanwu (2011) LPELR-4220 CA.
- xii. Hicks, A. & Goo, S. H. 6th edition. (2008) Cases & materials on company law. New York: Oxford University Press.
- xiii. Jensen, M. C., & Clifford S. W. (1985). Stockholder, manager and creditor interests: Applications of agency theory.
- xiv. Jensen, M.C., & Meckling, W. H. (1976). Theory of the firm: Managerial behavior, agency costs and ownership structure. *Journal of Financial Economics* 3, 305-360.
- xv. Jerry Ngiam Swee Beng v. Abdul Rahman bin Mohd Rashid & Anor (2003) 6 MLJ 448 at 450.
- xvi. Lea, S. (2012). Qualitative data analysis. Seminar for the Academic Swiss Caucasus Net. Armenia.
- xvii. M. A. Omisade & Ors v Harry Akande (1987) LPELR 2639, S.C.
- xviii. Namey, E., Guest, G., Thairu, L. and Johnson, L. (2008). Data reduction techniques for large qualitative data sets. In: Handbook for team-based qualitative research. Rowman Altamira.
- xix. N.T.S.S.R. (2016). Nigerian telecommunications (services) sector report, by the National Bureau of Statistics.
- xx. New Resources International Ltd & Anor. v. Oranusi (2011) 2 NWLR (Pt 1230) 102.
- xxi. Respondent 1 (2016). Professor of law. Interview.
- xxii. Respondent 3 (2016). Law lecturer. Interview.
- xxiii. Respondent 6 (2016). Company director, Interview.
- xxiv. Respondent 7 (2016). Shareholder activist. Interview
- xxv. Respondent 9 (2016). Company secretary. Interview
- xxvi. Respondent 10 (2016). Company secretary. Interview
- xxvii. Respondent 11 (2016). Company secretary. Interview
- xxviii. Respondent 12 (2016). Company director. Interview
- xxix. Respondent 13 (2016). Company director. Interview
- xxx. Respondent 14 (2016). Company director. Interview
- xxxi. Respondent 16 (2016). Regulator. Interview.
- xxxii. Respondent 17 (2016). Regulator. Interview.
- xxxiii. R.R.N.S.E. (2015). Rules and Regulations of the Nigerian Stock Exchange.
- xxxiv. Salomon v. Salomon. (1879) AC 22.
- xxxv. Sharp v. Dawes (1974) 1 WLR 1133.
- xxxvi. Smits, J. M. (2014). Law and interdisciplinary: On the inevitable normativity of legal studies, critical analysis of law. Maastricht European Private Law Institute Working Paper 2014/101:1 75-86.
- xxxvii. Tsokwa Oil Marketing Co. v. U.T.C. (Nig.) Plc (2002) 12 NWLR (Pt 52) 437 C.A.
- xxxviii. Yaqin, A. (2007). Legal research and writing. LexisNexis.