

**ANALYSIS OF THE LAW ON COMPANY MEETINGS IN CONTEMPORARY  
CORPORATE GOVERNANCE IN NIGERIA**

**BY**

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AHMADU BELLO UNIVERSITY,  
ZARIA**

**APRIL, 2018**

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**A THESIS SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES,  
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**DEPARTMENT OF COMMERCIAL LAW,  
FACULTY LAW,  
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ZARIA**

**APRIL, 2018**

## DECLARATION

I declare that the work in this dissertation entitled “*ANALYSIS OF THE LAW ON COMPANY MEETINGS IN CONTEMPORARY CORPORATE GOVERNANCE IN NIGERIA*” has been performed by me in the Department of Commercial Law, Ahmadu Bello University, Zaria. The information derived from the literature has been duly acknowledged in the text and a list of reference provided. No part of this dissertation was previously presented for another degree at this or any other institution.

Joshua Elaigwu MOSES  
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Signature

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Date

## CERTIFICATION

This dissertation entitled “*ANALYSIS OF THE LAW ON COMPANY MEETINGS IN CONTEMPORARY CORPORATE GOVERNANCE IN NIGERIA*” by Joshua Elaigwu MOSES meets the regulations governing the award of the degree of LL.M (Master of Laws) of Ahmadu Bello University, and is approved for its contribution to knowledge and literary presentation.

Prof. A. R. Agom  
(Chairman, Supervisory Committee)

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Signature

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Date

## **DEDICATION**

This Dissertation is dedicated to the LORD GOD ALMIGHTY, my Shield, Defender, Buckler, Saviour and the Strength of my life.

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## LIST OF ABBREVIATIONS

ALR. Comm.	African Law Report Commercial
Cap.	Chapter
C.A.	Court of Appeal
Ch.	Chancery
Ed.	Edition
FHCR	Federal High Court Report
FWLR	Federation Weekly Law Report
JSC	Justice of the Supreme Court
KB	Kings Bench
L.F.N.	Laws of the Federation of Nigeria
LLR	Law Report of the High Court of Lagos State
LRN	Law Report of Nigeria
LPELR	Law Pavilion Electronic Law Report
Ltd	Limited
NCLR	Nigerian Commercial Law Report
Nig.	Nigeria
NWLR	Nigerian Weekly Law Report
Ors.	Others
Para.	Paragraph
Plc.	Public Limited Company
Pt.	Part
PENCOM	National Pension Commission

SC ..... Supreme Court  
SCNJ ..... Supreme Court of Nigeria Judgment  
USA ..... United States of America  
QBD ..... Queen’s Bench Division

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## ABSTRACT

This study analyzed the Law on Company Meeting in Modern Day Corporate Governance in Nigeria. It principally discussed the concept of Company meeting, its various kinds and practical relevance as a key instrument for the protection of members of the company and a means by which they tame the activities of the overzealous or corrupt directors of the company. This study was motivated by the fact that, in spite of the critical role of company meetings, corporate mismanagement and expropriation of members of the company by the directors and the progressive decline of the practical objectives of company meetings has continued to be a challenge. These issues raised the questions as to how well does the law on company meetings protect the members of the company from corporate mismanagement and expropriation by the directors of the company? In all of these, the major aim of the study is to ensure that more protection is accorded to the members of the company. This aim was accomplished by finding out whether the law on company meetings sufficiently or adequately protect the members of the company from corporate mismanagement and expropriation by the directors of the company. In undertaking this study both the doctrinal and empirical approach were mainly adopted. The doctrinal method was achieved by the consideration of both primary and secondary sources of data. The primary sources of data considered includes statutes and judicial authorities of superior courts of records, while the secondary source of data considered included text books, journals, and seminar papers. In the analysis, it was found that despite the undoubted improvement introduced by the CAMA, it cannot be said that the provisions on company meeting in the CAMA have substantially or adequately taken care of investors' protection. The provision or requirement by Section 211(1) of the CAMA which mandated every public company only to hold statutory meeting within six months of its incorporation still suffer from big ambiguity especially on whether the section binds or includes companies changed or converted from private to public company. Furthermore, the study also found that the law on company meetings has hitherto not keep pace with developments in information technology on electronics meetings and application of electronics means in serving of notice of meeting and conducting the affairs of the meeting. In view of the above findings, it was recommended that the legislature should recognise the technological advancement by legalizing participation in company meeting through E-voting, E-ballot, video conferencing or by other audio-visual means. Moreover, electronic notice through e-mails, text messages to mobile phones, and other electronic means of communication should also be legalized in the CAMA and be made to replace Section 220 of CAMA which provides for sending of Notice of Meeting by post. It was also recommended that section 211(1) of CAMA should be amended to remove the ambiguity it creates by making it very clear that where a company is incorporated as a private company and later changed or converted to a public company, the company should within six months from the date of its change or conversion from private to public hold the statutory meeting.

## CHAPTER ONE

### GENERAL INTRODUCTION

#### 1.1 Background to the Study

Meetings, are undoubtedly the primary communicative practice of humanity, particularly institutions and groups. It is used to accomplish goals, disseminate vital information and solve problems. It gives opportunity for social contracts and development of inter-personal relationships. Families, schools' management, town leadership, grass root movement, Governmental department, organisational councils and even the legislative and executive arms of the Government, all function through the mechanism of meetings. Thus, meetings cut across every facet of life and from the foregoing; it shows that there are different kinds of meetings that can be convened.

This work is principally concerned with meetings conducted by incorporated companies. Meetings conducted by companies are governed by law or regulations relating to the convening and conduct of the meetings and ancillary matters. In Nigeria, the meetings of incorporated companies are governed by the Companies and Allied Matters Act<sup>1</sup> hereinafter referred to as the CAMA.

Company meeting, is an indispensable tool of corporate governance. It is meant to be a key instrument for the protection of investors (shareholders and creditors) and the means by which members tame the activities of overzealous and recalcitrant or corrupt directors and officers of the company. Thus, it is the most viable means of improving the management of a company.

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<sup>1</sup> Cap. C20 Laws of the Federation of Nigeria (LFN), 2004.

The importance of meetings in the affairs of the company is indeed very central in corporate Governance. At pre-incorporation, the promoters or members need to meet, discuss and arrange how to set up a company.

First, the members must agree on the company's charter of operations, the name of the company, registered office, objects or businesses for which the company is incorporated, status, the authorised share capital, the fact of association and the extent of members' interest in the company. These will be lucidly spelt out in the company's Memorandum of Association. The members, at this stage, must also work out the internal regulation of the company. The members must meet to resolve on the classes of shares, alteration of capital, meetings, voting, seal, notices, number of directors, borrowing power of the company, proceedings at directors' meeting, the company's bankers, winding up etc. This inter-alia will form the contents of the company's Articles of Association. The Articles and memorandum of Association constitute the company's constitutional documents and define the entire field of the company's operation.

As a going concern, the company's charter or its very existence can be abrogated, altered or modified by a resolution of the members at the company's meeting.

The key officers of the company are put in office at the company's meeting. The first directors of the company are determined in writing by the subscribers to the Memorandum of Association or a majority of them or the directors may be named in the Articles<sup>2</sup>. The subsequent directors are appointed by the members at the Annual General Meeting<sup>3</sup>. In the event of all the directors and shareholders dying, personal representatives of the shareholders may apply to court to for an order to convene a meeting of personal representatives of the shareholders to appoint new directors to manage the company and where the personal representatives fail to convene a meeting,

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<sup>2</sup> Section 247, CAMA Cap. C20, L.F.N., 2004; Longe v. FBN Plc. (2010) 6 NWLR (Pt. 1189)1 S.C.

<sup>3</sup> Section 248(1) Ibid.

the creditors have the right to apply to court for an order to call a meeting of creditors to elect new directors to manage the company<sup>4</sup>. Where there's a casual vacancy on the board owing to death, resignation, retirement or removal, the directors at their board meeting can fill such casual vacancy, pending the approval by members at the next Annual General Meetings<sup>5</sup>.

From the foregoing, directors can be appointed into office at meetings of members, directors, shareholders, personal representatives of shareholders and creditors. Conversely, directors are removable from office by a simple resolution of members at General Meetings. Consequently, the place of company meetings in contemporary corporate governance can never be over-emphasized. The health of any institution, hinges essentially, on financial discipline and accountability. To ensure sound corporate governance, the law has ascribed to shareholders at general meetings the power and the right to appoint monitors of its finances who submit formal report on same. To achieve this, every company at each annual general meeting must appoint an auditor to audit the financial statement of the company<sup>6</sup>. In the case of public companies, in addition to appointing auditors, the company shall also constitute an Audit committee comprising of an equal number of directors and shareholders' representatives. The Audit Committee is to examine the Auditor's report and make recommendation thereon to members at the Annual General Meeting<sup>7</sup>.

At a closer glance, company meetings, serve variety of purposes and variety of interests. To the members, it provides them the forum to be heard on matters affecting their investments. Here, the members are sure of meeting face to face with their Corporate Chieftains in one place and questioning them on the company's position and

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<sup>4</sup> Section 248(2) CAMA.

<sup>5</sup> Section 249 Ibid.

<sup>6</sup> Section 357(1) Ibid.

<sup>7</sup> Section 359(2) Ibid.

prospect. It is one place where members meet, discuss and ventilate their grievances on matters affecting their interest and are able to exact some measure of accountability from management. Further, the members can actuate at meetings the potency of their ultimate control over the affairs of the company by getting their acts together and sacking the directors. Meetings therefore, provide to the members a tool for intervention in corporate administration<sup>8</sup>. In certain exceptional cases, under section 63(5)(a)(b) of the CAMA members in general meetings may assume managerial responsibilities of the company. This is termed the default powers of the general meeting.

To the company, meetings provide the opportunity for the election of its key officers charged with steering the ship of the company. The directors, auditors and members of the audit committee are put in office at the company's meetings. Also company policies and decisions are collectively taken at company meetings, be it the board of directors' meetings or members in general meeting. To the company therefore, meetings become the fora where the course of the company is charted.

However, in practice, the general meeting of members, has in reality turn to a yearly gala affair or an annual ritual and the Board of Directors, through inducements and diverse means of influence, have perpetuated their interests and continue to expropriate investors through these meetings and the instrumentality of the present laws in Nigeria. Since commercial corporations attained corporate personality and the kindred characteristic of limited liability as basic attribute, it became highly imperative that certain grounds for protection be canvassed for investors and trade creditors of the company. It was on this consideration, that a gradual evolution of a body of rules grew, requiring disclosure of certain minimum information regarding constitution, management and viability of the company to give an informed notice to whoever transacts with the

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<sup>8</sup>Agom, A.R., (2000) Power of Court to Compel Company Meetings. *Modern Practice Journal of Finance and Investment Law* Vol.4, No.3, P.42.

company, as to be forewarned is to be forearmed. The philosophy of disclosure which now permeates every facet of company law is at given practical expression at the meeting of the company. Here at, the financial statement is presented, pre-incorporation contracts are discussed, approved or disapproved, directors interest in the company's contracts and such other sensitive and allied matters are discussed.

However, there are some limitations against the powers of the general meetings in corporate governance. These limitations flowing from the reality of dispersal of share ownership, directors effective control and manipulation of the proxy machinery and proceedings at meetings, the growth and expansion of the capital market, increasing sophistication of modern management, the technical complexities of production processes, the emergence of professional cadre of managerial technocrats, shareholders apathy arising from lack of expertise, knowledge etc., have torrentially, wane the strength of company meetings as a primary organ in corporate administration. These limitations question the practical utility of company meetings.

These factors have in no small way, helped to gradually enthrone directorial oligarchies in some Companies, with practically little or no control at all, from members of the company. This is so, notwithstanding that the two primary organs of the company are the members in general meeting and the board of directors. These oligarchies in some cases, have turned up the problems of corporate mal-administration which in most cases eventually leads to corporate failure and collapse.

It is against the foregoing background, that this work principally analyses the legal provisions on company meetings under the CAMA, its various kinds and practical relevance in the scheme of company law, identified some of the provisions inhibiting the effectiveness of the members' company meeting as an effective tool for exercise of

corporate powers in spite of the fact that members' meeting is the most viable mechanism of corporate governance. As a way out, suggestions are provided on the founded lacunae.

## **1.2 Statement of the Research Problem**

One of the issues that this study seeks to address is corporate mismanagement and the expropriation of company members or shareholders by the directors or officers of the company. Corporate mismanagement and expropriation of members can take a variety of forms. In some instances, both the directors and the officers of the company simply steal the profits. In other instances, the directors sell the output, the assets, or the additional securities in the firm they control to another firm they own at below market prices such transfer pricing, asset stripping, and investor dilution, though often legal, have largely the same effect as theft. In still other instances, it takes the form of diversion of corporate opportunities from the firm, installing possible unqualified family members in managerial positions, or over paying executives. In still other instances, the directors took advantage of their effective control over the affairs of the company to pay themselves excessive remuneration as directors whether in cash or by way of such perquisites of office as the free use of the company's assets or worse still the directors simply made off with assets of the company for their private purpose or skilfully arrange legitimate payment to themselves for which they had given no commensurate consideration or make uncontrolled loans to themselves or their cronies which they had no intention of repaying. For instance, revelations from the proceedings of the failed Banks (Recovery of Debt) and Financial Malpractices Tribunal, show that they obtained loans from their banks without proper documentation and comparable collaterals.<sup>9</sup> These, they cleverly conceal, by false accounting not discernible to glossing auditors. In extreme cases, this has led to

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<sup>9</sup>Babalola, A. (2011) Bank Failure in Nigeria. A Consequence of Capital Inadequacy, Lack of Transparency, and Non- Performing Loans. Banks and Banks Systems, Vol. 6, P.99

corporate collapse with its ricocheting tragic effect. In the main, investors and creditors lost huge sums of investible fortunes. On the macro-level, confidence in the financial sector dwindled adversely, affecting national wealth and economic growth and prosperity. The depth of the problems can be appreciated when the Former Head of State, Late General SaniAbacha warned<sup>10</sup>:

We have resolved that all those who contributed to the failure of our public institutions and parastatal through monumental mismanagement of public funds will be held to account to ensure that present or future executives of such institutions operate according to set rules and procedures ---. Let me therefore seize this opportunity to give notice to all heads of parastatal including executives in private sector manning investment of members of the public that henceforth this administration will demand probity, accountability and transparency in their management of these institutions.

The second issue that this study seeks to address is the legal implication of section 211(1) of the CAMA. Section 211(1) of the CAMA provides for and makes it compulsory for every public company to within six months of its incorporation, hold a general meeting of the members of the company which the Act refers to as the “Statutory Meeting”. However, while section 211(1) of the CAMA mandates public companies to hold statutory general meeting within six months from the dates of their incorporation, there is no statutory provision mandating companies converted from private to public company to hold such meeting. The problem here is that, section 211(1) of the CAMA is silent on companies who first incorporated as private and later changed or re-registered or converted to public. It is the implication of this lacuna that this study also attempts to address.

Another issue that this work attempts to address is the progressive decline of the practical objective of company meetings owing to modern corporate realities or practices and dynamism. It is noteworthy to state that the practical objective of company meetings

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<sup>10</sup>Agom, A. R. (1999) Company Meeting and Corporate Governance in Nigeria. LL.M. Thesis (Unpublished), Faculty of Law, A. B. U, Zaria, P. 4.

is to ensure that shareholders exercise effective control over the affairs of the company and its directors through the General Meeting. Company meeting, is an indispensable tool of corporate governance. It is meant to be a key instrument for the protection of members and the means by which members tame the activities of overzealous and corrupt directors or officers of the company. In short, the rights and powers of shareholders at general meetings, are aimed at giving members effective control over the activities of their company and over those who are engaged to manage it. In practice, things work out differently. Modern corporate realities and practices defeat this practical objective of company meetings. Directors wield effective control over the activities of company meetings which ought not to be so. This is a challenging issue to address if corporate governance aimed at accountability, transparency and adequate disclosures are to be maintained.

In view of the foregoing issues, the following research questions become imperative.

First, how well does the law on company meetings under the CAMA sufficiently or adequately protect members of the company both from corporate mismanagement and expropriation by the directors of the company?

Secondly, does the requirement under section 211(1) of the CAMA mandating public companies to hold statutory general meeting within six months from the dates of their incorporation binds or includes companies converted from private to public company as well?

Thirdly, do the legal provisions on company meetings in the CAMA keep pace with modern corporate realities or practices and dynamism?

Fourthly, can it be said that the legal provisions on company meetings in the CAMA keep pace with modern development and advancement in information technology as far as meetings of company is concerned?The foregoing research questions therefore are the basis upon which the objectives of this study were formulated.

### **1.3 Aim and Objectives**

The major aim of this work is to principally analyse the legal provisions on company meetings under the CAMA, its various kinds and practical relevance in the scheme of company law in order to identify the factors and some of the provision on company meetings inhibiting the effectiveness of the members' company meeting as an effective tool for exercise of corporate powers in spite of the fact that the meeting is the most viable mechanism of corporate governance.

The above aim will be accomplished by fulfilling the following research objectives.

First, to find out whether the law on company meetings under the CAMA sufficiently or adequately protect members of the company from corporate mismanagement and expropriation by the directors of the company.

Secondly, to find out whether the requirement under section 211(1) of the CAMA mandating public companies to hold statutory general meeting within six months from the dates of their incorporation binds or includes companies converted from private to public company as well.

Thirdly, it is also to find out whether the legal provisions on company meetings in the CAMA keep pace with modern corporate realities or practices and dynamism.

Lastly, is to find out also whether the legal provisions on company meetings in the CAMA keep pace with modern development and advancement in information technology as far as meetings of company is concerned.

To accomplish the above series of objectives, the study will critically examine the practical workings of the legal provisions on company meetings in Nigeria, to identify if any lacuna obsolete provision exist that undermines the powers of the general meeting in order to canvass for the retention, repeal or amendment of our laws in this area. Nigerian judicial authorities shall also be considered to see how our courts have grappled with matters arising in this area and the principles which they established. The law of other jurisdiction on company meetings, shall also be considered in order to assess how well our laws have accorded protection to company members. Some of these rights include disclosures and accounting rules which provides members with the information they need to exercise other rights. Protected shareholders' rights, include those to receive dividend on pro-rata terms. To vote for directors, to participate in company meetings, to subscribe to new issues of securities on the same terms as insiders, to sue directors or the majority for suspected expropriation, to call extraordinary general meeting, etc. These rights and powers are exercised by members, in a general meeting.

To accomplish the second objective, section 211(1) is critically examined alongside with the legal interpretation given to the section by our courts and legal scholars in the field of company law.

This study compares the current ongoing corporate practices about statutory meeting vis-à-vis the law creating it. This will help in answering the fourth objective.

In order to accomplish the fourth objective, legislatures in other jurisdictions like the United State of America, Australia and Malaysia that have given electronic meeting a

statutory recognition shall be looked at and compared with our laws to see areas that our laws need improvement.

Also, fact and data shall be collected through interviews and the preparation and random distribution of questionnaires to target group particularly shareholders of various companies across three major Nigerian cities namely; Abuja, Kano and Kaduna. The data collated from the responses to the questionnaires will be analysed and the result compiled will help in determining the extent to which public companies hold statutory meeting, how early notices of meeting are received and the practical extent of members' participation in company meetings.

#### **1.4 Scope and Limitation of the Research**

The scope of this research is determined by the objectives of the research. The scope of this work covers meetings of companies, generally and the crux of the discussion shall be hinged on the relevant provisions of the CAMA, which is the principal legislation in Nigeria. Other relevant legislation bearing on company meetings may also be considered particularly the Security and Exchange Commission (SEC). This limitation is intentional and deliberate. It is to enable this work give the chosen aspect a relatively full coverage and adequate treatment. However, reference shall be made to the law of other jurisdictions where necessary.

The research shall concentrate on company meetings namely; Statutory meeting<sup>11</sup>, Annual General Meeting<sup>12</sup> and Extra Ordinary General Meeting<sup>13</sup>, collectively referred to as General Meeting, and how such meetings are summoned, convened and conducted. Other types of meetings known to law namely; Directors Meeting<sup>14</sup>, One Man's

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<sup>11</sup> Section 211(1) CAMA

<sup>12</sup> Section 213(1) Ibid.

<sup>13</sup> Section 215(1) Ibid.

<sup>14</sup> Section 249 Ibid.

Meeting<sup>15</sup> and Court Ordered Meeting<sup>16</sup>, shall be discussed. As a way of strengthening participation of shareholders in company meetings and the need for the CAMA to embrace the advancement in technology, electronic meeting shall be discussed using examples from other jurisdictions like Delaware(USA), Malaysia and Australia.

This research will also discuss the shortcomings or limitations of the right and powers of the general meeting. Nigerian judicial authorities shall also be considered to see how our courts have grappled with matters arising in this area and the principles which they established.

However, dearth of Nigerian judicial authorities on company meetings is one of the challenges encountered in the study. More so, there are but just few or not enough materials on this area. Not so many people have written on company meetings. This will provide the basis for analytical and expanded discussion in this work.

This study, also faced a challenge of extending the questionnaires to other geo-political zones in the country as it is limited to Abuja, Kano and Kaduna only. The reason for limiting it to these few number of cities arose from financial and time constraints of dealing with larger cities.

This study, also found it hard to get people that owns company shares to fill the questionnaires in the cities where the questionnaires were administered. This also contributed to the reason why the questionnaires were not extended to other geo-political zones in the country.

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<sup>15</sup> Section 213(2), 223(2), 239(4) Ibid.

<sup>16</sup> Section 223(2), 239(4) Ibid.

## **1.5 Research Methodology**

In this work both the doctrinal method and empirical approach were mainly adopted. The doctrinal method was achieved by the consideration of both primary and secondary sources of data. The primary sources of data considered include statutes and case laws or judicial authorities of superior courts of records to wit; Supreme court, Court of Appeal and High Courts both foreign and Nigerian cases, while the secondary sources of data was achieved by the consideration of published discussions, analyses and criticisms made by legal scholars and luminaries in textbooks, articles in journals, Seminar/Workshops Papers, Conferences, Newspapers and materials and information from internet.

The empirical approach was carried out through facts and data collected through interviews and the preparation and random distribution of questionnaires to target group particularly shareholders of various companies across three major Nigerian cities namely; Abuja, Kaduna and Zaria. The reason for limiting the study to these fewer number cities arose from time constraints and cost implication of dealing with larger cities. Moreover, the writer believes that the nature of the random sampling carried out could be deemed to be a representative fraction that may be applied to other cities in the country. Data collated from the responses to the questionnaires were analysed and the result compiled helped in determining the extent to which public companies hold statutory meeting, how early notices of meeting are received, the practical extent of shareholders' participation in corporate meeting, to mention but a few. Also, proceedings observed from attending company meeting of Julius Berger Construction Co. Plc held in Abuja in 2013 at Shehu Musa Yar'adua Centre, were used. The result obtained enabled an evaluation of the problems and recommended the areas in need of urgent reforms.

## 1.6 Literature Review

It would be impossible to conduct any meaningful research in this area of law without reference to some published works on company meetings. In undertaking this study, several literatures from both foreign and Nigerian authors were accessed.

Among the foreign literatures accessed, are the published works of Gower<sup>17</sup>, Davies<sup>18</sup>, Pennington<sup>19</sup>, Clive Schmitt Off<sup>20</sup> and Shaw and Smith. Despite the immense worth of these works, they all suffer from one weakness. They are all based on foreign laws and therefore provide little knowledge on what the law currently is in Nigeria. For instance, Davis, Pennington, Clive Schmitt Off and Shaw and Smiths' work are respectively based on the now repealed English Companies Act of 1985 and this largely outdated. Nonetheless, they provide good examination of some cornerstone principles of company law which have found their way into Nigerian company law, the very foundation of this work.

In Nigeria, there are among other resource materials writings by Ayua<sup>21</sup>, Orojo<sup>22</sup>, Bhadmus<sup>23</sup>, and Imhanobe<sup>24</sup>. While Ayua discusses the company law under the now repealed Companies Act of 1968 Orojo, Bhadmus and Imhanobe's books on Company Law, though under the present CAMA, are more or less like a re-statement of the legal provision in the statute book, without subjecting same to any serious critical analysis which this work seeks to achieve.

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<sup>17</sup> Gower, L.C.B. (1979) *The Principles of Modern Company Law*. (4<sup>th</sup> ed. London, Stevens and Sons,) p. 524.

<sup>18</sup> Davies, L.P. (2008) *Principles of Modern Company Law*. Sweet and Maxwell, London, 8<sup>th</sup> Ed.

<sup>19</sup> Pennington (1970) *Company Law*. England Butterworth, 5<sup>th</sup> Ed.

<sup>20</sup> Clive, S.O. (1999) *The Law of Meetings, their Conduct and Procedure*. Plymouth, Macdonald & Evans, 15<sup>th</sup> Ed.

<sup>21</sup> Ayua, I.A. (1984) *Nigrian Company Law*. Graham Burn, London

<sup>22</sup> Orojo, J. O. (2008) *Company Law Practice in Nigeria*. Lexis Nexis Butter Worths, South Africa, 5<sup>th</sup> Ed. p. 229

<sup>23</sup> Bhadmus, Y.H. (2009) *Bhadmus On Corporate Law Practice*. Chenglo Ltd., Enugu, P.262

<sup>24</sup> Imhanobe, S.O. (2008) *The Lawyer's Desk Book*. Temple Legal Consult, Abuja, Vol. 1, P. 438.

Moreover, rather than focusing on the practical objectives of company meetings, their implication and the practical applicability of the laws of company meetings in commercial realities, the authors merely restated the provision of the CAMA with little or no explanation. They essentially failed to approach meetings in the wider context of shareholders' participation as a focus for improving corporate governance practice. These works when distinguished from this present study, highlight how corporate meetings are nowadays being convened, held and conducted and shows that there is more to company meetings than simply restating their statutory provisions without subjecting same to any serious critical analysis for the simple reason that no law is relevant where it cannot be applicable to practical situation. What makes a law relevant is the fact that it appeals to the yearnings and aspiration as well as protect the interest of people for whose benefit it was enacted. Thus, where statutory provisions are derogated from, or become inapplicable to practical life situation, it therefore loses its meaning and significant.

In addition to the above, the works of these text writers are all based on doctrinal studies. Notwithstanding, these renowned authors works, provided a store of knowledge from which sources, this study immensely benefited. Also, Orojo in his book, expressed the view that company meetings can be held by one man alone and not necessarily more than one. This work uses the work of Akume whose article<sup>25</sup> provides comprehensive circumstances under which one man's meeting may be convened, held and conducted, an aspect not discussed by other authors.

Apart from the foregoing Nigerian writers, there are other Nigerian authors whose works were of immense benefit in writing this dissertation. There are, Amupitan<sup>26</sup> and Agom<sup>27</sup>. Amupitan's book not only traced the historical antecedent of corporate governance and

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<sup>25</sup> Akume, A.A. (2011) *Longe v. First Bank of Nigeria Plc, A Review of Corporate Governance Issues Revisited by the Supreme Court. Nials Journal of Supreme Court Review*, Vol. 1

<sup>26</sup> Amupitan, J.O. (2008) *Corporate Governance Models and Principles*. Hilltop Publishers, Nigeria.

<sup>27</sup> Agom, A.R. (2000) The Place of Company Meetings in Corporate Governance. *Modus international Law and Business Quarterly Journal*, Vol. 5, No. 4, P. 13

code of best practices as applicable in different jurisdictions, it also elucidated the power play and in fact control of corporate management by the board of directors through their misuse of statutory provision to their collective advantage and to the detriment of the shareholders. His work has gone beyond doctrinal to empirical studies as well as providing emphasis on actual happenings in corporate world and its management. Amupitan concluded that this had prevented exercise of effective checks and balances by shareholders as statutorily provided.

The work of Agom, no doubt discusses company meetings and the practical applicability of the laws of company meetings in commercial realities subjecting same to serious critical analysis. His work incorporated a pattern of shareholders' attendance at annual general meeting of seven public companies in Nigeria from 1991 to 1995 to show the level of participation at general meetings of companies. While this research immensely benefited from his work, it differs only to the inclusion of analysis of data collected by sending out questionnaires, in order to elicit responses that will ensure future reform and improvement in corporate meeting, to solidify and strengthen investors' protection through the empowerment of the general meeting. Other relevant literatures considered are the works of Akume<sup>28</sup>, Bello<sup>29</sup> and John<sup>30</sup>. Akume's article discusses generally some aspect of the CAMA that calls for review. He identified the following as some of the aspect of the CAMA that needs review:

- (a) Section 7(1)(a) which is on the investigatory and supervisory function of the CAC.
- (b) Section 54(3) (a) and 56(1) (a)-(d) which borders on the Exemption from incorporation of some foreign companies operating in Nigeria.

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<sup>28</sup> Akume, A. A. (2010-2012) The Companies and Allied Matters Act, 1990, Twenty Years on; The need for some Review. *Ahmadu Bello University Journal of Commercial Law (ABUJCL)* Vol. 5, No. 1, P. 28.

<sup>29</sup> Bello, L. A. (2010-2012) A Critic of the Legal Requirements for a Valid Notice of Company Meeting. *Ahmadu Bello University Journal of Commercial Law (ABUJCL)* Vol. 5, No. 1, P. 126.

<sup>30</sup> John, D.C. (2010-2012) An Examination of the Legal Principles of Corporate Governance in Nigeria. *Ahmadu Bello University Journal of Commercial Law (ABUJCL)* Vol. 5, No. 1, P. 201.

- (c) Section 27 (2) (a) which borders on the minimum authorized share capital.
- (d) Section 28 on Guarantee Companies.
- (e) Section 526 (b) on Defunct Companies.
- (f) Section 572 (1) on registration of Business name and
- (g) Part C of the CAMA dealing with incorporated trustees.

He pointed out that Section 219 of the CAMA excludes the CAC as of right from the list of those entitled to receive notices to attend company meeting and that this has limited the powers of the CAC in Section 7 (1) (a) to effectively supervise the management and happenings in companies for the purpose of protecting the interest of the public. Consequently, he recommended the amendment of Section 219 (1) and (2) to include the CAC as one of those entitled to receive notices to attend Company meetings as of right in order to aid the CAC's investigatory and supervisory function. However, the writer did not direct his focus to Section 211 (1) of the CAMA which mandate every public company to hold statutory general meeting within six months from the dates of its incorporation, but says nothing about companies converted from Private to public to hold such meeting which is one of the issues this work seeks to address.

For Bello, her article examines the legal requirements of a valid notice of company meeting which is only an aspect discussed by this work and whether these requirements are sufficient or not taking into consideration the peculiarity of the Nigerian situation. Just like this work, her work discusses the basic principles regulating issuance of notice of company meeting, content of a notice of meeting, kind of notices, persons who are entitled to notices, default in issuing notices and the remedies for such default, to mention but a few. She pointed out that the epileptic nature of our postal service system as well as some shortfalls in statutory provisions regulating notice of meeting has contributed to the delay in receipt of notice of meetings. Consequently, she

recommended the need to introduce modern alternatives to ameliorate the seeming inept nature of our postal service and a legislative reform in order to improve the current low level participation of shareholders in company meetings. While this research benefited from her work, it is observed that a careful consideration of the cases cited in her work will provide to the discerning eye, the fact that they are all English cases except the cases of *Longe v. FBN Plc*<sup>31</sup> and that of *Onwuka v. Taymani*<sup>32</sup>. The writer did not direct her focus to Nigerian cases that borders on notice of meeting such as the cases of *Ososanya v. Obadeyi*<sup>33</sup>, *Dairo v. Western Nig. Technical Co. Ltd*<sup>34</sup>, *YalajuAmaye v. A.R.E.C Ltd*<sup>35</sup> and *Baffa v. Odili*<sup>36</sup>, a gap which this work seek to fulfils. Moreover, in January 2016, six years after her article, the Supreme Court in the case of *Oni v. CadburyNigeria Plc*<sup>37</sup> delivered another Judgment affirming its earlier decisions in previous cases that failure to serve notice of meeting renders the meeting invalid.

As for John, his work examines the legal principle of corporate governance and its culture to the improvement and sustainability of corporation. It provides insights into the corporate governance rules or provisions for its practice in companies because of the fact that corporate mismanagement and non-adherence to corporate rules are some of the factors that have brought companies to ruins. While recognizing that they are corporate governance basic principles which are universal in their application, he identified transparency, accountability, fairness and responsibility as the fundamental blocks or pillars of corporate governance with the Chief Executive Officer/the management, the board of directors and the shareholders as the main actors in corporate governance.

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<sup>31</sup> (2010) 6 NWLR (Pt. 1189) 1 S. C.

<sup>32</sup> (1968) A. L.R. Comm. 313.

<sup>33</sup> (1966) 2 A. L. R. Comm.

<sup>34</sup> (1979) NCLR.

<sup>35</sup> (1990) 4 NWLR (Pt. 145) 422.

<sup>36</sup> (2001) 15 NWLR (Pt. 737) 709.

<sup>37</sup> (2016) LPELR – 26061 S. C.

The writer examines the relevant provisions of the CAMA relating to corporate governance such as the provisions dealing with shareholders' rights, directors and the board and rules as to disclosure and transparency. Thus, he pointed out that the main corporate code dealing with issues of corporate governance in Nigeria are the Investments and Securities Act (ISA) 2007, the Rules and Regulations of the Securities and Exchange Commission, the PENCOM Code of Corporate Governance for Licensed Pension Administrators and investment Trustees Act, 2004, the CAMA, to mention just a few. But the one that relates to this work is the CAMA in which the writer highlighted several sections dealing with issues of corporate governance, from directors, shareholders and their right, directors' obligation to prepare and present financial statement before the general meeting and the what financial statements should include.

But a careful consideration of his work reveals that the writer highlighted those relevant sections of the CAMA that deals with issues of corporate governance as it relates to the relationship between directors' obligations and powers and the shareholders. The writer did not direct his focus to the inadequacies and or the weaknesses of those provisions which affect effective adherence to corporate rules or codes, a gap which this work attempts to fill.

Another relevant literature considered is the work of Aderibigbe<sup>38</sup>. His work analyses the legal provisions on the various company meetings conducted by incorporated companies under the CAMA which he termed "Corporate Meetings". He identified Statutory General Meeting, Annual General Meeting and Extra-Ordinary General Meeting as the main types of company meeting under the CAMA while Board Meeting, Class Meeting, Creditors' Meeting and Management Meeting as other form of meeting.

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<sup>38</sup>Aderibigbe, I. O. (2010)The Mechanism of Corporate Meetings under the Companies and Allied Matters Act (CAMA) 1990, *International Journal of Advanced Legal Studies and Governance*, Vol. 2, No. 1, P.163.

His article just like this dissertation, discusses company meetings not just only by merely stating the legal provisions but by subjecting same to serious critical analysis. Furthermore, his work also focuses on the objectives of company meeting and the extent of its practical applicability in actual practice. However, while discussing the shortcomings of corporate meetings under the CAMA, he limited the shortcomings to a few number namely; inadequate notice of meetings, excessive time distance and high cost of meeting, misuse of proxy mechanism by directors and the inadequate provisions as to adjournment and quorum. He did not direct his focus to other very important shortcomings such as wide distribution of share ownership, apathy of members, lack of requisite knowledge by members in corporate governance matters, the Rule in *Foss v. Harbottle*, dismal performance of auditors and audit Committee to mention but a few which this work seeks to discuss. Apart from the above, his work is purely doctrinal in approach but this work combines both doctrinal and empirical approach.

One but unique difference between this research and the literatures reviewed above is that this work discusses electronic meetings statutorily recognised in other jurisdictions as a way of stimulating reforms in the area of our company law meeting for the recognition of information technology to solidify and strengthen investors' protection through the empowerment of the general meeting.

## **1.7 Justification**

The justification for this research is predicated upon the need to revolutionize the concept of company meetings. This being the case, this work will not only increase the much needed awareness by potential and prospective investors (shareholders and creditors), but will inspire shareholders in particular to cultivate the practice of attending company meetings no matter the cost and questioning management on matters which appear from a detail study of the company's account to require further explanation. This will no doubt check the excesses of the board of directors, thereby minimizing unnecessary cases of corporate mal-administration and investors' expropriation which is one of the major causes of corporate failure and collapse.

To the directors, this work will be a wakeup call to conform and strictly adhere to corporate governance laws, rules and practices by limiting the extent or application of their powers to those statutorily provided without necessarily eroding the powers of the shareholders by the abuse of the proxy machinery or other means.

Generally, this work is a contribution to the development of law in that it canvasses for the introduction and recognition of electronic meetings in the CAMA and the use of modern information technology as a medium of communication for enhancing and improving corporate governance practices in company meetings and decision making. This work will also help companies and the Corporate Affairs Commission (CAC), to do more in reviewing the company policies and laws applicable to company meetings.

Consequently, this research will be useful to scholars of company law, shareholders, prospective investors, Corporate Affairs Commission (CAC), Investments and Securities tribunal (IST) and members of the public. Also the content will be valuable not only as an addition to existing literature on the subject area but also a pointer to salient areas otherwise neglected by financial and or corporate managers.

## **1.8 Organizational Layout**

The entire body of the work is divided into six different chapters but interrelated chapters. Chapter one provides an introductory account of the general background of this study, the statement of the problem, the aim and objectives of the study, the scope of the study, the techniques to be adopted in this study and a review of literatures.

Chapter two centres on the conceptual clarification of issues. That is, to say that the chapter explains some key terms and phrases used in this dissertation. Such terms are the concept of meeting, company meeting, electronic meeting, corporate governance, the various types of company meeting, their nature and relation with the company, the position they occupy within the corporate structure. This becomes desirable in view of the clear division of powers by section 63 of the CAMA.

Chapter three discusses the proceedings at company meetings. The legal requirements and procedure for convening the various kinds of meetings most especially statutory general meeting, annual general meeting and extra ordinary general meeting are critically examined alongside with other forms of meeting.

Chapter four considers the limitations of the power of the members' general meeting flowing from the reality of wide dispersal of share ownership, directors' effective control and manipulation of proxy machinery and proceedings at meeting, shareholders' apathy.

Chapter five is devoted to the empirical analysis and result. It discusses the way and manner data were administered to target group, collated and analysed.

Chapter six which is the concluding chapter is devoted to the summary of the entire study and conclusion. Based on the identified findings, the chapter recommends inter- alia legislative responsiveness to reforms. This it is hope will serve as a panacea to

enable the members' general meetings assume their proper role as a primary organ for the actualisation of corporate powers.

## **CHAPTER TWO**

### **CONCEPTUAL CLARIFICATION OF ISSUES**

#### **2.1 Introduction:**

This chapter explains some key terms and phrases used in this dissertation. This is done in the light of their contextual meaning. The attempt is made for two reasons, namely, to enable the readers of this work have an easy grasp of the subject matter of discourse without the distraction of looking up the terms used in this research elsewhere and to enable readers have beforehand, the functional meaning of key terms used in this work. The key terms given functional definitions and explanations are; the concept of Meeting, the concept of Company Meeting, the concept of Statutory General Meeting, the concept of Annual General Meeting, the concept of Extra-Ordinary General Meeting, the Concept of Directors' Meeting, the concept of Court Ordered Meeting, the concept of One Man's Meeting and the Concept of Electronic Meeting.

## **2.2 The Concept of Meeting**

In truth, the word meeting is susceptible to many connotations, but in one of its more specific sense it indicates an assembly of persons. Such assembly may arise in circumstances in infinitely diverse in their characters and combination. It may be tortuous and casual or organised and contrived and its object may be as various as are the interests which are common to the generality of mankind. In ordinary English Language usage, a meeting is an event at which two or more persons meet directly or indirectly.

Akumedefined a meeting as an assembly of two or more persons properly convened and constituted to discuss or decide matters. According to Aiyar's Judicial Dictionary<sup>39</sup>:

The word "meeting" when not defined under the relevant statute, it has to be construed only in its popular sense. If a common sense view of the matter is taken, it is quite clear that for a meeting, there must be at least two persons, because a man cannot meet himself.

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<sup>39</sup> (10<sup>th</sup>ed. The Law Book Company(p) Ltd, Allahabad, Indian).

Coulson Thomos, C.J.<sup>40</sup> considers a meeting as the gathering of a number of people for any lawful purpose. In *Sharp v. Darwes*<sup>41</sup>, it was held that a meeting meant “the coming together of persons for the purpose of discussing and acting upon some matter or matters in which they have interest”. A year later, following the above decision the court held that there had not been a valid meeting where there was only one member present, even though he held proxies for others.<sup>42</sup> Many years later, an English court held that no meeting was constituted where all but one of the shareholders have left the room where the meeting was being held.<sup>43</sup>

The foregoing definition of a meeting clearly shows that a meeting presupposes the presence of more than one person<sup>44</sup>. In other words, for there to be a meeting, there must be the presence of at least two persons. This definition makes both common and legal sense because a person cannot meet all by himself. He has to be with another person for a meeting to take place. If the above is the definition of a meeting, how therefore can company meeting being the focus of this work be defined? This will lead us to the concept of company meeting.

### **2.3 The Concept of Company Meeting**

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<sup>40</sup> (1975) Company Administration made Simple. London, W.H. Allen, P. 78.

<sup>41</sup> (1876)2 QBD, 26

<sup>42</sup> Re Stanley Carbin Co. (1877)1 W.N 223

<sup>43</sup> Re London Flat Ltd. (1969)1 WLR 711

<sup>44</sup> Re Prain & Sons, petitioners (1947) S.C. 325

The various company legislations have evaded any conscious effort at defining the word “Company Meeting”. Even though, the CAMA devoted some sections<sup>45</sup> to company meetings, no definition is given of what it is. At best, CAMA only catalogue the various types of meetings that a company must and may hold. Previous company legislation in Nigeria and other jurisdictions<sup>46</sup> have continued to acquiesce in this omission.

However, for the relative purpose of this discussion, company meetings may be said to be the coming together of all or some members or scheduled officers of a duly incorporated company with the object of deliberating and taking decision aimed at attaining overall corporate goal(s). The common law notion of meeting has been fairly indented by legislative and judicial permissiveness. For it is now possible for one person to constitute a meeting,<sup>47</sup> members need not necessarily assemble in a place before a valid meeting can be held, and a written resolution of members is as valid and effectual as a resolution properly considered and passed at a duly convened meeting.<sup>48</sup>

Broadly speaking, three kinds of meetings are known to company law. From the relevant sections devoted to company meetings in the CAMA, they are the general meetings, the meeting of the directors and the creditors meetings. Section 63(1) of the CAMA provides:

“A company shall act through its members in general meeting or its board of directors or through officers or agents, appointed by, or under authority derived from the members in general meeting or the board of directors”

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<sup>45</sup> Sections 211, 213 and 215 CAMA

<sup>46</sup> Ghana Companies Act, No.179, 1963; English Companies Act, 1985, as amended by the English Companies Act, 1989; Indian Companies Act, 1956 as amended by the Indian Companies Act, 1967.

<sup>47</sup> Section 213(2) and 223(2) CAMA

<sup>48</sup> Section 234 Ibid

It can be gleaned from this section that the members general meeting and the board of directors constitute the two primary and statutory organs for the actuation of corporate powers. The general meeting is of three types namely;

- a) Statutory General meeting(SGM)
- b) The Annual General meeting(AGM)
- c) The Extra Ordinary General Meeting(EGM)

These concepts shall now be closely examined.

#### **2.4 The Concept of Statutory General Meeting**

Section 211(1) of the CAMA, provides for and makes it compulsory for every public company to hold a general meeting of the members of the company which the Act refers to as the “Statutory Meeting”. This has also been recently reinforced by the directive of the Security and Exchange Commission(SEC), in part C of the Code of Corporate Governance for public companies 2010 where public companies are required to comply with the requirement of meetings under the CAMA. The above provisions of law combined with the directive from the SEC, amply emphasize the critical role and importance of a statutory meeting in the affairs of a company.

The CAMA which requires public companies only to hold statutory general meeting, does not define the term statutory meeting. The section provides as follows:“Every public company shall within a period of six months from the date of its corporation hold a general meeting of the members of the company (in this Act referred to as “the Statutory Meeting”).

The above provision, even though is an improved and substantial re- enactment of section 122 of the former Nigerian Companies Act, 1968, which was drawn from section 130 of the English Companies Act, 1948 does not define the term statutory meeting.

However, the term may be defined as the first mandatory public gathering of a publicly traded Company's executives, directors and interested shareholders. It may also be referred to as the first mandatory meeting of the members of the public limited liability company. But a holistic consideration of sections devoted to SGM, the following can be said to be the essential elements of a SGM;

- (a) Public company
- (b) Period of six months of incorporation
- (c) General meeting
- (d) Members of the company
- (e) Statutory report.

From the essential elements above, statutory meeting can be defined as the first mandatory general meeting of the members of a public company required to be held within the period of six months from the date of incorporation for the purpose of considering the statutory report.

#### **2.4.1 Nature of Statutory General Meeting**

It is to be noted here that the SGM, is prescribed for public companies only and it is statutorily required to be held within six months<sup>49</sup> from the date of incorporation of the company. The CAMA has modified the position under the repealed Companies Act of 1968, which required this meeting to be held within three months from the company's commencement of business. Thus, the time limit for holding a SGM depends on the company's legislation and this time limit also vary from one jurisdiction to another jurisdiction but in Nigeria it must be held within six months. An interesting question to ask here is whether a company which fails to hold its SGM within the six months

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<sup>49</sup> Section 211(2) CAMA. This section has modified the position under the repealed Companies Act, 1968 which required this meeting to be held within three months of incorporation.

prescribed by law can exercise discretion to hold the meeting outside the period prescribed by law without recourse to the court of law. In *Guardian Express Bank Plc v. Odukwu & Anor*<sup>50</sup>, Guardian Express Bank Plc was incorporated on 8<sup>th</sup> May, 2000. The company sought to hold its Statutory Meeting more than six months after the date of incorporation. The 1<sup>st</sup> respondent applied to the court claiming inter-alia a declaration that the company could not hold its Statutory Meeting after expiration of six months from the date of its incorporation except with the leave of court.

The trial court after considering section 212 and 411(3) CAMA held that the appellant (the company) having not held its statutory meeting within the time prescribed by law cannot do so without the leave of court. Dissatisfied with the judgment of the trial court the appellant appealed to the Court of Appeal and the appeal was dismissed. Thus, the position is that a company which fails to hold its SGM within the six months prescribed by law cannot exercise discretion to hold the meeting outside the period prescribed by law unless with the leave of court.

The meeting which shall be held in Nigeria<sup>51</sup> can only be held once in the life time of any public company. It is not needed in the case of a private company and in practice it is generally dispensed with, even by public companies, by the device of forming a company as a private company and then converting it to a public company.

#### **2.4.2 Statutory Report and its Content**

The directors of the company must, at least 21 days before the meeting forward a report called “ Statutory Report” to every member of the company<sup>52</sup>. The subscribers of the memorandum and every other person who agrees in writing to become a member of a company and whose name is entered in its register of member shall be regarded as

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<sup>50</sup> (2009) 14 NWLR (Pt. 1160) 43 C.A.

<sup>51</sup> Section 216 CAMA

<sup>52</sup> Section 211(2) Ibid.

members of the company<sup>53</sup>. Where the company has a share capital, every member shall be a shareholder and shall hold at least one share<sup>54</sup>.

But in practice, it is convenient and usual to send the statutory report along with the notice of meeting to the members. The statutory report must state the following: -

- (a) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up, the extent to which they are so paid up and in either case, the consideration for which they are allotted;
- (b) the total amount of cash received by the company in respect of all the shares allotted, distinguished as above;
- (c) the names, addresses and descriptions of the directors, auditors and managers, if any, and secretary of the company;
- (d) the particulars of any incorporation contract, together with the particulars of any modification or proposed modification thereon;
- (e) any underwriting contract that has not been carried out and the reason for this;
- (f) the arrears if any, due on calls from any director; and
- (g) the particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares or debentures to any director or manager.<sup>55</sup>

The statutory report must be verified by a certification of not less than two directors or by a director and the Secretary of the company<sup>56</sup>. It is to be noted that under the repealed Companies Act, of Nigeria, 1968, the Secretary had no authority to certify the statutory report. The report must also contain an abstract of the receipts and payments of the

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<sup>53</sup> Section 79(1) & (2) Ibid.

<sup>54</sup> Section 79(3) Ibid.

<sup>55</sup> Section 211(3) CAMA

<sup>56</sup> Ibid.

company, the balance in hand, and an account or estimate of the preliminary expenses of the company<sup>57</sup>. The statutory report shall so far as it relates to shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors of the company.<sup>58</sup>

*In Guardian Express Bank Plc v. Odukwu & Anor.*<sup>59</sup> It was held that for an Auditor to satisfy the provision of section 211(5) of the CAMA, he must not only certify the entries made, he must also confirm that such entries made by the company are correct. In the above case, the auditors only certified that the statutory report contains the particulars specified in section 211 of the CAMA. The auditors avoided vouching for the correctness of any of the particulars. The court therefore held that it is mandatory for the auditors to certify as correct the listed particulars required forming part of the statutory report and that certification that the entries are correct presupposes that the auditors have vetted them and found them to be correct. Consequently, the court concluded that the evasion by the auditors dealt a fatal blow to the statutory report and then held that the statutory report did not meet the requirement of section 211(5) of the CAMA. After sending the report to the members, the directors shall immediately forward a copy therefore to the Corporate Affairs Commission (CAC) for registration<sup>60</sup>.

At the commencement of the meeting, the directors shall cause a list showing the names, descriptions and addresses of the members of the company and the number of shares held by them to be produced and to remain open and accessible to any member of the company throughout the duration of the meeting<sup>61</sup>.

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<sup>57</sup> Section 211(4) Ibid.

<sup>58</sup> Section 211(5) Ibid.

<sup>59</sup> Supra at p. 29

<sup>60</sup> Section 211(6) CAMA

<sup>61</sup> Section 211(7) Ibid.

### **2.4.3 Issues for Discussion at the Statutory General Meeting**

Generally, the main agenda of a statutory meeting is only to consider and adopt the statutory report, but the members of the company present shall be at liberty to discuss any matter relating to the formation of the company and its commencement of business or any matter arising out of the statutory report<sup>62</sup>. However, any member who wishes a resolution to be passed on any matter arising out of the statutory report shall give further 21 days' notice from the date of receipt of the statutory report, to the company of his intention to propose such a resolution at the meeting<sup>63</sup>.

The meeting may adjourn from time to time to conclude unfinished business of the original meeting. Any resolution of which notice has been given in accordance with the Articles either before or subsequent to the former meeting may be passed and the adjourned meeting shall have the same power as the original meeting<sup>64</sup>.

Unlike the other kind of general meeting, members at the statutory meeting are at liberty to discuss any matter relating to the formation of the company and its commencement of business or arising out of the statutory report. This is so even where previous notice of such matter was not given, except that no resolution on the same can be immediately passed. For this purpose, the meeting may adjourn for the requisite notice to be given and at the adjourned meeting, if thought fit, the resolution may now be effectively passed. Again, the adjourned statutory meeting, unlike other kinds of members' general meeting is not confined to the conclusion of matters begun at the original meeting.

The salient features of the statutory meeting give the members in the first place, the latitude to freely discuss issues affecting the company without being muzzled by the rigid requirement of prior notice. Secondly, they enable the adjourned meeting transact

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<sup>62</sup> Section 211(8) Ibid.

<sup>63</sup> Section 211(9) Ibid.

<sup>64</sup> Section 211(10) Ibid.

any business beneficial to the company which issue may not be an unfinished business of the original meeting. The purpose of the meeting, is to give members shortly after the company commences activities, an opportunity of having a first progress report from the directors and the promoters of the details of the capital funds that have been subscribed, the manner in which these funds have been expended to date, the balance remaining on hand, information on circumstances of the company's promotion floatation and its development since incorporation. In other words, the statutory meeting enable members to know all important matters pertaining to the formation of the company and its initial life history. The matters discussed include, which shares have been taken up, what money has been received, what contracts have been entered into, what sums have been spent on preliminary expenses etc.

#### **2.4.4 Effect of Default in Holding SGM or Delivering Statutory Report to CAC**

The failure to hold the statutory meeting renders the company and any officers concerned liable to a criminal offence for which if found guilty, liable to a fine of fifty naira daily for the period that the default continues<sup>65</sup>. In *Guardian Express Bank Plc v. Odukwu & Anor.*<sup>66</sup> the Court held that where a company is in default of holding the mandatory meeting within six months of incorporation, leave of court would be required for the company to hold such a meeting and cannot unilaterally extend time for itself. Failure to hold the meeting or deliver the statutory report to CAC is also a ground for petitioning that the offending company be wound up compulsorily by the court<sup>67</sup>. Only a member of the company has the locus standi to seek this order<sup>68</sup>. The application for this order shall not be presented before the expiration of fourteen days after the last day on

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<sup>65</sup> Section 212 CAMA

<sup>66</sup> Supra at p. 29

<sup>67</sup> Section 408 CAMA.

<sup>68</sup> Section 410(2) (b) Ibid.

which the meeting should have been held<sup>69</sup>. On the hearing of the petition, the court is given discretion to direct that the meeting be held and the cost be borne by the persons who, in the opinion of the courts are responsible for the default<sup>70</sup>. This was given judicial recognition in *Guardian Express Bank Plc v. Odukwu&Anor.*<sup>71</sup> where it was held that a court on hearing a petition for winding up may pursuant to section 411(3) of CAMA order that the statutory meeting be held out of time or the report be delivered to the CAC, instead of making the winding up order and order the cost to be paid by the persons who are responsible for the default.

#### **2.4.5 Practices Adopted by Companies Required to Hold SGM**

In practice, SGM is generally dispensed with even by public companies, by the device of forming a company as a private company and then converting it to a public company. All it has to do is just merely pass a special resolution deleting from its articles one or more of the three essential restrictions entitling it to be a private company. One of the reasons for adopting the device of forming as a private company and then converting it to a public company is because it is quite exorbitant to convene this meeting. The cost of printing and sending notices of meeting and statutory report to multitude of members and arranging venue, is no doubt enormous. Consequently, to avoid these enormous expenses, companies would first incorporate as private companies and subsequently convert to public companies.

Apart from the cost implication, other reasons exist for a company to decide to go public, such as obtaining financing outside of the company or reducing debt. It also gives the company more solid standing when negotiating interest rates with banks. This would reduce interest cost on existing debt the company might have. But the main reason most

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<sup>69</sup> Ibid.

<sup>70</sup> Section 411(3) Ibid.

<sup>71</sup> Supra at p. 29

companies decide to go public is to raise money and spread the risk of ownership among a large group of shareholders. A private company might also change into a public company if it desires to raise more capital for business. Whenever a private company is converted into a public company, it is allowed to put its shares in public and traded on the Stock Exchange.

A study of the public companies in Nigeria today especially banks clearly shows that most of the public companies, were first incorporated as private companies and later changed to public companies without having to hold the SGM. For instance, what is known as the United Africa Company (UAC) of Nigeria Plc today was first incorporated in Lagos as Nigerian Motors limited on 22<sup>nd</sup> April, 1931. It became United Africa Company of Nigeria limited on 1<sup>st</sup> February, 1955 and later UAC of Nigeria Limited on 1<sup>st</sup> March, 1973. The name UAC of Nigeria Plc was adopted in 1991. The point here is that the Company started as a private company and later became a public Company.<sup>72</sup>

Also, DAAR Communications Plc was incorporated on the 31<sup>st</sup> day of August, 1988 under the Companies Act, 1968 as DAAR Communications ltd. The company was converted to DAAR Communications Plc on 23<sup>rd</sup> April, 2007 to reflect its new status as a public limited liability company.<sup>73</sup> Access Bank Plc was incorporated on 8<sup>th</sup> February, 1989 as a privately owned commercial bank and on 24<sup>th</sup> March, 1998 (i.e. nine years after) became a public limited liability company<sup>74</sup>. First Inland Bank Plc which started operation on 3<sup>rd</sup> January, 2006 was a merger of four indigenous banks namely; First Atlantic Bank Plc, Inland Bank Plc, NUB International Bank limited and IMB international Bank Plc. First Atlantic Bank Plc which became part of First Inland Bank Plc commenced banking operation on 15<sup>th</sup> November, 1990 as Comet Merchant Bank of Nigeria. It changed to First Atlantic Bank Limited in June, 2000. The bank converted to

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<sup>72</sup> [www.uacnplc.com/company/history](http://www.uacnplc.com/company/history) Accessed on Saturday, 4th April 2015 at 10:35 a.m.

<sup>73</sup> [www.daargroup.com](http://www.daargroup.com) Accessed on Tuesday, 21<sup>st</sup> April, 2015 at 6 p.m.

<sup>74</sup> [www.accessbankplc.com](http://www.accessbankplc.com) Accessed on Saturday, 4th April 2015 at 1:54 p.m.

a public limited liability company on 28<sup>th</sup> February, 2002<sup>75</sup>. Before the merger, Inland Bank Plc was incorporated on 20<sup>th</sup> April, 1998 as a private limited liability company before it converted to a public company<sup>76</sup>. Diamond Bank Plc began as a private limited liability company on 21<sup>st</sup> March, 1991 and became a public company in 2005 following a highly successful private placement share offer which substantially raised the bank's equity base<sup>77</sup>. Intercity Bank Plc was incorporated on 27<sup>th</sup> April, 1987 as a private limited liability company. It converted to a public limited liability company on 8<sup>th</sup> September, 1992. The Bank along with other eight banks merged together to form Unity Bank Plc in 2006<sup>78</sup>. First City Monument Bank Plc was also incorporated a private limited liability company on 20<sup>th</sup> April, 1982. On 15<sup>th</sup> July, 2004, the bank changed its status from a private company to a public limited liability company<sup>79</sup>. Zenith Bank Plc was incorporated as Zenith International Bank Limited on 30<sup>th</sup> May, 1990 as a private limited liability company. It became a public limited company in June, 2004<sup>80</sup>. Fidelity Bank Plc began operations in 1998 as Fidelity Union Merchant Bank Limited. In 1999, it converted to commercial banking and changed its name to Fidelity Bank Plc<sup>81</sup>. Wema Bank Plc was formed on 2<sup>nd</sup> May, 1945 as a private company and converted to a public company in 1987 and was listed on the Nigerian Stock Exchange in 1990<sup>82</sup>.

Moreover, Oceanic Bank Plc acquired by Eco Bank Plc<sup>83</sup>, Guarantee Trust Bank Plc<sup>84</sup> and Union Bank of Nigeria Plc<sup>85</sup> were first incorporated as a private limited liability company before they were converted to public companies. This practice of incorporating

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<sup>75</sup> [www.thenationonlineng.net](http://www.thenationonlineng.net) Assessed on Saturday, 4<sup>th</sup> April, 2015 at 3:14 p.m.

<sup>76</sup> Ibid

<sup>77</sup> [www.diamondbank.com](http://www.diamondbank.com) Accessed on Saturday, 4<sup>th</sup> April 2015 at 7:29 p.m.

<sup>78</sup> [www.theunion.com.ng](http://www.theunion.com.ng) Accessed Sunday, 5<sup>th</sup> April, 2015 at 7:13 p.m.

<sup>79</sup> [www.fcmb.com](http://www.fcmb.com) Accessed on Sunday, 5<sup>th</sup> April 2015 at 7:41 p.m.

<sup>80</sup> [www.zenithbank.com](http://www.zenithbank.com) Accessed on Sunday, 5<sup>th</sup> April, 2015 at 6:36 p.m.; logbaby.com Accessed on Sunday, 5<sup>th</sup> April, 2015 at 6:40 p.m.

<sup>81</sup> [www.fidelitybankplc.com](http://www.fidelitybankplc.com) Accessed on Sunday, 5<sup>th</sup> April, 2015 at 5:19 p.m.

<sup>82</sup> [www.wemabank.com](http://www.wemabank.com) Accessed on Sunday, 5<sup>th</sup> April, 2015 at 9:17 p.m.

<sup>83</sup> [www.ecobankplc.com](http://www.ecobankplc.com) Assessed on Sunday, 5<sup>th</sup> April, 2015 at 10:00 p.m.

<sup>84</sup> [www.gtbp.com](http://www.gtbp.com) Assessed on Sunday, 5<sup>th</sup> April, 2015 at 8:11 p.m.

<sup>85</sup> [www.unionbankng.com](http://www.unionbankng.com) Assessed on Sunday, 5<sup>th</sup> April, 2015 at 8:20 p.m.

a company as a private company and subsequently converting it to a public company without complying with the requirement by section 211 of the CAMA for public companies to hold SGM raises the question whether the section bind companies converted from private to public.

Because of this trend of incorporating a company as a private company and subsequently converted it to a public company, the provision for statutory meeting was considered “dead letter”, the statutory meeting useless anachronism”<sup>86</sup> and deleted in the Ghana’s Companies Act<sup>87</sup> and the English Companies Act of 1985. Moreover, Subsequent Companies Act of England such as the 1989 Act and even the 2006 Act which is the one currently in force does not make provision for SGM<sup>88</sup>. In South Africa, their Companies Act<sup>89</sup> does not make provision for statutory meeting. However, they make provision for annual general meeting to be held by only public companies<sup>90</sup>. Also in India, it is interesting to note that section 156 of the Companies Act, 1956 which made it mandatory for every public company to hold a statutory meeting within a period of not less than a month or more than six months from the date of commencement of business has been amended and deleted in the Companies Act of India, 2013<sup>91</sup>.

However, in spite of the fact that most companies would first incorporated as private companies and subsequently convert to public companies, the provision for statutory meeting is still retained in Nigeria for public companies only because of its significant role. To check its evasion, it was recommended<sup>92</sup> that all companies in Nigeria whether public or private be required to hold statutory meeting. This, in their

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<sup>86</sup> Gower, L.C.B. (1961) Final Report of the Commission of Enquiry into the Working and Administration of the Present Company Law of Ghana, P.114.

<sup>87</sup>No. 179 of 1963

<sup>88</sup>[www.legislation.gov.uk](http://www.legislation.gov.uk) Accessed on Monday, 6<sup>th</sup> April, 2015 at 10:00 a.m.

<sup>89</sup>No. 61 of 1973, No. 71 of 2008 and that of 2011

<sup>90</sup>[www.kpmg.com](http://www.kpmg.com) Assessed on Monday, 6<sup>th</sup> April, 2015 at 1:00 p.m.

<sup>91</sup>[www.indiankanoon.org](http://www.indiankanoon.org) Accessed on Wednesday, 25<sup>th</sup> March, 2015 at 3:30 p.m., [www.caclubindia.com](http://www.caclubindia.com) Accessed on Wednesday, 25<sup>th</sup> March, 2015 at 6:36 p.m.

<sup>92</sup> Report on the Reform of Nigerian Company Law (1988) Nigerian Law Commission, P. 153-154.

view, will hamstring any opportunity of escape route for any public company. This recommendation was jettisoned from the body of the final draft of the Act.

In the exposition of the rules of SGM, the view has been advanced that every public company within a period of six months from the date of its incorporation whether as a public or private company shall hold statutory meeting<sup>93</sup>. It was submitted that this interpretation does not convey the true literal or golden interpretation of Section 211(1) of the CAMA hence, the reference is to “every public company” and to companies incorporated as such and to suggest that the section contemplates the inclusion of public companies incorporated as private companies is to elasticised the section beyond its intended scope<sup>94</sup>.

In *Mussini v. Balogun*<sup>95</sup>, Kazeem, J. opined that where a private company converts into a public company, it should comply with the provision of CAMA. In supporting the opinion of Kazeem J. it was submitted that though the provision of Section 211 does not apply to a private company, if a private company converts into a public company it should comply with the provision of CAMA<sup>96</sup>. Such apparent practices by companies and the divergent views of text writers on the position of the law on the matter, makes the entire jurisprudential understanding of section 211(1) of the CAMA, clumsy and confusing or difficult to understand. This is further due to the fact that there is no any clear Nigerian reported case which settled the matter one way or the other.

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<sup>93</sup>Sasegbon, D. (1991) *Nigeria Companies and Allied Matters, Laws and Practice*. D. Sc Publication, Lagos, Vol. 1.

<sup>94</sup>Agom, A. R. (2000) The Place of Company Meetings in Corporate Governance. Op. Cit., p.16

<sup>95</sup> (1968)2 ALR Comm. 197

<sup>96</sup>Aderibigbe, I. O. (2010) The Mechanism of Corporate Meetings under the Companies and Allied Matters Act (CAMA) 1990, *International Journal of Advanced Legal Studies and Governance*, Vol. 2, No. 1, P.163

## **2.5 The Concept of Annual General Meeting (AGM)**

An annual general meeting (commonly abbreviated as AGM), is a meeting that official bodies, and associations involving the public (including companies with shareholders), are often required by law (or the constitution, charter, by-laws etc. governing the body) to hold. An AGM is held every year to elect the board of directors and inform their members of previous and future activities. It is an opportunity for the shareholders and partners to receive copies of the company's accounts as well as reviewing fiscal information for the past year and asking any questions regarding the directions the business will take in the future. Section 213 (1) of the CAMA provides:

Every company shall in each year hold a general meeting as its Annual General Meeting in addition to any other meeting in that year and shall specify the meeting as such in the notice calling it; and not more than 15 months shall elapse between the date of one annual general meeting of a company and that of the next.

- (a) If a company holds its first annual general meeting within eighteen months of its incorporation it need not hold it in that year or in the following year;
- (b) Except for the first annual general meeting, the commission shall have the power to extend the time within which any annual general meeting shall be held, by a period not exceeding three months.

The AGM represents the source of ultimate authority within the company structure. Every company whether public or private must hold an annual general meeting within eighteen months of its incorporation and thereafter in each year, with the additional requirement that not more than fifteen months must lapse between the AGM and the next:

From the above provisions, the AGM is compulsory for all companies whether private, public, Limited or unlimited. It is evidently made compulsory in order that members of a company as investors should be given a recurring opportunity of meeting, firstly, to consider the progress and development of the company and the stewardship of their chosen directors, and secondly to take necessary action to prospectively safeguard their interest and to promote those of the company. The AGM is a potent protective and interventionist weapon in the hands of investors. According to Gower,

The Annual General Meeting is an important protection to members for it is one occasion when they can be sure of having an opportunity of meeting the directors and of questioning them on the accounts, on their report and on the company's position and project. It is at this meeting that normally, a proportion of the directors will retire and come up for re-election and at which the members will be able to try to exercise their only real power over the board –that of dismissal.... The Annual General Meeting is valuable to them because the directors must hold it whether they want it or not<sup>97</sup>.

For these reasons, the law insists that meetings of members be held at reasonable intervals. Provisions for meetings may be made in the Articles of Association of the company but in order to ensure that meetings of members are held at reasonable intervals irrespective of whether the Articles of Association of a company provides for it or not, the CAMA imperatively requires that a company must in each year hold an AGM, in addition to any other meeting in that year. In Great Britain, it became optional with effect from 1 October 2007 for any private company to hold an AGM, unless its articles of association specifically require it to do so.<sup>98</sup>

The date on which a company will hold an AGM is determined by two requirements of time as stipulated in Section 213(1) of the CAMA to wit;

- (a). The meeting must be held every year. Section 18 (1) of the interpretation Act<sup>99</sup>, defines “year” as a period of twelve months construed to mean a calendar year commencing on the 1<sup>st</sup> day of January and ending on the last day of December. The year is not the anniversary of the twelve months commencing from the date of incorporation.
- (b). Not more than 15 months must elapse between the holding of one Annual General Meeting and the next succeeding one. In *Smedley v. Registrars of Companies*<sup>100</sup> information was laid on the 18<sup>th</sup> of June, 1918 under Section 64 of the companies (Consolidation) Act of 1908 against the directors of a company for not holding a

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<sup>97</sup> Gower, L.C.B. (1979) *The Principles of Modern Company Law*. Op.Cit. at p. 14

<sup>98</sup> [www.ws.fife.org/annual\\_general\\_meeting](http://www.ws.fife.org/annual_general_meeting). Assessed on 3<sup>rd</sup> December, 2015 at 6:56 p.m.

<sup>99</sup> Cap. I 123 L.F.N. 2004.

<sup>100</sup> (1919) 1 K.B. 97.

general meeting in 1917. The last general meeting of the company was held on the 21<sup>st</sup> of March, 1916. The Section provided that:

A general meeting of every company shall be held once at the least in every year, and not more than fifteen months after the holding of the last proceeding general meeting and if not so held, every director who is knowingly party to the default shall be liable to a penalty.

The court held under this section, that the information was in time having been laid within six months after the commission of the offence and that the section created two separate offences, that of not holding the meeting in the year and that of not holding it within fifteen months after the last meeting.

However, the first AGM of a company may be held within 18 months of its incorporation<sup>101</sup> i.e. the company need not hold its first AGM in the first or second year of its incorporation. For example, if a company was incorporated on 1<sup>st</sup> November, 1995, it need not hold AGM in 1995 or 1996 but must hold it at least in April 1997. Below is further illustration for more clarity.

Date of Incorporation: 1<sup>st</sup> November, 1995.

1<sup>st</sup> November, 1995 - 31<sup>st</sup> December, 1995 = Two months (need not hold its AGM in the first year of incorporation). 1<sup>st</sup> January, 1996 - 31<sup>st</sup> December, 1996 = 12 months (need not hold it likewise in the second year of incorporation). 1<sup>st</sup> January, 1997 - 30<sup>th</sup> April 1997 = Four months (But must hold it in the third year of incorporation and not later than April). Thus a company that was incorporated on 1<sup>st</sup> September, 2000, may hold its first AGM not later than April 2002. The next subsequent AGM should be held within 15 months from the date of the previous AGM. If a company incorporated on 1<sup>st</sup> November, 1995 holds its first AGM on 30<sup>th</sup> April, 1997, the subsequent AGM should be held not later than 31<sup>st</sup> day of July, 1998, that is within 15 fifteen months from the date

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<sup>101</sup> Section 213(1)(a) CAMA.

of previous AGM. Failure to comply with either requirement constitutes an independent breach.

The difference therefore between the first and the subsequent AGM is that while the first AGM must be held within 18 months from the date of incorporation the subsequent AGM must be held within 15 months from the date of previous AGM. However, where a company could still not hold its subsequent AGM within the fifteen months the CAC has the power to extend the time for holding the meeting by not more than three months<sup>102</sup>, but the time for the first AGM cannot be extended.

Where a company defaults in holding AGM, any member of the company may apply to the CAC to call or direct the calling of AGM in the company, and upon such application, the CAC may give consequential or ancillary direction as it thinks expedient. This shall include directions modifying or supplementing the provision of the Articles of Association in relation to the calling, holding and conducting of the meeting<sup>103</sup>.

The point must quickly be made that these powers are not intended to enable CAC make any general change in the Articles of the company or to interfere in the management of the company. There are simply powers to enable the CAC make any temporary and ad-hoc change necessary for calling, holding and conducting the meeting. The CAC may also direct that one member of the company present in person or by proxy may apply to the court for an order to take a decision which shall be binding on all the members of the company<sup>104</sup>. A general meeting held pursuant to the direction of the CAC or an application of a single member of the company to the court (in the year of default) shall be deemed to be the AGM of the company for the year in which it is held, unless the CAC directs otherwise<sup>105</sup>.

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<sup>102</sup> Section 213 (1) (b) Ibid.

<sup>103</sup> Section 213 (2) Ibid.

<sup>104</sup> Ibid.

<sup>105</sup> Section 213 (3) Ibid

However, where the meeting so held is not held in the year in which the default occurred, the meeting so held shall not be treated as the AGM for the year in which it is held unless at that meeting the company resolves that it be so treated<sup>106</sup>. Assuming the last date for holding the AGM of a company in 2011 is 30<sup>th</sup> April, 2011 and the company defaulted, and the CAC directs an AGM to be held in December 2011 that will be deemed the company's AGM for 2011. But assuming the direction of the CAC upon which an AGM was held came in February, 2012, the question is whether the AGM held will be regarded as Annual General Meeting for 2011 or for 2012. Unless at that meeting the company resolves that it shall be regarded as AGM for 2012, the meeting will be treated as AGM for 2011. Where a company resolves that a meeting shall be treated as AGM, a copy of the resolution shall within fifteen days after the passing of the resolution be filed with the CAC<sup>107</sup>.

Default in holding a meeting directed by the CAC or in complying with any directions of the CAC renders upon conviction that company and every officer of the company who is in default to a fine of N500. If default is made in filing with the CAC a copy of the resolution deeming a general meeting as AGM, the company and every officer of the company who is in default shall be liable to a fine of N25.<sup>108</sup> The AGM like the SGM must be held in Nigeria.<sup>109</sup> It is the responsibility of the company acting through its board of directors to convene this meeting by authorising the Secretary of the company to issue notice of meeting and to arrange for the holding of the same.

Two kinds of businesses may be transacted at the AGM. These are ordinary business and special business. The ordinary business of the AGM includes declaration of dividend, presentation of financial statement, Directors' and Auditors' Report, Election of

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<sup>106</sup> Ibid.

<sup>107</sup> Section 213 (4) Ibid.

<sup>108</sup> Section 213 (5) Ibid.

<sup>109</sup> Section 216 Ibid.

Directors to replace those retiring, appointment and the fixing of the remuneration of the Auditors and appointment of members of the Audit committee. Any other business aside from the above shall be considered special business<sup>110</sup>. Ordinary business may be transacted as special business but special business cannot be transacted as ordinary business. This is because ordinary business requires ordinary majority while special business requires special majority of the votes. i.e.  $\frac{3}{4}$  of the total votes cast and not the total of members present.

The AGM provides to members the best opportunity of questioning the management of the company and to exercise real control over the directors. In reality this is often a pious hope. The director's effective control of the mechanics of meetings has increasingly rendered the AGM a routine affair. More often, members at the meeting are merely confronted with fiat accomplished matters that ordinarily should fall for their resolution. The much vaunted laying of financial statements at this meeting is in truth a historical narration of ex-post-facto transactions and for which the law gives no room for members to adopt or reject. These no doubt have considerably weakened the efficacy of the AGM as a protective and interventionist tool in the hands of members of the company.

## **2.6 The Concept of Extra Ordinary General Meeting (EGM)**

Section 215(1) of CAMA provides that "The board of directors may convene an extraordinary general meeting whenever they deem fit, and if at any time there are not within Nigerian sufficient directors capable of acting to form a quorum, any director may convene an extraordinary general meeting"

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<sup>110</sup> Section 214 Ibid.

This section is a slight modification of section 125(1) of the repealed Nigerian companies Act, 1968, which in itself is a verbatim reproduction of section 132 of the English Companies Act, 1948. The provision is traceable to the EGM in section 68 of the English Companies (clauses consolidation) Act of 1845.

EGM therefore may be called in ordinary parlance emergency meeting. It is the type of general meeting that is usually convened to deal with matters that are so urgent and important that it cannot wait until the next AGM. The meeting is designed to address contingent situations that have arisen owing to business exigencies or some factors external to the company, and deserving expeditious response which cannot be put on hold for consideration at the next AGM. Unlike the SGM and AGM which the law insists on being held within certain time frame, the EGM except for the few instances for which the law insist on it being held, is entirely within the discretion of the company to convene and hold.

Section 112 of the CAMA provides that, when the net assets of a public company are half or less of its called up share capital, the directors shall, not later than 30 days from the earliest on which that fact is known to a director of the company duly convened an EGM of the company. The meeting shall be convened for a date not later than 60 days from that day, for the purpose of considering whether any, and if so, what steps should be taken to deal with the situation.

Also section 336 of the CAMA requires that where an Auditor's notice of resignation contain a statement of the circumstances connected with his resignation which he consider should be brought to the notice of the members or creditors of the company, there may be deposited with the notice, a requisition signed by the Auditor calling on the Directors of the company to forthwith duly convene an EGM of the company. The meeting shall be convened for the purpose of receiving and considering such explanation

of the circumstances connected with his resignation as he may wish to place before the meeting.

The importance of this meeting can never be overemphasized. But for this meeting, a company may be hamstrung when unforeseen event turns up not addressable within the time and legal framework of the SGM and the AGM required to be held by public Companies only, once in the company's life time and within six months of incorporation in the case of the Former and once in a year in the case of the latter. The events that may compel the convening of this meeting are infinite. They may arise from within the company as in managerial irresponsibility or board drawn squabbles or from factors external to the company as in new legislation, government directives or polices touching on the operation of the company.

In the first quarter of 1997<sup>111</sup>, Fidelity Union Merchant Bank Limited and Unic Insurance Plc convened an EGM. While Fidelity Bank convened the meeting to map out plans to increase the company's share capital to meet the minimum authorized share capital requirement prescribed by the Federal Military Government in January 1997, Unic Insurance Plc held the meeting on 20th March, 1997 to increase its share capital from N100 millions to N200 millions to part finance the construction of its Corporate headquarters and also to accommodate the minimum paid up capital of N90 millions presented by Insurance Decree No. 2, 1997.

On 23<sup>rd</sup> March, 1993, Dorji Textiles Mills (Nig.) Ltd held an EGM of the company in which it removed Mrs Ethel Onyemachi David Orji, the appellant as a director of the company<sup>112</sup>. In May, 1996, Nigerian Ropes Plc was compelled to hold

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<sup>111</sup> Business Times, Monday, March 1997, Vol. 212, No.12, P.7

<sup>112</sup> Orji v. DTM (Nig.) Ltd (2009)18 NWLR (Pt. 1173) 467 S.C.

EGM where its Chairman/ Managing Director was removed from office for activities considered inimical for the profit progress of the company<sup>113</sup>.

In *National Palm Produce Association Nig. Ltd v. Udom*<sup>114</sup>, the respondents had convened an emergency meetings of the Association on 18<sup>th</sup> and 25<sup>th</sup> of January, 2010 and 1<sup>st</sup> February, 2010 in which it removed the 2<sup>nd</sup> appellant from his office as the chairman and replaced with the 2<sup>nd</sup> respondent without given the 2<sup>nd</sup> appellant the notice for such meeting. The appellants asked the court to declare the meetings and the purported removal of the 2<sup>nd</sup> appellant null and void. It was held that, the meetings of a company held without the mandatory 21 days' notice is null and void and all decisions taken in those meetings are also null and void and of no legal effect.

Also Oceanic Bank Plc now Eco Bank Plc, the shareholders in an EGM held with Eco Bank on 23<sup>rd</sup> December, 2011 approved the proposed resolution to merge both banks, transferring all assets, liabilities and undertakings of Oceanic Bank to Eco Bank.<sup>115</sup>

EGM may be held by all kinds of companies and the factors that may give rise to it remain infinitely diverse. It may be convened by:

- (a) The board of directors or any director. Section 215(1) requires the board of Directors to convene this meeting whenever the board deems fit. However, if at any time, there are not within Nigeria sufficient Directors capable of acting to form a quorum, any Director may convene the EGM. The board of Directors or a single Director as the case may be would by a resolution direct the Secretary of the company to convene this meeting by issuing the necessary notices and

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<sup>113</sup> Guardian Newspapers 30<sup>th</sup> May, 1996, P. 4

<sup>114</sup> (2014) 8 NWLR (Pt. 1410) 479 C.A.

<sup>115</sup> Simisola Iyaniwura and Wole Iyaniwura (2014) The Nature of Shareholding in Nigeria: Evidence from the Banking Crisis. *Global Journal of Management & Business Research*. Global Journal Inc. (USA) Vol. 13, P. 33

arranging venues for the meeting. The Extra Ordinary General Meeting so convened is said to be convened voluntarily.

- (b) A member or members of the company on requisition. Section 215(2) of the CAMA gives the members of the company the right to call EGM. This right, which is a very important minority right cannot be taken away by the articles. The procedure adopted by members to call this meeting is called requisition which means an official request in writing that an EGM of members be convened.

The procedure for requisition is as follows:

- i. If the company has a share capital, a member or members holding not less than one tenth (1/10th) of the total paid up capital of the company officially request or requires the Directors in writing to proceed to convene an EGM. But if the company does not have a share capital then the requisition is made by a member or members holding not less than one – tenth (1/10th) of the total voting rights of all the members having a right to vote at general meetings<sup>116</sup>.
- ii. The requisition shall be signed by the requisitioner and deposited at the registered office of the company. The objects of the meeting must be stated in the requisition.<sup>117</sup>
- iii. The Directors shall on receiving the requisition proceed to convene the meeting within 21 days from the date of the deposit of the requisition.
- iv. If the Directors do not within 21 days proceed to convene the meeting, the requisitioners, or any one or more of them representing more than one-half of the total voting rights of all of them may, themselves convene the meeting which must be held within three months from the date of deposit of the requisition,

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<sup>116</sup> Section 215(2) CAMA

<sup>117</sup> Section 215(3) Ibid.

otherwise the requisitionist have lost the right to convene such meeting unless they make a new requisition<sup>118</sup>.

The Directors shall not be considered as having proceeded duly to convene an EGM on receipt of the requisition unless the notices sent out by their authority correspond with the object of the requisition. If the Directors convened the meeting in respect of some but not on all of those objects, the Directors have failed to duly convene this meeting and the requisitionist are entitled to convene their own meeting. Where the members proceed to convene this meeting, any reasonable expenses incurred by the requisitionist by reason of the failure of the Directors duly to convene the meeting shall be repaid by the company. Any sum so repaid shall be retained by the company out of any sums due or to become due from the company by way of fees or other remuneration in respect of their services to such of the Directors as were default.<sup>119</sup>

This provision seeks to encourage members who would otherwise be intimidated by the cost of requisitioning and holding the meeting and also serve as deterrent to Directors whose default could have impose on them the brunt of shouldering the cost of members convening this meeting. The Directors must give adequate Notice of the special business to be transacted at the meeting.<sup>120</sup> However, unlike the SGM and the AGM, the EGM may be held outside Nigeria.<sup>121</sup>

By vesting the authority to convene EGM on the board of Directors and the members, the law attempts to strike a balance between two extreme interests. The first extreme is one of allowing members facile powers to hold this meeting as their personal interest dictate and which far from serving the interest of the company may impede its administration. On the other hand, is the second extreme of vesting the entire power to hold this meeting on the Directors

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<sup>118</sup> Section 215(4) Ibid.

<sup>119</sup> Section 215(6) Ibid

<sup>120</sup> Section 215(7) Ibid. This is incumbent on requisitionist as well. See Section 215(3)

<sup>121</sup> Section 216 Ibid.

who are in the position to disregard the wishes of the members and deny to them opportunities of meeting apart from the AGM to take decisions on the company.

## **2.7 The Concept of Directors Meeting**

The whole of the Directors collectively form the board of directors (BOD). The notion of a board is conceptually rooted in collegiate resolve proceeding from a meeting whether formally or informally held. A company shall act through its board of directors or through officers or agents appointed by or under authority derived from the BOD<sup>122</sup>. In *Batraco Ltd. v. Spring Bank Ltd*<sup>123</sup>, the court held that by virtue of section 63(1) of CAMA, a company shall act through its members in a general meeting or its Board of Directors or through officers or agents appointed by, or under authority derived from the members in general meeting or the board of directors.

The Board of Directors is therefore one of the constitutional organs of the company. Except otherwise provided by the Articles of Association and as it is more often the case, the business of the company shall be managed by the Board of Directors who may exercise all such powers of the company as are not reserved to members in general meeting<sup>124</sup>. Unlike the members' general meeting, the CAMA does not prescribe detailed rules for the convening and conduct of directors' meetings. Accordingly, they shall be regulated by the scanty provisions of the CAMA, the Articles of Association and as the directors in their discretion may deem fit. Provided that the directors hold their meeting not later than six months after the incorporation of the company, subsequent meeting for despatch of business may be held, regulated and adjourned as the Board of Director think fit<sup>125</sup>.

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<sup>122</sup> Section 63(1) Ibid.

<sup>123</sup> (2015) 5 NWLR (Pt. 1451) 107 C.A.

<sup>124</sup> Section 63(4) CAMA

<sup>125</sup> Section 263 (1) Ibid.

The nature and scope of business that the directors can transact at their meeting is indeed wide. Unless prohibited by law or limited by the Articles of Association, such business range from board managerial decision to corporate policy formulation. In reality, the nature and size of the enterprise to some extent bears on the scope of the board's deliberation and determination. In small private companies where ownership and management are fused together, it is often the case for the Board of Directors to formulate basis managerial and corporate decisions. However, in big public companies with attendant separation of ownership from management and a diverse and complete production network, the board decides on core corporate polices leaving intricate managerial decisions with management to formulate and brought to the Board of Directors for ratification and reconsideration.

The secretary of the company on the requisition of a single director or by authority of the Board of Directors summons this meeting by issuing notices. The notice which must be in writing and not less than 14 days before the day of the meeting must be given to every director entitled to receive it<sup>126</sup>. Failure to give this notice shall invalidate the meeting<sup>127</sup>. In *Baffa v. Odili*,<sup>128</sup> it was held that failure to serve notice of the meeting on a director renders the meeting invalid. Also where the length of notice of meeting is less than the statutory 14 days, the meeting is void<sup>129</sup>. In *Longe v. F.B.N. Plc*<sup>130</sup>, the appellant was on 13<sup>th</sup> June, 2002 removed by the Board of Directors as the Managing Director and Chief Executive Officer. The appellant was not given the notice of the meeting of the board of directors at which the decision to remove him was taken. The Supreme Court held that a director to be removed must be given a notice of the meeting and failure to give such a notice shall invalidate the meeting. However, a director who is on suspension from duties is not entitled to receive notice. This was the

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<sup>126</sup> Section 266(2)

<sup>127</sup> Section 266(3) Ibid.

<sup>128</sup> (2001) 15 NWLR (Pt. 737) 709 C.A.

<sup>129</sup> Ibid.

<sup>130</sup> (2010) 6 NWLR (Pt. 1189) 1 S.C.

decision of the court of Appeal in Nigerian case of *Alonge v. FBN Plc*<sup>131</sup>, where a former director of the respondent company who had been on suspension on allegation of impropriety, sought a declaration that all the decisions taken at the meeting of the board of Directors of the respondents at which his appointment was revoked be declared unlawful, null and void, because notice of the meeting not issued to him. Per Salami JSC (as he then was):

...where the Managing Director/Chief Executive of a company is suspended, all his rights, privileges and powers consequential or attached to the employment, including attending board meetings, cease(d). A notice of board meeting is not given for the fun of it. It is therefore, not issued informally to a person who is otherwise entitled to attend but barred by reason of his suspension. Even if he is entitled to notice, the practice is that the person being discussed would step out to enable other members of the board freely take their decision concerning him.

The court held in the instance case amongst other reliefs sought, that since the appellant accepted the suspension of his only subsisting appointment with the respondent, he was not entitled to the notice of the meeting of the board. Also a director who is not in Nigeria, and has not furnished an address within Nigeria need not be given notice<sup>132</sup>. This is so even if the director concern professes to waive his right to be sent notices.

The notice shall specify the venue, date and time of the meeting and the general nature of the business to be transacted but unlike the member's general meeting, the notice of directors' meeting need not specify special business to be transacted at the meeting. A director shall attend meeting in person and not by proxy. The rule enunciated in the maxim delegatus non potest delegare applies here in full force to deny directors the authority to appoint agent to attend board meeting on their behalf. The directors shall appoint one of themselves as chairman of the Board of Directors who shall preside over the board meeting<sup>133</sup>. Unless the Articles otherwise provide, directors may deal with business at a board meeting in the order they deem

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<sup>131</sup> Supra at p. 2

<sup>132</sup> Section 266 CAMA

<sup>133</sup> Section 263 (4) Ibid.

fit<sup>134</sup>. Usually, at the commencement of meeting, the company Secretary circulates among the directors the agenda for discussion at the meeting.

In the course of deliberation, each director shall be entitled to one vote only.<sup>135</sup> Any question arising at the meeting shall be decided by majority of votes and in the event of a tie, the Chairman shall have a second or casting vote.<sup>136</sup> All decisions of the directors are expected to be agreed upon and taken at this meeting. However, a written resolution signed by all the directors for the time being entitled to receive notices of meetings of the directors shall be as valid and effectual as if it had been passed at a meeting of the directors duly convened and held.<sup>137</sup> This is whether the Board of Directors is of a public or private company. Despite the strategic position directors occupy in the power structure of the company, the fact that they must act collectively as a board and the obligation of holding the first directors' meeting within six months after incorporation, the CAMA has not prescribed any penalty for not convening this meeting. However, where the directors' meeting cannot be effectively held for any resolution because of a deadlock on the board, there are no directors, effective quorum cannot be obtained.

Where the directors are disqualified from voting at the meeting the executive powers of the board would revert to members in the general meeting to be exercised in a residual capacity<sup>138</sup>. Furthermore, aside from the first meeting, the directors are not obliged to hold subsequent meetings except when in their discretion they deem fit. Afortiori, a written resolution signed by the directors is as effective as a resolution on any matter proposed, considered and passed at a duly convened meeting. This latitude weakens the advantage of collegiate action and collective wisdom intrinsic in the board notion.<sup>139</sup> The board of a

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<sup>134</sup> Section 240 (1) Ibid.

<sup>135</sup> Section 263 (9) Ibid.

<sup>136</sup> Section 263 (2) Ibid.

<sup>137</sup> Section 263(8) Ibid.

<sup>138</sup> Agom, A.R., (2000) Power of Court to Compel Company Meeting. Op.Cit. at p. 4

<sup>139</sup> Ibid.

company often consist of executive and non-executive directors. While the executive directors see to the daily managerial needs of the company, the non-executive directors perform their duties mostly at periodic board meetings. The full board of many a company meet at seldom interval to have a general view of the affairs of the company and deal with broad policy issues concerning the management of the company. The law does not compel directors to attend the daily management of the company; accordingly, the need arises for directors to delegate their duties and responsibilities to one or more of their body to oversee.

Traditionally, the directors as representatives of shareholders in who power of management are often vested are precluded from sub-delegating their authority. Even the entire board has no inherent power to delegate any of their duties to some other subordinate body.<sup>140</sup> However, section 63(1) and 263(5), (6) and (7) of the CAMA creates a statutory exception to the prohibitive rule of delegatus non potestdelegare. These sections permit the Board of Directors to delegate their powers and responsibilities to agents and committees appointed by the board. Articles of Association more often permit this delegation.

This delegation occurs at two different levels. At the first level, the Board of Directors may delegate any of their powers to a committee of the board<sup>141</sup> consisting of a number of directors charged with certain responsibilities of the board. This committee reports to the board through the Chairman of the board. The board Chairman cannot double as the committee chairman otherwise he would be reporting to himself. This committee of the board may meet from time to time to discharge its duties. The committee's proceedings shall be regulated by direction issued by the board. Members shall elect one of themselves as Chairman of the committee and who shall preside over the committee meetings. However, five minutes after the time appointed for holding of the meeting, and their chairman is absent, the members present

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<sup>140</sup> Ibid.

<sup>141</sup> Section 262 (5) CAMA

may choose one of their members to be chairman to enable the meeting proceed to business.<sup>142</sup> In the course of deliberation, members present are entitled to one vote each and resolutions are arrived at by majority of votes. A committee may meet and adjourn as it thinks proper.<sup>143</sup>

The second level of delegation is to the management. This normally consists of the executive directors and some key officers of the company. In some cases, the Board of Directors, may enter into a management agreement with a different firm to provide management expertise for the enterprise. The proximate example of this, is the management agreement between Church Industries Ltd and Aba Textile plc which resulted in the effective turnaround of the fortunes of Aba Textile Plc<sup>144</sup>. Members of management meet regularly to appraise the daily performance of the company. It is at management meetings that major policies of production, finance and personnel are formulated. The decision to add new products, preparation of operating budgets, and negotiation of collective bargaining agreement, research and development are often taken at management meeting. In fact, it is in this constituency that the daily managerial responsibilities are situated. In these matters, the board's role is in the main supervisory. The management meeting is presided over by the company's chief executive. Proceedings of the meeting are regulated by regulations of the board, the company's articles of association, the management contract and the Companies Act. Collective decisions are taken by majority of votes and each member at the meeting is entitled to one vote.

In addition to the powers of the members, directors and the CAC to convene company meetings, the law opens another window by which these meetings may be held. The law vests on the courts power to call or conduct company meeting's in certain situation.

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<sup>142</sup> Section 262 (6) Ibid.

<sup>143</sup> Section 262(7) Ibid.

<sup>144</sup> Agom, A.R. (2000) The Place of Company Meetings in Corporate Governance. Op. Cit. at p. 16

## 2.8 The Concept of Court Ordered Meeting

Court ordered meeting is another type of a company meeting ordered by the court where for any reasons it becomes impracticable to call or conduct a meeting of the company.

Section 223(1) of the CAMA provides:

If for any reason it is impracticable to call meeting of a company or of the board of directors in any manner in which meetings of that company or board may be called or to conduct the meeting of the company or board in the manner prescribed by the Articles or this Act, the court may, either of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting, in the case of the meeting of the company, and of any director of the company in case of the meeting of the board, order a meeting of the company or board, as the case may be, to be called, held and conducted in such manner as the court thinks fit, and where any such order is made may give such ancillary or consequential directions as it thinks expedient.

The purpose of this provision is to provide an alternative remedy to be applied when the normal machinery of management of a company has broken down.<sup>145</sup> It is also available when the affairs of the company have approached an impracticable situation.<sup>146</sup> Although a shareholder may apply to the court to call a meeting of the company under section 223(1) of the CAMA, it must be noted that a person does not become a shareholder merely because shares have been allotted to him. In *Contract Resources Nig. Ltd v. Wende*<sup>147</sup>, it was observed that an allottee of shares has a mere equitable interest in the allotted securities but does not graduate to a shareholder until his name has been entered in the register of shares. The order will be made only if it is impracticable to hold the meeting. Thus where all the shareholders and directors except one are dead, it is obvious that it is impracticable to hold a meeting since one person cannot normally hold a meeting.<sup>148</sup> So also where the members and directors have split into warring factions and the machinery of management has broken down as in

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<sup>145</sup>Per Idigbe, J.S.C., in *TaiwoOkeowo& Sons v. Migliore& 3 Ors.* (1979) 11 S.C. 138: (1979) 12 NSSC 210: (1978) All NLR 282 at 313:

<sup>146</sup> Per Coker, J.S.C. in *Iro v. Park* (1972) ALL NLR (Pt.2) 912 at 919

<sup>147</sup>(1998) 5 NWLR 243

<sup>148</sup> *East v. Bennett Bros. Ltd.* (1911) 1 Ch. 163

Okeowo's case<sup>149</sup>. The scope of this power is indeed expansive. Firstly, the jurisdiction of the court covers not only the members general meeting, as was the case under Section 128(1) of the Nigerian Companies Act, 1968, but now clearly stated to include the meetings of the board of directors. This obviates the likely difficulty of interpretation which dogged the former section 128(1) of the Companies Act, 1968. In *Okeowo's case* the Supreme Court, in a seventy-one-page judgment and resorting to the sledge hammer of substantial justice strained to hold in effect that the section could cover board of directors meeting. Secondly, the opening words of the section "If for any reason it is impracticable...." give the court a wide discretion in this matter. Therefore, if for any course whatsoever, it is impracticable to call or conduct the general meeting of the company or the board of directors meeting, a court can utilize this power to call, hold or conduct any such meeting. In *Orji v. Dorji Textiles Mills (Nig.) Ltd.*<sup>150</sup>, the appellant Mrs Ethel Onyemachi David Orji averred that after the death of her husband who was the Managing director of the 1<sup>st</sup> respondent company on 20<sup>th</sup> November, 1993, it became impracticable and impossible to call a meeting of the company or of its directors notwithstanding her request to the 2<sup>nd</sup> and 3<sup>rd</sup> respondents who were shareholders and directors of DTM (Nig.) Ltd to do so. The appellant therefore, sought inter-alia for an order of the court as a member, shareholder and director of the company directing the convening and conduct of an EGM of the company. The trial court found that the appellant had not proved that she was a member, shareholder and director of the company entitled to the reliefs she sought. This was affirmed by the court of appeal and the Supreme Court.

The courts have had a cause to lay a test of impracticability for the purpose of considering the scope of the word impracticability. In a very pragmatic approach, *Idigbe J.S.C. in Okeowo's case*<sup>151</sup> lucidly explained away any ambiguity on this point when he said:

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<sup>149</sup> A.G. Rivers State v. Delta Consult Ltd. (1990) FHCR 13.

<sup>150</sup> (2009) 18 NWLR (Pt.1173) 467 S.C.

<sup>151</sup> Supra at p. 56, footnote 145

The word impracticable appearing in the section, however must be given a practical meaning; the situation envisaged by the section must be understood to be so (i.e. to have arisen) from a business point of view. Accordingly, the conclusion (i.e. on the issue of “impracticability”) ought not to be reached on the slightest excuse that the directors (sic) cannot agree. The expression “impracticable” in the context of the section is, indeed, more limited than the word “impossible” (see *El Sombrero Ltd (1958) CH. 900*): the term as I already said, implies impracticability from a reasonable (sic) point of view and the courts must take a common sense view of the matter.

The facts of this case summarized are these. Metal Construction (West Africa) Limited was incorporated in 1958 and by 1974, the entire authorized share capital was held by one Sergio Migliore and Delia Migliore (his wife), both Italians. With the promulgation of the Nigerian Enterprises Promotions Decree No.4, 1972, it became compulsory for the Italian proprietors to shed off 40% of their shareholding to Nigerians. Consequently, the shareholding structure of the company altered in the following proportions:

1.Mr. Sergio Migliore	-	53.75%]	Italians
2.Mrs. Delia Migliore	-	4.25%]	„
3.Mr. A Mangili	-	1.00%]	„
4.Mrs. TaiwoOkeowo	-	5.00%]	Nigerian
5.Mr. TaiwoOkeowo	-	35.00%]	„

All the shareholders were also directors of the company. Subsequently, Mr. Sergio Migliore died intestate. Letters of administration in respect of his personal estate were granted to Mrs. Delia Migliore and her brother, Mr. A. Mangili and, the right in the 53.75% of the shareholding in the company, after a fierce legal tussle between the Nigerian shareholders and the Italian shareholders. The complaint by the Italian shareholders which the court found as a fact was that the company secretary had been refusing to summon meeting of the company and accepted instructions from the Nigerian shareholders only. There was fractionalisation in the membership and also in the directorate. The Italian shareholders prayed the Federal High Court, inter-alia, for directions to be given as to the manner in which a meeting of the board of directors may be summoned, held and conducted for the purpose of considering a resolution to

remove the said secretary and appoint a replacement. The court in granting the application in part directed the secretary to convene a general meeting of the company within one week. On appeal, the appellant contended that the test of impracticability had not been satisfied and that the court was wrong in ordering a meeting of the company when application before the court was for a meeting of the board of directors.

In affirming the decision of the lower court, the Supreme Court held that the exercise of the power to order a calling of meeting extend to a situation where there is a rift among the directors and strenuous opposition by one faction of the directors against the other. Specifically, the Supreme Court stated:

Where the evidence has shown that a secretary could not call a meeting; would not even accept a director's letter for the call of a meeting, that the majority shareholding of a director was denied; that the secretary had aligned himself with one faction of the disputing directors and the records of the meeting of the company allegedly held were falsified - surely there could be no clearer evidence of a rift justifying the intervention of court. The alternative to such an ---.

This expansive power of the court can be felt at three stages of a meeting. The power of the court to order the calling, holding or conducting of the meeting of a company or board of directors. The provision does not empower the court to sit in judgment over the business decision of the company<sup>152</sup>. The power of the court is limited to ordering the calling, holding or conducting the relevant meeting<sup>153</sup>.

Where the court makes an order pursuant to S.223 of the CAMA, it may also give such ancillary or consequential directions as it think expedient to give practical effect to its orders. In the *Okeowo's case*, in addition to ordering a company's meeting the court also ordered that all the requirements as to length of notice for calling a meeting of the company will not apply to the calling of the meeting ordered by the court. In exercise of this power, the court may also direct one-member present in person or by proxy or a director to apply to court for an order to take a decision which shall bind all the members. The court can resort to the section either on

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<sup>152</sup>Roland Dele Kuku v. Rosuar Nig. Ltd. (1980) FHCR 13.

<sup>153</sup>Iro v. Park Op.Cit. at p. 56

the application of any member in the case of a company's meeting or any director in the case of a board meeting. The court may resort to this section *suomotu* without transgressing the trite principle of law, to wit, a court cannot grant to a party a relief not sought for<sup>154</sup>. In *Okeowo's case*, the Supreme Court, holding tenaciously to substantially justice, affirmed the decisions of the lower courts ordering a company's meeting even though the applicant prayed for a meeting of the board of directors.

It is the considered view of the writer that the wordings of the section are clear enough to justify this course of conduct without necessarily bending over backwards in the name of justice to do that which the clear provisions of the law permit. It is however, a good practice to clearly indicate in the application before the court, the relief being sought. In addition, a meticulous reading of S.223(2) of the CAMA, exposes a significant legislative oversight therein. While a member present in person or by proxy or a director of the company may apply to court for an order to take a decision which shall bind all the members, the decision taken by a single director would appear not to bind all the other directors. This result could hardly have been intended, for the decision to be taken by the applicant director would be a decision that in the ordinary run of things would be taken by the board of directors. Like the member's decision that binds all members of the company, it makes more sense that the decision taken by the single director should bind all the other directors. This is exactly what the provision omitted to provide for.

Notwithstanding these defects, the Nigerian Supreme Court continues to show a remarkable appreciation of the essence of this section and have adequately risen to the task in deserving cases. In the case of *Ezeonwu v. Onyechi*,<sup>155</sup> seven members of a praying band in Kano met and agreed to plan and finance the formation of a company. Series of meetings were held and contributions made towards this purpose. It would appear that the Plaintiff and the

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<sup>154</sup> *Ekpeyong v. Nyong* (1975) 2 S.C. 71

<sup>155</sup> (1996) 2 S.C.N.J. 250

first Defendant bore the substantial cost. The Memorandum and Articles of Association for the company and the return on directors (Form Co7) were duly signed by the Plaintiff and the first Defendant and witnessed by the legal practitioner who drafted the incorporation documents. The company was eventually incorporated as City Biscuits Manufacturing Company Limited. The members met on several occasions to raise funds to enable the company go into business. The Plaintiff mortgaged his house as security for a loan to the company. It would appear that the first Defendant acted as the chairman, the managing director and the company secretary. He summoned meetings, presided at such meetings, prepared and signed the minutes of such meetings. The first Defendant took complete control of the affairs of the company and the Plaintiff was no longer consulted or informed about the goings-on in the company. Dissatisfied, the Plaintiff by originating summons in the Federal High Court, Enugu sought, inter-alia, an order directing a meeting of the company to be held within thirty days for the purpose of appointing secretary and Auditors outside the subscribers and directors of the company. The Federal High Court and the Court of Appeal dismissed the application. In allowing the appeal in its entirety, the Supreme Court ordered the first Defendant to call a meeting of the company to be held within thirty days from the date of the judgment for the purpose, inter alia of appointing secretary and auditors outside the subscribers/directors of the company and to do all other things as the law may require to be done at an Annual General Meeting. Any meeting called, held and conducted pursuant to S.223 (1) of the CAMA shall for all purposes be deemed to be meeting of the company or of the board of directors duly called, held and conducted.<sup>156</sup>

## **2.9 The Concept of One Man's Meeting**

The general rule regarding company meetings is that there has to be two or more persons for a meeting to hold. This principle makes both common and legal sense. A person

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<sup>156</sup> Section 223(3) CAMA

cannot meet all by himself. He has to be with another person for a meeting to take place. In *Sharp v. Dawes*,<sup>157</sup> this assertion was given judicial recognition under the common law. In that case, a company meeting was convened but only the secretary Mr. Sharp and another shareholder, Mr. Silversides attended. The meeting nevertheless proceeded to business with Mr. Silversides chairing. The meeting decided that a call be made on all shares that have not been paid for. Mr. Dawes received one of such calls but refused to pay, arguing that there was no valid meeting authorizing the calls to be made. The Court per Lord Coleridge CJ. held that there was no valid meeting convened, Mr. Silversides being the only shareholder present could not by himself constitute a meeting, the meeting being a shareholders' meeting. The court in the above case based its decision on the fact that according to the ordinary use of the English language, a meeting could not be constituted by one shareholder.

Although the general rule is that one man cannot constitute a meeting all by himself, there are special situations where one-man meeting could in law be properly held and the event will be recognized by law as a meeting proper. Under the common law, this fact had been recognized first in *East v. Bennett Bros. Ltd.*<sup>158</sup> where the court held that one member who held all the shares of a particular class of shareholders could by himself constitute a meeting of that class of shareholders. In this case it was argued and properly too that being the holder of all the preference shares of the company, no other person was affected by the preference shareholder's action and therefore there was no basis for defeating the validity of his one-man meeting. The courts later acknowledged that where the statute allows the word "meeting" to admit of a special meaning as to include a one-man meeting, then the courts could exercise jurisdiction to order for or validate one-man meeting.

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<sup>157</sup> (1876) 2 QB. D 26

<sup>158</sup> (1911) 1 Ch. 163

In *Re: London Flats Ltd*<sup>159</sup>, Plowman, J. held that as a general rule, one shareholder could not constitute a meeting except where it could be shown that the word “Meeting” had a special meaning and could include a single shareholder. In *Re El. Sombrero Ltd*<sup>160</sup> the Applicant held 90% of the share of the private company. The two directors of the company held five percent shares each in the company. The applicant desired to sack the directors. All efforts to convene a meeting of the company failed. Two shareholders are required to form a quorum for a general meeting to hold, so the two directors being the only shareholders besides the applicant never attended any meeting so that there will not be quorum. The applicant therefore requisitioned a meeting. The other two shareholders as usual refused to attend. The applicant therefore applied for direction to hold a one man meeting as allowed by the section 135 (1) of the 1948 English Companies Act. The other shareholders/directors opposed the application arguing that one man cannot constitute a meeting.

The court held that since it has become impracticable to hold a meeting, the courts had jurisdiction under the 1948 Companies Act to order for a one-man meeting. The Court indeed granted the order. One- man meeting is an exception; it is a weapon in some cases where benefits or rights are deprived because of lack of a valid meeting to approve or exercise the rights or benefits. The existence of the one- man meeting option is also a minority protection as in the *El. Sombrero*’s case where the majority use their number to oppress a numerical minority.

In Nigeria there are provisions of the CAMA which have the effect of admitting the legality of one- man company meetings. These are considered below.

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<sup>159</sup> (1969) 2 All E.R. 744

<sup>160</sup> (1958) 3 All E.R. 1

## 2.9.1 Kinds of One Man's Meeting

### i) By Court Order

a) Where there is default in holding AGM within 15 months of a previous AGM, any member of the company may apply to the CAC for directions. These directions “shall include a direction that one member of the company present in person or by proxy may apply to the court for an Order and take decision which shall bind all the members.”<sup>161</sup>

b) Where not due to default but due to impracticability, it is not possible to call meeting of the company or of the Board of Directors, any shareholder or director may apply to the court for an order to convene and hold the meeting. The court has power under the CAMA to order that one member in the case of company meetings and one director in the case of board meetings may in person or by proxy hold the meeting and it shall be binding on all the members or the directors as the case may be.<sup>162</sup>

c) Where there is a quorum at the beginning of a meeting but no quorum later to continue the meeting as required by law,<sup>163</sup> due to deliberate act of some members withdrawing from the meeting to break existing quorum, the court may order a one man meeting where that is what is necessary if the meeting must hold.<sup>164</sup>

d) Where Board Meetings are unable to hold due to consistent lack of quorum, a board member may apply to court to hold a board meeting by himself and bind all the other members.<sup>165</sup>

### ii) One Man Extra Ordinary General Meetings

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<sup>161</sup> Section 213 (2) CAMA

<sup>162</sup> Section 223 (1) & (2) Ibid.

<sup>163</sup> Section 232 Ibid.

<sup>164</sup> Section 232(5) Ibid

<sup>165</sup> Section 239 (4) Ibid.

Once the board of directors of a company receive notice by a member or members of the company for a requisition of an Extra-Ordinary General Meeting (EGM) they must within 21 days convene the meeting. If they fail to do so, “the requisitionists or any one or more of them representing more than one half of the total voting rights of all of them may themselves convene the meeting.”<sup>166</sup> From the above, it is clear that if only one of requisitionists holds voting rights representing more than one half of the total voting rights of all the requisitionists, he may by himself convene the EGM.

iii) One Man Meeting by Proxies

Any member of a company qualified to attend and vote at a meeting of the company shall be entitled to appoint another person, whether a member or not to attend and vote instead of him. It is submitted that since the statute allow appointment of proxies, a shareholder who receives a proxy therefore attends the meeting for himself and as representative of the others whose proxies he holds. He therefore has several capacities at the meeting. The shareholder armed with the proxy mandate could validly convene a meeting as if all the others were physically present.

iv) One Man Meeting in Wholly-Owned Subsidiaries

A company is a wholly-owned subsidiary where the only shareholders of the company are its parent company and the parent company’s other subsidiaries who are nominees of the parent company.<sup>167</sup> Where a meeting of the wholly owned subsidiary is called and only the representative of the parent company is present and armed with a proxy mandate from the other subsidiary of the parent company which is itself a nominee of the parent company, a one man meeting could validly take place.

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<sup>166</sup> Section 215 (1) -(4) Ibid

<sup>167</sup> Section 338(5) & (6) Ibid.

It is also our view that where the quorum for a given company meeting is fixed by percentage of shareholding then the holder of that percentage of shareholding could by himself alone constitute the quorum for the meeting to take place. The reasoning in *East v. Bennet Press Ltd*<sup>168</sup> could respectfully apply. For e.g. if quorum for a given meeting is fixed at say holders of 60%, if only one member holds the required 60%, he constitutes the required quorum to hold the meeting by himself.

One-man meeting is an exception in the sense that it is a weapon in some cases where benefits or rights are deprived because of lack of a valid meeting to approve or exercise the rights or benefits. Its existence is an option for the protection of the minority as in the *El-Sombrero* (supra) where the majority use their number to oppress a numerical minority.

## **2.10 The Concept of Electronic Meeting**

A meeting that takes place over an electronic medium rather than in the traditional face to face (physical presence) is called an electronic meeting. The most common form of an electronic meeting is done through web-based software which allows individual and groups from around the globe to facilitates meetings without physical travelling to an agreed upon location. Participant can be face-to-face in a meeting room or distributed around the world. They may all be participating at the same time or different times. The intent behind electronic meeting is to provide flexibility to participate in meeting when a member is unable to attend in person.

The traditional view of what constitute a meeting has evolved over time with the advancement of technology. In some jurisdictions, physical presence is no longer an essential element to prove that there is a valid meeting. A meeting can be held if an assembly of members is seated at different places connected by audio-visual links. The rationale behind the

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<sup>168</sup>Supra at p. 56

requirement of CAMA for meetings is that members shall be able to attend in person so as to debate and vote on matters affecting the company. Given the modern technological advances, the same result can now be achieved without being physical present in the room, they can electronically be in each other's presence so as to hear and be heard and to see and be seen through video conferencing or by other audio-visual means.

This is proven by the change of court's attitude in deciding what amount to a valid meeting. The case of *Byng v. London Life Assurance Ltd.*<sup>169</sup>, marked the changes in the concept of meeting. In this case, a general meeting of London Assurance Ltd. was held in few separate rooms connected by electronic audio-visual aid. The meeting was held as a valid meeting. The word 'meeting' now has been extended to meeting of mind<sup>170</sup>. In *Wagner v. international health promotions*<sup>171</sup>, a board meeting was held through telephone. In delivering his Judgment, Santow J. addressed the true meaning of the directors meeting together as stated in the articles. "I agree that the words "meet together" connote a meeting of mind and possible by modern technology not by bodies". Legislatures in several jurisdictions decided to adopt a contemporary approach and follow the trends of allowing technology to be used in company meetings.

### **2.10.1 Electronic Meeting in Some Jurisdictions**

#### **a. Delaware, USA**

One of the known jurisdictions which allow shareholders' meeting to be entirely visual is Delaware, USA. In 1996, the Delaware based corporation, Bell &Howel started to cast its Annual General Meeting online. At the time, Delaware statute in respect of shareholders meeting provided that: "Meeting may be held at such place, either within or

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<sup>169</sup> (1990)1 Ch. 170

<sup>170</sup> Bell v. Burton (1993)12 ACSR 325

<sup>171</sup> (1994) 15 ACSR 419

without the State, as may be designated by or in the manner provided in the bylaws or, if not so designated, at the registered office of the corporation in this State”.

In the above meeting, there were 950 shareholders who followed the proceedings of the AGM online, but it was reported that they were not considered to be legally present, and therefore did not attend the meeting for quorum or voting purposes.<sup>172</sup> The above provision was then amended in the year 2000. The new provision of Title 8 section 211(a) (1) reads as follows:

Meetings of stockholders may be held at such place, either within or without this State as may be designated by or in the manner provided in the certificate of incorporation or bylaws, or if not so designated, as determined by the board of directors. If, pursuant to this paragraph of the certificate of incorporation or the bylaws of the corporation, the board of directors is authorized to determine the place of a meeting of stockholders, the board of directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by paragraph (a) (2) of this section.

This new provision permits all companies incorporated in Delaware to hold their general meeting not merely by an ordinary video-conference but entirely virtual. This makes Delaware a jurisdiction that clearly sets aside the requirement of physical presence in a meeting.

In April 2001, a Chicago-based technology consultant, Inforte Corp., which was incorporated in Delaware, held its annual meeting over the internet. It was done with ‘no Complaints’ feedback.<sup>173</sup>

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<sup>172</sup>HasaniMohd Ali, Zinatul A. Zainol, *et al.* (2013) Some Legal Uncertainties in Electronics Corporate Meetings. *International Journal of Computer Theory and Engineering*, vol. 5, No.2, P. 284.

<sup>173</sup> Ibid.

b. Malaysia

In 2007, an amendment was made by the Malaysian Parliament to the Companies Act 1965, known as the Companies (Amendment) Act 2007 (The Act). There was an amendment made with respect to shareholders' electronic meeting. The provision concerned is section 145A that reads as follows: "A company shall hold all meetings of its members within Malaysia and may hold a meeting of its members within Malaysia at more than one venue using any technology that allows all members a reasonable opportunity to participate".

Under this new provision, a general meeting of a company is no longer confined to be held in a State where the registered office is situated but can be held anywhere within Malaysia. The most virtual change is laid down in the second part of this provision. Malaysian companies may now hold their general meetings in more than one location with the aid of any technology. Unfortunately, this development raises some question left without any definite answers. It is uncertain as to what kind of technology a company may apply under this provision. The phrase "... at more than one venue..." suggests that there must be a physical location to hold a meeting and the location must be within Malaysia. But the phrase with the aid of "any technology" implies that a virtual meeting is possible.

c. Australia

In Australia, the changes to company meetings involve the following aspects: modification of the rules on the holding of meetings; use of electronic technology to hold meetings; provision of notices of meetings; notice of meetings of listed company and a reasonable opportunity for members to ask questions or comment on the company's

management.<sup>174</sup> According to section 249S of the Australia Corporations Act provides that:- “A company may hold a meeting of the member at two or more venues using any technology that give the members as a whole a reasonable opportunity to participate”.

Though the above provision empowers companies to hold their general meeting electronically, there is still no express provision allowing a meeting to be held in no place (entirely virtual). However, it is still possible to argue that section 249S could actually extend to virtual meeting as well.

In Malaysia, the amended section 145A has similar wordings with those in section 249S of the Australian Corporations Act. Therefore, the same issues arise here as to whether virtual shareholders meeting is possible for Malaysian company. It is to be pointed out that the word “venues” could be literally interpreted as physical locations. Nonetheless, it may be argued that if the provision is interpreted according to a purposive approach, there is no reason to exclude the applicability of a virtual meeting.

## **2.11 The Concept of Corporate Governance**

The term ‘governance’ is derived from a Latin word ‘gubernare’ meaning ‘to steer’, usually applying to the steering of a ship, which implies that corporate governance involves the function of direction rather than control. Governance refers to the way in which something is governed and to the function of governing. The governance of a country, for example, refers to the powers and actions of the legislature, the executive and the judiciary.

Corporate Governance refers to the way in which companies are governed, and to what purpose. It is concerned with the practices and procedures for trying to ensure that a company is managed in such a way that it achieves its objectives. This could be to

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<sup>174</sup> Ibid.

maximize the wealth of its owners (shareholders), subject to various rules and regulations and with regard to the other groups with an interest in what the company does.

Corporate Governance is a code of conduct to be observed by a corporate entity reflected through the actions of its board of directors and others managing its affairs. This code of conduct is to be observed in order to protect the interest of its shareholders, the public, the State, the employees and the creditors. A company not being a living person, this code of conduct relates to the need to disclose, to its owners and those affected by its existence, the society, in a transparent manner the various aspect of the company's internal operation such as financial, administrative, personal interest of those in management, the extent to which external supervision exists and the like. Ajogwu posited that it is the specific responsibility of each board that could ensure proper disclosure, integrity in financial reporting and a duty of accountability of management to the shareholders<sup>175</sup>

From the foregoing, it is therefore, necessary in this dissertation to say that corporate governance is concerned with the processes, systems, practices and procedures as well as the formal and informal rules that govern corporations and institutions, the manner in which these rules and regulations are applied and followed, the relationships that these rules and regulations determine or create and the nature of those relationships. It refers to the manner in which the power of a corporation is exercised in the stewardship of the corporation's total portfolio of assets and resources with objective of maintaining and increasing shareholder value and satisfaction of other stakeholders in the context of its corporate mission. It implies that companies not only maximize shareholders' wealth, but balance the interest of shareholders with those of other stakeholders.

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<sup>175</sup> Ajogwu, F. (2013) Corporate Governance and Group Dynamics. Centre for Commercial Law Development (CCLD), Lagos, p. 270

## CHAPTER THREE

### PROCEEDINGS AT MEETINGS

#### 3.1 Introduction

The objective and aims of company meetings can only be accomplished when meetings are appropriately convened and held. This enables those participating to attend in the first place and secondly to contribute profitably to the discourse at the meeting. It is therefore essential to a proper understanding of investors' protection to appreciate how such meetings properly called, held and conducted. Basically, this is a matter for the regulations of each individual company, but in practice there is considerable measure of uniformity. Although, the summon and conduct of a meeting depend on the regulations of the individual company, the CAMA has laid down certain rules which must be complied with no matter what the company's regulation say. This therefore means that the convening and conduct of a company meeting must as a matter of fact conform to the established legal framework and the company's Article of Association.

The need for regulation of meetings arises principally for two reasons. The public interest regulation of assembly of person in as much as the united strength of the assembly may be a source of detriment to the community. This has given rise to legal rules of general application. If an assembly is to accomplish expeditiously, the purposes for which it was convened, expediency requires the development of conventional rules for the regulation of the procedure at meetings appropriate to the nature and objects of particular assemblies.

The law on company meetings is accordingly confined to those principles, germane to the regulation of assemblies whose purpose is the administration of material affairs affecting private interest, held in common by the members of those assemblies. In this chapter, the mechanics of conveying meetings shall be closely looked at. The rights of the company, officers and members of the company at various stages of company meetings shall be given

detail consideration. This will in the long run show clearly, how conveners or those attending meetings, can assist and maximise the advantages of convening or attending company meetings. In addition to the CAMA, case law has over the years, developed a body of principles to regulate the conduct of meetings. Company's general meetings are convened and conducted with a lot of funfair. Sitting arrangement exclusively made out for shareholders, observers and the press. At the entrance to the venue of the meetings are normally seated the Registrars who take account of shareholders and proxy attendance, distributing voting card and the annual account booklet to shareholders who may not have received theirs. Ushers show people to their seats. The high table facing the shareholders is occupied by the directors at the head of which is the chairman of the Board of Directors. Closely seated to the chairman is the secretary. Next to the high table are the tables of the auditors, the audit committee and also the Registrars.

The meeting is started by singing the national anthem, to which all in the hall rise. After this, the chairman takes control of the proceedings. A successful meeting can be made or marked by the ability of the chairman to successfully handle and conduct the meeting. Two fundamental principles apply to the conduct of all kinds of meetings. Plurality of person as to constitute a quorum and a form of authority to direct and circumscribe the deliberations of those present as in the person of a chairman.

## **3.2 Notice of Meeting**

### **3.2.1 Meaning of Notice**

Notice is an advance notification or intimation of the happening of a future event, in this case the convening of a meeting. It implies a formal notification sent members of a company who are entitled to attend and vote in the meeting, informing them of a time, date and venue of the meeting.

Notices serve several purposes. In the main, it gives members advanced notifications of an impending meeting to enable them make up their minds in whether to attend or not. If they decide to attend, what contribution to make and to adequately prepare towards it and if they do not wish to attend, whether to appoint proxy in their stead to attend in their behalf to exercise their corporate franchise. In another sense, it gives an indication of the company's compliance with a statutory requirement. It also creates awareness of the company's existence to enable the general public, competitors and government monitor its activities for purposes of investment, policy formulation and regulation.

Proper notice of every general meeting must be given to members, unless the articles otherwise provides.<sup>176</sup> Section 217(1) of the CAMA, provides that the notice required for all types of general meetings is 21 days from the date on which the notice was sent out. "21 days" means 21 clear days excluding day of service and that of the meeting.<sup>177</sup> However, under section 217(2) of the CAMA shorter notice (less than 21 days' notice) could be given in the following instances.

- a. For AGM if it is agreed to by all the members entitled to attend and vote at the meeting.
- b. For any other meeting by a majority holding not less than 95% in nominal value of the shares with right to attend and vote.

### **3.2.2 Content of Notice of a Meeting**

The notice of meeting must be clear in its content. It must not be misleading or ambiguous. It must specify the place, date and time of the meeting and the general nature of the business to be transacted in detail to enable those to whom it is given to decide whether or not to attend the meeting. Where the meeting is to consider a special

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<sup>176</sup>Onwuka v. Taymani (1965) LLR 62

<sup>177</sup>Re Hector Whaling Ltd. (1936) Ch. 208

resolution, its terms should be set out in the notice.<sup>178</sup> In the case of the notice of the annual general meeting, it will suffice to state in the notice that the purpose of the meeting is to transact the ordinary business of an annual general meeting and it will be deemed to be a sufficient specification that the business is for:-

- (i) The declaration of dividends,
- (ii) Presentation of the financial statement and the reports of the directors and the auditors,
- (iii) The election of directors in place of those retiring,
- (iv) The fixing of the remuneration of the auditors, and,
- (v) If the requirements of sections 362 and 262 of the CAMA are duly complied with, the removal and election of auditors and directors.<sup>179</sup>

No business may be transacted at any general meeting unless notice of it has been duly given<sup>180</sup>. Gower<sup>181</sup> adumbrated this position, thus: “Although the majority decision prevails; a meeting of the majority without notice to the minority is ineffective, for non-constant other reasons that the persuasive to change their minds”.

Any other business is special and the notice convening a meeting at which such business is to be transacted must state its nature otherwise it is irregular and the special business cannot be dealt with.<sup>182</sup> Every notice of general meeting must have the information that the members of the company are entitled to appoint a proxy who will attend, vote and speak on their behalf in the meeting. It is an offence punishable by N500.00 fine for any officer to act in default.<sup>183</sup> When there is an error or omission in respect of information to be contained in the notice, the meeting will not be invalidated except the company’s officer responsible for the error or omission acted mala fide or failed to exercise due care and

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<sup>178</sup> Section 218(1) CAMA

<sup>179</sup> Section 218(2) Ibid.

<sup>180</sup> Section 218(3) Ibid.

<sup>181</sup> Davies, L. P. and Gower (2006) Principles of Modern Company Law. Sweet and Maxwell, 8 Edition

<sup>182</sup> Baillie v. Oriental Telephone (1915) 1 Ch. 503

<sup>183</sup> Section 218(4) CAMA

diligence. In the case of such error, the officer may make the necessary correction either before or during the meeting.<sup>184</sup>

### **3.2.3 Persons Entitled to Notice of Meeting and Effect of Failure to give such Notice**

Section 219(1) provides that the following persons shall be entitled to receive notice of a general meeting:

- a. Every member;
- b. Every shareholder;
- c. Every director of the company;
- d. Every auditor for the time being of the company, and
- e. The Secretary.

Therefore, it is mandatory for companies to give notices of company meetings to those entitled to receive them. The right to vote is an incident of beneficial ownership of shares, and so is right to complain of non-receipt of notices. At law, it is well settled that everyone entitled to be present at a meeting must be given notice of meeting. Failure to give notice to a single person entitled to receive notice renders the meeting a nullity. In *Onwuka v. Taymani*<sup>185</sup> the plaintiff, a shareholder in a company was not sent a notice of the general meeting of the company which was convened and held and where he was purportedly removed from being a director in the company.

The court held that the meeting and its proceedings were invalid and decision taken thereat, void and of not effect. To mitigate the rigour of the law in this respect, it became the practice to insert in the articles of association saving clauses like: “the non-receipt of the notice by any member shall not in validate the proceedings at any general meeting. The effect of this kind of provision, is to muzzle an aggrieved member or even exclude his right to

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<sup>184</sup> Section 218(5) Ibid.

<sup>185</sup> (1968) ALR Comm. 313

complain of non-receipt of notice. It is respectfully submitted that this will not provide a shield for a defaulting company where a notice was not sent at all. The default in giving notices can be summarised under three headings:

- (1) Where the notice is not sent to a person entitled to receive it,
- (2) It is sent without due authorization and is not subsequently ratified,  
and
- (3) Where it does not subsequently indicate the business to be transacted.

In the first two cases, the proceedings founded upon the notice will be invalid in their entirety and in the last case, the invalidity will affect the businesses that were not duly notified. However, it is not all failure to give notice that will render the meeting invalid and the proceedings null and void.

In the case of Board of Directors Meetings, only the directors on the board of the company are entitled to receive notice. However, a director who is on suspension from duties is not entitled to receive notice. This was the decision of the court of Appeal in Nigerian case of *Alonge v. FBN Plc*<sup>186</sup>, where a former director of the respondent company who had been on suspension on allegation of impropriety, sought a declaration that all the decisions taken at the meeting of the board of Directors of the respondents at which his appointment was revoked be declared unlawful, null and void, because notice of the meeting not issued to him. Per Salami JSC (as he then was):

...where the Managing Director/Chief Executive of a company is suspended, all his rights, privileges and powers consequential or attached to the employment, including attending board meetings, cease(d). A notice of board meeting is not given for the fun of it. It is therefore, not issued informally to a person who is otherwise entitled to attend but barred by reason of his suspension. Even if he is entitled to notice, the practice is that the person being discussed would step out to enable other members of the board freely take their decision concerning him.

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<sup>186</sup> Supra at p. 2

The court held in the instance case amongst other reliefs sought, that since the appellant accepted the suspension of his only subsisting appointment with the respondent, he was not entitled to the notice of the meeting of the board.

The omission to give notice to every director renders the proceedings invalid. In *Longe v. F.B.N. Plc*<sup>187</sup>, the appellant was on 13<sup>th</sup> June, 2002 removed by the Board of Directors as the Managing Director and Chief Executive Officer. The appellant was not given the notice of the meeting of the board of directors at which the decision to remove him was taken. The Supreme Court held that a director to be removed must be given a notice of the meeting and failure to give such a notice shall invalidate the meeting. A similar decision was reached in the case of *Baffa v. Odili*<sup>188</sup>. In *Dairov. Western Nigerian Technical Co. Ltd.*<sup>189</sup>, the court held that the decision to remove the plaintiff as a director of the 1<sup>st</sup> Defendant company was irregular and illegal as a result of the failure to serve the plaintiff the notice of the meeting. In *Yalaju Amaye v. A.R.E.C. Ltd.*<sup>190</sup>, the board by a resolution on 21<sup>st</sup> August, 1979 removed the plaintiff as a managing director of the company and appointed the 2<sup>nd</sup> respondent who was the chairman as also the managing director. After that, the plaintiff received a letter dated 21<sup>st</sup> August, 1979 signed by the 2<sup>nd</sup> respondent informing the plaintiff that pursuant to an extra ordinary general meeting of the company held on that day, his oral resignation as the managing director of the company was accepted. The plaintiff denied ever making such representation and also claimed that he has since on 21<sup>st</sup> August, 1979 been prevented from participating in the affairs of the company and had never been invited to any meeting of the company in his capacity as the managing director or as a shareholder. The Supreme court held that the purported appointment of the 2<sup>nd</sup> respondent as the chairman/managing director of the company is illegal, null and void because the notice of the

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<sup>187</sup> (2010) 6 NWLR (Pt. 1189) 1 S.C;

<sup>188</sup> (2001) 15 NWLR (Pt. 737) 709 C.A.

<sup>189</sup> (1979) NCLR

<sup>190</sup> (1990) 4 NWLR (Pt.145) 422

meeting purported to have removed the plaintiff was not served on him. The court also held that the plaintiff was and still the managing director and a shareholder of the company.

In a more recent case of *Oni v. Cadbury Nigerian Plc.*<sup>191</sup>, the company held a meeting of its directors where it took a decision and terminated the employment of the appellant as the chief executive officer of the company who was summoned to their London office by the principal company and remained there on their instruction when his employment was terminated without serving him the notice of the meeting. The High court of Lagos state held that the meeting is invalid. This was affirmed by the Court of appeal, Lagos Division. On further appeal to the Supreme Court, the court agreed with the decision of both the trial court and the court of appeal, but the Supreme Court declared the entire proceedings of the trial court and the Court of appeal null and void for lack of jurisdiction to entertain same.

Where the failure to give notice was due to accidental omission, this inadvertence will not invalidate the meeting. In *Re West Canadian Collieries Ltd*<sup>192</sup>, there was an omission to send notices to nine shareholders because their address plates had been kept out of the addressograph because previous correspondences to them were through the post undelivered. For fear of their mails falling into wrong hands, their address plates were kept out of the machine. It was held that the omission was accidental and did not invalidate the meeting. However, failure to give such notice due to misrepresentation, misinterpretation, or ignorance of law or of the provision of the articles of association will not amount to accidental omission.

In *Mussel White v Ch Mussel White & Sons*<sup>193</sup>, the plaintiff had transferred their shares but their names remained in the register of members because payments for their shares had not been completed. The Annual General Meeting of the company, was held but the plaintiff was not sent notices, under the erroneous impression that having

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<sup>191</sup>(2016) LPELR-26061 S.C.

<sup>192</sup> (1962) Ch. 370; Section 211 CAMA

<sup>193</sup> (1962) Ch. 964

executed transfers of their shares, the plaintiffs were no longer members of the company and therefore not entitled to receive notice of meeting. The court held that this omission arising from an error was not accidental, and failure to give notice invalidated the meeting.

Section 219(2)<sup>194</sup> provides that no other person shall be entitled to receive notice of general meeting. A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address or any address supplied by him for the giving of notice to him. Section 220(1)&(2)<sup>195</sup> is to the effect that notice of meeting sent by post will be deemed to be effected after 7 days of posting the letter. By section 221(1)&(2)<sup>196</sup> failure to give notice of any meeting to any person entitled to receive it will invalidate the meeting unless such failure is an accidental omission on the part of the person giving the notice. Accidental omission means a genuine mistake. Misrepresentation or misinterpretation of the provision of the Company Act or Articles of the company shall not amount to accidental omission.<sup>197</sup> In the case of public companies, additional notice is required besides notice sent to each member. The law<sup>198</sup> further required that such notice of meeting sent to members must be advertised in at least two daily Newspapers 21 days before the general meeting.

### **3.2.4 Kind of Notices**

According to period of days, notices can be classified into ordinary, special and default notices.

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<sup>194</sup> CAMA Op.Cit. at p. 1

<sup>195</sup> Ibid.

<sup>196</sup> Ibid.

<sup>197</sup> Ibid., Awoyemi v. Salomon (1976) FRCR 165

<sup>198</sup> Section 222(2) CAMA

i) Ordinary Notice

This is the usual and conventional notice applicable to all general meetings. The company gives it, to its members at least 21 days before the day of the meeting.<sup>199</sup> In the case of board meetings, the usual period of notice is at least fourteen days before the day of the meeting.<sup>200</sup> For debenture holders, meeting, the usual period of notice is usually stated in the trust deed of debenture. For creditors meeting at creditors Voluntary Winding up, the notice of creditors meeting shall be published once in the Gazette and once in at least two newspapers printed in Nigeria, and circulating in the district where the registered office of the company is situating. In the case of Creditors Meeting at winding up subject to the Winding up Rules, the Official Liquidator or Receiver shall give not less than fifteen days' notice in the Gazette and in a local newspaper.<sup>201</sup>

ii) Special Notice

This is a unique kind of notice reserved for few resolutions only. It is required to be given by the members to the members to the company, for a period not less than twenty-eight days before the day of the meeting.<sup>202</sup> The company, on receipt, will in turn give ordinary notice of the intention to propose the resolution concerned at the meeting of the company. Notices of resolutions to remove a director elect, as a director in a public company a person who is 70 years or above must be special notices. Also in the case of special notice, where the intention to move a resolution requiring special notice has been given to the company and a meeting is called for a date twenty-eight days or less after the

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<sup>199</sup> Section 217 Ibid.

<sup>200</sup> Section 266(2) Ibid.

<sup>201</sup> Rule 12 Companies Winding Up Rules, 2011

<sup>202</sup> Section 236 CAMA

notice has been given, the notice though given within the time required shall be deemed to have been properly given.<sup>203</sup>

The difference between the ordinary notice and the special notice of company meetings is that the ordinary notice is issued by the company to its members for convening a meeting while special notice is notice issued by members to the company requisitioning a meeting of the company to pass a special resolution. Upon receipt the company will in turn issue a 21 days' notice to its members to convene the meeting requisitioned.

iii) Default Notice

Default notice on the other hand, is one that falls short of the period required for it. It is however validated by the action of those who are entitled to allege its invalidity. In the case of general meeting of members, a meeting maybe validly convened even when the period of notice given is shorter than twenty-one days. This is so, if in the case of meeting called as AGM, it is so agreed by all the members entitled to attend and vote thereat<sup>204</sup>. In the case of any other general meeting, by majority of members holding not less than ninety-five percent in the nominal value of the shares giving rights to attend and vote at the meeting or 95% of the total voting rights at that meeting of all members<sup>205</sup>. The assent of members may be given differently and need not be at the meeting.

### **3.2.5 Remedies for Failure to Give Notice of Meeting**

Where there is default in giving notice, two potential legal remedies are available and may be resorted to. Where the meeting is proposed, the aggrieved member or members can apply to court for an injunctive order to restrain the convening and or holding of the meeting in question. Where the meeting has been held, the member or

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<sup>203</sup> Section 236 Ibid.

<sup>204</sup> Section 217(2)(a) Ibid.

<sup>205</sup> Section 217(2)(b) Ibid.

members can apply to court for a declaratory order that the meeting is invalid and decision taken are null and void, and an order to set aside the entire proceeding. But where notice of a meeting has been given to a member and he did not attend the meeting, such member cannot have the meeting set aside simply because he did not attend the meeting. This was the decision in the case of *Osasanya v. Obadeyi*<sup>206</sup>. The court with jurisdiction to hear such applications is the Federal High Court.<sup>207</sup>

### 3.3 Quorum and Attendance at Meeting

Quorum is the minimum number of members that must be present at the meeting to enable the meeting start or before any business can be transacted. The first essential is to ensure that a quorum is present, for without a quorum the meeting will be a nullity. The law provides that unless otherwise provides in the articles no business shall be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business and throughout the meeting.<sup>208</sup> Thus, this provision applies only when there is no contrary provision in the articles. Normally, it is a matter for the articles of the company to fix the quorum but where it is silent the provision<sup>209</sup> which deals with the number of persons that constitute a quorum applies. That is 1/3 of members or 25 members (whichever is less) present in person or by proxy. But where the number of members is not a multiple of three, then the quorum shall be the number nearest to one-third, and when the number of members is six or less, the quorum shall be two members. In determining quorum members and proxies must be counted<sup>210</sup> and a person may be present at the meetings as two persons for the purpose of a quorum. Thus, he can

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<sup>206</sup>(1966) 2 A.L.R. Comm.

<sup>207</sup> Section 650 Ibid.

<sup>208</sup> Section 232(1) Ibid.

<sup>209</sup> Section 232(2) Ibid.

<sup>210</sup> Section 232(3) Ibid.

be present as a shareholder and also as a trustee of some shares which gives him the right to vote.<sup>211</sup>

Where a member withdraws from the meeting for what appears to the chairman, to be insufficient reason and for the purpose of reducing the quorum, and the quorum is no longer present, the meeting may continue with the members present and their decision will bind all the shareholders and where there is only one member, he may seek direction of the court to take decision.<sup>212</sup> On the other hand, where there's a quorum at the beginning, but no quorum subsequently due to some shareholders leaving for what appears to the chairman to be sufficient reason, the meeting will be adjourned to the same place and time, in a week's time, and if there is no quorum still at the adjourned meeting the members present will then be the quorum and their decision will bind all shareholders, and where only one member is present, he may apply to the court for directions to take a decision.<sup>213</sup>

If within one hour from the time appointed for the meeting, a quorum is not present, the meeting if convened on the requisition of members shall be dissolved, but in any other case, it shall stand adjourned to the same day in the next week, at the same time and place, or to such other time and place as the chairman and, in his absence, the directors may direct<sup>214</sup> and at the adjourned meeting, any two or more members present at the time and place to which the meeting is adjourned shall form a quorum, and if only one member is present, he may seek the direction of the court to take a decision.<sup>215</sup>

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<sup>211</sup> Neil Mcleod & Sons Ltd., Petitioners (1967) S.C. 16

<sup>212</sup> Section 232 (4) CAMA

<sup>213</sup> Section 232 (5) Ibid.

<sup>214</sup> Section 239(3) Ibid.

<sup>215</sup> Section 240(4) Ibid.

### 3.4 Chairman

The next step is to provide a chairman to preside over the meeting. Who he shall be again depends on the company's articles and, if they are silent, the Companies Act<sup>216</sup> provides that the chairman if any of the BOD, should preside as chairman at every general meeting of the company, or if there is no such chairman, or if he is not present within one hour after the time appointed for the holding of the meeting or is unwilling to act, the directors present will elect one of their members to be the chairman and if no director is willing to act as chairman, the members present can chose one of their members to be the chairman. It has also been said to be trite knowledge that unless otherwise provided, the chairman of a company is also chairman of the BOD.<sup>217</sup> The powers and duties of the chairman of the general meeting shall include the following:<sup>218</sup>

- a. To preserve order and take such measures as are reasonably necessary to do so,
- b. To see that proceedings are conducted in a regular manner.
- c. To ensure that the true intention of the meeting is carried out in resolving any issue that arises before it.
- d. Ensure that all questions that arise are promptly decided, and
- e. To act bona fide in the interest of the company.
- f. The chairman shall cast his vote bona fide in the interest of the company as a whole but if he is also a shareholder he may cast it in his own interest.<sup>219</sup>
- g. To adjourn the meeting at the direction of the meetings.<sup>220</sup>

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<sup>216</sup> Section 240 (2)&(2) Ibid.

<sup>217</sup> Chander v. Thadani (1980) FHCR 168

<sup>218</sup> Section 240 (3) (a) – (e) CAMA

<sup>219</sup> Section 240(4) Ibid.

<sup>220</sup> Section 239 (1) Ibid.

The position of the chairman is an important and onerous one, requiring great tact and firmness, and a fair sense of judgment. This is so, because the chairman will be in charge of the meeting and will be responsible for ensuring that its business is properly conducted. This may entail taking snap decisions on points of order, motions, amendments and questions, often deliberately designed to harass him and upon the correctness of his ruling, the validity of the action may depend. He will probably require his legal adviser to be at his elbow, and this is one of the occasions, when even the most cautious lawyer, will have to give advice without an opportunity of referring to the authorities.

Good chairmen are as rare as good statesmen-and almost as valuable, for whether the meeting will be long drawn out and inconclusive, or short and decisive, depends upon them.<sup>221</sup> It may be necessary to adjourn the meeting; for example, because time does not permit its business to be concluded in one day or because a quorum was not present. Section 239(1) of the CAMA confer on the chairman, with the consent of the meeting, to adjourn the meeting from time to time and from place to place but no business shall be transacted at any adjourn meeting other than the business left unfinished at the earlier meeting. An adjourned meeting requires no fresh notice but if a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.<sup>222</sup> If within one hour from the appointed time for the meeting a quorum is not present, the meeting if convened upon the requisition of members must dissolve but in any other case, it can be adjourned to the same day in the next week, at the same time and place or any other time or place the chairman and in his absence, the directors may direct.<sup>223</sup> At the adjourned date of the meeting any two or more members present at the place and time shall form a quorum and their decision shall bind all shareholders and if

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<sup>221</sup> Gower, L.C.B. (1979)*The Principles of Modern Company Law*.Op.Cit. at p. 14

<sup>222</sup> Section 239 (2) CAMA

<sup>223</sup> Section 239 (3) Ibid.

only one member is present, he may seek the direction of court to take a decision.<sup>224</sup> If the chairman improperly adjourns the meeting, the members may elect another chairman and carry on with the business of the meeting.<sup>225</sup>

The regulations normally deal specifically with the question of adjournment. If they are silent in both the regulations and the Act it is not clear whether it rests with the meeting or with the chairman to resolve on an adjournment, but it is clear that the chairman cannot capriciously at his own will and pleasure adjourn leaving the business uncompleted, and if he purports to do so, the meeting may elect another chairman and continue.

### **3.5 Resolutions**

The decision of a company takes the form of resolutions. To be effective, this must be passed at a general meeting of the company, but in the case of a private company, a written resolution signed by all the members entitled to attend and vote will be as effective as if it has been passed at a general meeting.<sup>226</sup>

There are two types of resolutions specified in the CAMA.

- (i). Ordinary resolution
- (ii). Special resolution

An ordinary resolution is a resolution passed by a simple majority of votes cast by members in person or by proxy at a general meeting.<sup>227</sup> A special notice may be required for certain ordinary resolutions. For example, section 262(1) & (2) of the CAMA, which requires only an ordinary resolution for the removal of a director, provides that special

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<sup>224</sup> Section 239(4) Ibid.

<sup>225</sup> John v. Rees (1969) 2 ALL E.R.274

<sup>226</sup> Section 234 CAMA.

<sup>227</sup> Section 233 (1) Ibid.

notice of that resolution must be given. Other resolutions which require special notice include resolution:

- a. For appointment or approving the appointment of a director over 70 years for public companies.<sup>228</sup>
- b. To appoint as some other person instead of the director so removed at the meeting at which he is removed.<sup>229</sup>
- c. Appointing as auditor a person other than a retiring auditor.<sup>230</sup>
- d. Filling a casual vacancy in the office of auditor.<sup>231</sup>
- e. To remove an auditor before the expiration of his term of office.<sup>232</sup>

“Special Notice” used above is here used in a different sense, for it means notice to the company of intention to move the resolution at the next meeting, and not notice by the company of the meeting. When a resolution requires special notice as above, notice of intention to move it must be given to the company not less than 28 days before the meeting and the company in turn is to give notice to members of the proposed resolution not less than 21 days before the meeting in the same manner as it gives notice of meeting and if it is impracticable to give the notice in the same manner as it gives notice of meeting the company shall advertise it in a newspaper or use any other mode allowed by the articles.<sup>233</sup> Had the section stopped there, there would have been an obvious loophole, for the managers having received the special notice could then have convened a meeting for less than 28 days after its receipt and thus rendered the notice out of time. Hence, the proviso expressly provides that in such a case the notice shall still be deemed to have been properly given, the notice though not given within the time required. That is to say if

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<sup>228</sup> Section 256 Ibid.

<sup>229</sup> Section 362 (2) Ibid.

<sup>230</sup> Section 364 (1) (a) Ibid.

<sup>231</sup> Section 364 (1) (b) Ibid.

<sup>232</sup> Section 364 (1) (d) Ibid.

<sup>233</sup> Section 236 CAMA.,

after notice of intention to move the resolution has been given to the company, a meeting is called for a date 28 days or less after the notice has been given, the notice will be deemed to have been properly given for the purpose of passing the resolution.<sup>234</sup> Receipt of special notice will therefore affect the form of the notice of the meeting, which will have to refer to the resolution concerned, presumably setting it out verbatim.

The second type of resolution is special resolution. This is a resolution passed by at least  $\frac{3}{4}$  (three-four) majority of members voting in person or by proxy at a general meeting of which not less than 21 days' notice specifying the intention to pass the resolution as a special resolution has been duly given.<sup>235</sup> Shorter notice may however be given if agreed to by majority holding not less than 95% of the nominal value of the shares or by members representing not less than 95% of the total voting right in case of company not having share capital.<sup>236</sup> Where a special resolution is required, the CAMA or Articles must expressly state so. Where they simply require the passing of a resolution by the company without specifying whether it is Ordinary or special resolution, ordinary resolution shall be deemed to apply.

The following are some of the circumstances where special resolutions will be required under the CAMA.

- i. To change the name of a company<sup>237</sup>
- ii. To alter any provision in the memorandum<sup>238</sup>
- iii. To alter the object clause of a memorandum<sup>239</sup>
- iv. To alter the Articles of Association of a company<sup>240</sup>

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<sup>234</sup> Ibid. (Proviso)

<sup>235</sup> Section 233 (2) Ibid.

<sup>236</sup> Ibid.

<sup>237</sup> Section 31 (3) Ibid.

<sup>238</sup> Section 44 (5) Ibid.

<sup>239</sup> Section 46 (1) Ibid.

<sup>240</sup> Section 48 (1) Ibid.

- v. To re-register a private company to public company<sup>241</sup>
- vi. To re-register an unlimited company as a private company limited by share<sup>242</sup>
- vii. To re-register public company as a private company<sup>243</sup>
- viii. To create reserve capital<sup>244</sup>
- ix. To reduce capital on the authorization of the Articles and with the consent of the court<sup>245</sup>
- x. To make the liability of directors unlimited on the authorization of the Articles<sup>246</sup>
- xi. To effect winding up by the court<sup>247</sup>
- xii. To wind up voluntarily<sup>248</sup>

Sometimes, one or more members may propose a resolution or make a statement for the consideration of a general meeting. Section 235 of the CAMA, provides for how and in what circumstances such a resolution or statement may be circulated to members.

First, the resolution must be one which can properly be moved and is intended to be moved at the meeting. Secondly, there must be a requisition in writing by one or more members representing not less than one –twentieth (1/20th) i.e. five percent of the total voting rights of all the members having at the date of the requisition a right to vote at the meeting or by not less than 100 members holding

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<sup>241</sup> Section 50 (1) (a) Ibid.

<sup>242</sup> Section 52 (1) Ibid.

<sup>243</sup> Section 53 (1) (a) Ibid.

<sup>244</sup> Section 99(1) Ibid.

<sup>245</sup> Section 106 (1) Ibid.

<sup>246</sup> Section 289 Ibid.

<sup>247</sup> Section 408 (a) Ibid.

<sup>248</sup> Section 457 (b) Ibid.

shares in the company on which has been paid up an average of not less than N500.00 per person.<sup>249</sup>

Thirdly, where the requisition requires notice of a resolution, a copy of the requisition signed by the requisitionist, must be deposited at the registered office of the company, not less than six weeks before the meeting and in the case of any other requisition, not less than one week before the meeting.

There must be deposited with the requisition, a reasonable sum sufficient to meet the company's expenses of giving the notice, but a requisition will be deemed to have been properly deposited if after its deposit, an annual general meeting is called for a date six weeks or less after the deposit of the copy.<sup>250</sup>

If the above requirements are complied with, the company must at its expenses (unless the company resolved otherwise) give notice of the resolution to members of the company entitled to receive notice of the next annual general meeting.

In the case of a statement referred to in the resolution, the company must also at its expense (unless otherwise resolved), circulate to members entitled to have notice of any general meeting, copies of the statement if not more than 1,000 words, and where the statement has more than 1,000 words, a summary of it should be circulated.<sup>251</sup> But the company is not bound to circulate a statement if on the application of the company or of a person aggrieved; the court is satisfied that the right to the circulation of the statement is being abused to secure needless publicity for defamatory matter.<sup>252</sup> Once the resolution has been circulated, it may be dealt with at

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<sup>249</sup> Section 235 (2) Ibid.

<sup>250</sup> Section 235 (4) Ibid.

<sup>251</sup> 235 (1) Ibid.

<sup>252</sup> Section 235 (5) Ibid.

an annual general meeting, and an accidental omission to give the notice to one or more members will not invalidate the notice.<sup>253</sup>

As we have already seen, Section 235 of the CAMA entitles a member or more, holding not less than one-twentieth of the votes or not less than 100 members holding shares in the company on which there has been paid an average of not less than N500.00 per person, to use the company's machinery for circulating resolution to be moved at AGM. In addition, it further entitles them to require the company to circulate statements not exceeding 1,000 words in length, with respect to any business to be dealt with at any meeting. The opposition, therefore, can now use company's machinery for the dispatch of circulars whether in support of their own resolutions or in opposition to any proposals of the board.

In practice, however, this provision is of little value. This is because the requirements for circulation of member's resolutions has created a lot of stumbling blocks, in the part of desiring members who would want to urge the company to circulate a memorandum articulating the members position on any issue at stake. While management is at liberty to include any matter in the agenda for discussion at the general meeting and can employ the company's funds to circulate proposed resolutions to members, the members cannot freely do so. Members wishing to do so, must meet certain conditions and even when these conditions are met, a company shall still not be bound to give notice of any such resolution or circulate any such statement, unless there is deposited with the requisition a reasonable sum sufficient to meet the company's expenses in circulating the statement. Hence members determine to do battle with the board, are probably well advised, to disregard section 235.

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<sup>253</sup> Section 235(6) Ibid.

Whether they do so or not, they start with severe handicaps, the least of which is that they will have to draw on their funds, not on those of the company.

### **3.6 Voting on Resolutions**

The resolution is decided by the votes of members. Only members have a right to vote, and so, even directors cannot vote at general meetings, unless they are members.<sup>254</sup> Voting may take the form of a show of hands or a poll. Unless a poll is demanded, voting generally is in the first instance, on a show of hands<sup>255</sup>, i.e., those present indicate their views by raising their hands. On a show of hands, every member or proxy has one vote, but on a poll, a member's voting power depends on his shareholding. In other words, voting on a show of hands takes care of the numerical majority while a poll takes care of the financial majority which depends on the number of shares held in the company. i.e. the more shares a member have the more votes. Where shares are jointly held, the vote of the person whose names appear first on the register is accepted to the exclusion of other joint holders<sup>256</sup>. Recognizing the limitation of human anatomy, regulations generally provide for one vote only, per person on a show of hands, irrespective of the number of shares held. This will apparently be implied in the absent of any express provision. For this reason, the result on a show of hands, may give a very imperfect picture of the true opinion of the meeting. If the resolution is uncontroversial, a vote by show of hands will probably suffice and will save time and trouble, and on such matters the chairman's statement that the resolution is carried will normally be undisputed. But on any disputed question a poll will almost certainly be demanded.

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<sup>254</sup>Odumody v. Mohammed (1973) NCLR 452

<sup>255</sup> Section 224 (1) CAMA

<sup>256</sup> Section 227 (2) Ibid.

A poll shall be demanded before or on the declaration of the result of the show of hands and the persons who can demand a poll are:<sup>257</sup>

- (a) The Chairman of the meeting where he is a shareholder or a proxy.
- (b) At-least three members present in person or by proxy.
- (c) Any member or members present in person or by proxy and representing not less than one-tenth of the total voting right of all the members having the right to vote at the meeting being shares on which an aggregate sum has been paid up or
- (d) 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 share conferring that right.

Unless a poll is demanded, a declaration by the Chairman that resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that in the book containing the minutes of the proceedings of the company shall be conclusive evidence of the fact.<sup>258</sup> The right to demand a poll on any question cannot be taken away by the articles of the company except in respect of the election of the Chairman of the meeting or the adjournment of the meeting nor must the articles make ineffective a demand for a poll made by:

- (a) The Chairman where he is a shareholder or a proxy, or
- (b) At-least three members present in person or by proxy, or
- (c) Any member or members present in person or by proxy representing not less than one-tenth of the total voting or

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<sup>257</sup> Section 224 (1) Ibid.

<sup>258</sup> Section 224 (2) Ibid.

- (d) A member or members holding shares having a right to vote on which a sum has been paid up equal to not less than one-tenth of the total sum paid up on all the share conferring that right.<sup>259</sup>

This provision therefore, makes it impossible for the articles to hamstring a sizeable opposition by depriving them of their opportunity to exercise their full voting strength. Nevertheless, it may still mean that the members who can out-vote all the others, will (if less than three) never have the opportunities of doing so, because they cannot effectively demand a poll. But in respect of the election of the members of the Audit committee, there shall be right to demand a poll on such matter.<sup>260</sup> This is to ensure that the small shareholders who normally have a little say in the management of the company are not excluded from the committee.

As to the manner of taking a poll, the normal method is for the members present in person or by proxy, to sign lists or slips indicating whether they vote “For” or “Against” and the number of votes that they are polling. When a poll is taken, a member entitled to more than one vote, need not use all his votes or cast all the votes he uses, in the same way.<sup>261</sup> This provision is entitled for the benefit of the nominee companies and proxy holders, who are thus enabled to give effect to the instructions of their various principals.

Clearly, the number of votes cast will require careful checking to ensure that members have not purported to exercise more votes than they in fact have, hence the practice of adjourning to declare the result at a future date. For this purpose, it is advisable for each side to appoint scrutinisers, who should confirm and agree on the result and report to the Chairman. It should be noted that, unless the articles specifically

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<sup>259</sup> Section 225 (1) Ibid.

<sup>260</sup> Section 225 (3) Ibid.

<sup>261</sup> Section 226 (1) Ibid.

authorize it (which is unusual), voting by postal ballot is not permitted. This may well be thought strange, for clearly such a general referendum, is by far, the best method of obtaining the views of the members as a whole.

If a poll is duly demanded, it must be taken in such manner, as the Chairman direct and the result of the poll shall be deemed to be the resolution of the meeting at which the poll was demanded<sup>262</sup> but if it is on the election of a Chairman or on question of adjournment, it must be taken forthwith.

In the case of equality of votes, whether on a show of hands or on a poll, the chairman shall be entitled to a second or casting votes and any business other than that upon which a poll has been demanded, may be proceeded pending the taking of the poll.<sup>263</sup>

### **3.7 Proxy**

A proxy is the person mandated by a member of a company to represent him at the company's meeting. The proxy may or may not be a member of the company. The provision of section 230 of the CAMA sets out the process of using proxies at company meetings. Section 230 (1) provides thus:

Any member of a company entitled to attend and vote at a meeting of a company shall be entitled to appoint another person (whether a member or not) as his proxies to attend and vote instead of him, and a proxy appointed to attend and vote instead of a member shall also have the same right as the member to speak at the meeting. Provided that, unless the articles otherwise provide, this section shall not apply in the case of a company not having a share capital.

To ensure that a member is aware of his right to appoint proxy, section 230 (2) provides that in every notice calling a meeting of a company having a share capital, there shall appear with reasonable prominence, a statement that a member entitled to attend and vote is entitled to appoint a proxy or, where that is allowed, two or more proxies, to attend and

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<sup>262</sup> Section 226 (2) Ibid.

<sup>263</sup> Section 226 (3) & (4) Ibid.

vote instead of him, and that a proxy need not be a member and, if default is made in complying with these requirements every officer of the company who is in default is guilty of an offence and is liable to a fine of N250.

It would have been apparent, from the foregoing, that proxies play a vital part in modern company meetings. At common law, attending and voting had to be in person<sup>264</sup>, but it later became the normal practice to allow these duties to be undertaken by an agent or proxy<sup>265</sup>, which is now recognized by the Companies Act. Until the 1948 Company Act, however, the right to vote by proxy at a meeting of a registered company was dependent upon express authorization in the articles. In practice, this was almost invariable given; but not infrequently it was limited in some way, generally by providing that the proxy must himself, be a member. Where there was such limitation, the scales were further tilted in favour of the board, for a member wishing to appoint a proxy to oppose them, might find difficulty in locating a fellow member prepared to attend and vote on his behalf. To remove this stumbling block, it is now expressly provided that a proxy need not be a member.

In practice, the directors send out proxy papers with the notice of meeting in which they offered or nominate themselves as proxies in the alternative and a return of these papers, will inevitably strengthen the control of the directors at the general meeting. The result is that quite apart from the control of the administration of the company, the directors may be able to carry the general meeting even though they, together, hold among them minority shares. It has also been customary, to provide that proxy forms must be lodged in advance of the meeting. While this is a reasonable provision, in as much as it is necessary to check their validity before they are used at the meeting, it too could be used to favour the board if the period allowed for lodging was unreasonably

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<sup>264</sup>Harben v. Phillips (1883) Ch.D. 14, C.A

<sup>265</sup> The word proxy is used indiscriminately to describe both the agent and the instrument appointing him.

short. Moreover, as already pointed out, it had become the practice for the board to send out proxy forms in their own favour, with the notice of the meeting and for these to be stamped and addressed at the company's expense. However, a company cannot by its articles or otherwise, requires more than 18 hours' notice for the appointment of proxy.

Any provision in the company's articles, requiring the proxy instrument to be received by the company more than 18 hours before the meeting shall be void<sup>266</sup>. Where proxy papers are solicited at the expenses of the company and specified persons are named as proxies, or a list of persons willing to act is given, the invitation must be sent to all members entitled to attend and vote.<sup>267</sup> The board cannot invite only those from whom they expect a favourable response. In reality, individual members, seldom and meaningfully, utilize the proxy instrument for their benefits because of director's practice of offering themselves to members especially the large block shareholders as willing proxies which they often generously get, only to secure for resolution in their favour. For all these reasons, although proxy voting gives an appearance of democratic freedom, this appearance is often deceptive and in reality, the practice helps to enhance the dictatorship of the board over the members.

The form of the instrument appointing the proxy is determined by the articles. It may be a general proxy which appoints a person to vote as he thinks fit after listening to the various arguments on the resolution, or it may be a special proxy in other words, "a two-way proxy" which enable the members to direct the proxy to vote "For" or "against" any resolution and therefore provides that "this form is to be used in favour of/against the resolution". This will no doubt give greater reality to the control by the shareholders over the directors.

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<sup>266</sup> Section 230 (3) CAMA

<sup>267</sup> Section 230 (4) Ibid.

The instrument appointing a proxy, must be in writing, under the hand of the appointer or his attorney and in the case of a corporation, under the seal of the corporation or hand of an officer or attorney.<sup>268</sup> The instrument and the power of attorney must be deposited at the registered or head office of the company or other specified place in Nigeria, not less than 48 hours before the meeting at which the proposed proxy is to vote, or in the case of a poll, not less than 24 hours before the time of taking poll.<sup>269</sup> If default is made in complying with the above, the instrument of proxy is treated as invalid.

A vote given by a proxy in accordance with the terms of a proxy, is valid, notwithstanding the previous death or insanity of the principal, or the revocation of the proxy or authority, or the transfer of the shares in respect of which the proxy is given, provided that no intimation in writing of such death, insanity, revocation or transfer has been received by the company before the commencement of the meeting at which the proxy is used.<sup>270</sup> This provision, is clearly effective as between the company and the member and it has even been held that the company must disregard notice of revocation received out of time.<sup>271</sup> On the other hand, a member who has appointed a proxy may attend the meeting and vote and the company must then accept his vote instead of the proxy's i.e. any vote cast by the proxy on the particular resolution will be rejected.<sup>272</sup> This, however, does not revoke the appointment of the proxy who may vote on some other resolution on which the member does not vote.<sup>273</sup> On ordinary agency principles, it is clear that as between the member and his proxy, a revocation is always effective if notified to the proxy before he has voted, unless the agency is irrevocable and that if he disregards it, he usurps an authority and is liable to his principal.

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<sup>268</sup> Section 230 (6) Ibid.

<sup>269</sup> Section 230 (7) Ibid.

<sup>270</sup> Section 230 (5) Ibid.

<sup>271</sup> *Spiller v. Mayo (Rhodesia) Development Co. Ltd* (1926) W.N. 78

<sup>272</sup> *Cousins v. International Brick Co. Ltd* (1931) Ch. 90 C.A.

<sup>273</sup> *Ansett v. Butter Air Transport Ltd. (No.2)* (1958) 25 WN (NSW) 306.

It cannot be said, however, that these provisions have done much to curtail the tactical advantages possessed by the board. They still strike the first blow and their solicitation of proxy votes is likely to meet with a substantial response before the opposition is able to get under way. Even if the proxies are in the “two way” form, many members will complete them after hearing but one side of the case<sup>274</sup> and only the most intelligent and or obstinate are likely to withstand the impact of the, as yet, uncontradicted assertions of the directors. The final questions of interest relating to proxies are whether a valid proxy can do whatever his principal can do and whether he is compelled to exercise the authority conferred upon him.

The legal effect of S. 230 of the CAMA, is that the proxy is as good as the principal. It is deemed in law, that the presence of the proxy, pre-supposes the presence of the principal and in that capacity, can do whatever the principal can do. But as to whether the proxy is compelled to exercise the authority conferred on him, unless there is a binding contract or some equitable obligation compelling him to do so, the answer appears to be in the negative. Normally there is only a gratuitous authorization, imposing no positive obligation on the agent, but merely a negative obligation not to vote contrary to the instruction of his principal if he votes at all. But where they may be a binding contract, if, for example, the proxy is to be remunerated. Or they may be a fiduciary duty, if, for example the proxy is the principal professional adviser. Although the directors are not normally in a fiduciary relationship to individual members, it seems that if they are appointed proxies and instructed how to vote they must obey their instructions otherwise the two-way proxies would be valueless for the board would only use the favourable proxies and ignore the others.

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<sup>274</sup> Psychologically the fact that the forms are stamped and addressed is of immense important. and most two-way proxies provides that if neither for or Against is deleted the proxy will be used as the proxy thinks fit (i.e as the board wish)

Similarly, anyone who solicits proxies stating that he will use them in a certain way as instructed, will, it is thought, be under a legal obligation to do so as he has stated. But failing any such statement or definite instruction from his principal he will have a discretion and if he exercises it in good faith he will not be liable, whichever way he votes or if he refrains from voting.

A company which is a member of another company, shall be represented at the general meeting of that company, of which it is a member by a person authorized on a resolution of the BOD or other Governing Council<sup>275</sup>. Since a company or other corporation is an artificial person, who must act through agents or servants, it might be supposed that, when a member of another company, it could only attend and vote at meeting of that company by proxy. This, however, is not so. Section 231 (1) of the CAMA, provides that the member company may, by a resolution of its directors or other governing body, authorize such person as it thinks fit, to act as its representative at meetings and that the representative may exercise the same power as could his company if it were an individual. It is therefore normally preferable for a company to attend and vote by representative rather than by proxy, for the representative is in a stronger position since he may always speak, and vote on a show of hands as well as on a poll.

### **3.8 Registration of Resolutions**

Normally, resolutions are a matter of purely domestic concern (part of the company's indoor management). The only statutory requirement, is the provision that minutes shall be recorded in a book for that purpose.<sup>276</sup> Minutes, if purporting to be signed by the chairman of the meeting or next succeeding meeting, are evidence (but of course, not conclusive evidence) of the proceedings and the meeting is presumed to have

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<sup>275</sup> Section 231 CAMA 2004

<sup>276</sup> Section 241 (1) Ibid.

been duly held, convened, and regularly conducted.<sup>277</sup> Such minutes, are open for inspection by members and not by others.<sup>278</sup> Certain resolutions, on the other hand, are clearly of concern to third parties, and copies of these have to be filed with the CAC. Section 237 (1) of the CAMA provides that a printed copy of certain resolutions or agreements must be sent to the CAC within 15 days of passing the resolution for registration. The resolutions and agreements are as follows.<sup>279</sup>

- (a) A special resolution
- (b) Unanimous resolution on issue which requires special resolution.
- (c) Unanimous class resolutions
- (d) Resolution requiring a company to wind up voluntarily under Section 457(a).

All these, it would be appreciated, may well affect third parties, and this is especially so in the case of special resolutions, changing the constitution of the company by varying the articles. There are therefore, taken outside the bounds of indoor management and any one dealing with the company will be deemed to have notice of them when registered, and cannot assume that a needful resolution of one of the prescribed classes has been duly passed if a copy has not been filed.

The CAC may refuse to register a resolution altering the provisions of company's memorandum, if satisfied that the alteration is not in compliance with the requirement of the CAMA and which the CAC so refuses, it must notify the company accordingly and any person so aggrieved by the refusal may appeal to the court within 21 days from the receipt of the notification.<sup>280</sup> A copy of every registered resolution or agreement as

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<sup>277</sup> Section 241 (2) & (3) Ibid.

<sup>278</sup> Section 242 (1) Ibid.

<sup>279</sup> Section 237 (4) Ibid.

<sup>280</sup> Section 237 (2) CAMA 2004;Salgitter (WA) Ltd. v. Registrar of company (1975) 2 ALR Comm.393: or (1974) FRCR 215;

specified above must be embodied in or annexed to every copy of the articles issued after the passing of the resolution or the making of the agreement.<sup>281</sup>

### **3.9 Minutes of Meeting: The Form, Custody and Nature**

Every company must cause minutes of proceedings of its general meetings, board of directors and management meetings to be recorded in a book kept for that purpose<sup>282</sup>, at its registered office.<sup>283</sup> As to what amount to “books” kept for that purpose, S. 550(1) of the CAMA provides as follows:

Any register, record, index, minutes of book of account required by this Act to be made and kept by a company may be made by making entries in bound book or in loose leafs, whether pasted or not, or in a photographic film form, or in any information storage device that is capable of reproducing the required information in intelligible written form within a reasonable time, or by recording the matters in question in any other manner in accordance with accepted commercial usage

This provision, which widens the provision of section 138 of the Companies Act, 1968 was apparently prompted by the decision in *International Agricultural Industries Nig. Ltd v. Chika Brothers Ltd*<sup>284</sup>, where it was held that a minutes book sought to be tendered which consisted of typed loose sheets of the minutes were subsequently pasted in a book does not constitute a minute book under the provision of section 138 of the Companies Act, 1968. This decision was reversed on appeal.<sup>285</sup>

Section 550 (2) &(3) of the CAMA permits a register, record, index, minutes book or book of account not kept in a bound book but by some other means provided adequate precautions are taken against falsification and for facilitating its discovery.

If minutes are signed by the Chairman of the meeting before whom the proceedings were held or by the Chairman of the next succeeding meeting, this will be evidence of the

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<sup>281</sup> Section 237 (3) CAMA 2004

<sup>282</sup> Section 241 (1) Ibid.

<sup>283</sup> Section 242 (1) Ibid.

<sup>284</sup> (1987) 4 NWLR (Pt. 63) 92.

<sup>285</sup> (1990) 1 NWLR (Pt. 124)70

proceedings and until the contrary is proved, the meeting will be prima facie deemed to have been duly held.<sup>286</sup> But such minutes can still be contradicted by other evidence.<sup>287</sup> In *Oguntayo v. Adebute*<sup>288</sup>, it was held that the fact that the minute's book of a company contains some inaccuracies or the like, it will not necessarily cease to be a minute's book. The minute's book is open for inspection by members free of charge for at least six hours each day<sup>289</sup> and every member is entitled on request to be furnished, within seven days, with a copy of the minutes at a charge not exceeding 10 kobo for every 100 words.<sup>290</sup> If inspection is refused or a copy is not supplied as provided by the Act, the court may, by order, compel an immediate inspection of the minutes and in addition, every officer of the company who is in default is punishable with a fine.<sup>291</sup>

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<sup>286</sup> Section 241 (1) & (3) CAMA 2004; *Tung v. Nigeria Carton & Manufacturing Co. Ltd.* Suit No. FRC/L/M/82/78/(unreported)

<sup>287</sup> *International Agricultural Industries Nig. Ltd v. Chika Brothers Ltd.* (1987) 4 NWLR (Pt. 63) 92.

<sup>288</sup> (1997)12 NWLR (Pt. 531) 83 at 95

<sup>289</sup> Section 242 (1) CAMA 2004

<sup>290</sup> Section 242 (2) Ibid.

<sup>291</sup> Section 242 (3) & (4) Ibid.

## CHAPTER FOUR

### LIMITATIONS ON THE POWERS OF THE GENERAL MEETING

#### 4.1 Introduction

The ultimate control of a company, rests with the general meeting. Thereasons for this are not farfetched. The general meeting considers and approves the election and reports of directors, appointment and remuneration auditors, as well as financial statements and dividend proposal. Similarly, alteration of the memorandum and articles of association, alteration of share capital, removal of directors and winding up of the company, cannot be given effect, unless sanctioned by members in general meeting. Further, the general meeting may be vested with the residential powers of the company where there is a deadlock or disqualification of the board<sup>292</sup>. Thus, the intendment of the CAMA, is that the members exercise control and direct the affairs of the company. To strengthen their power, the CAMA further avails the members with the following judicial remedies for breach of directors' duties:

- (a) action in restitution to recover secret profits<sup>293</sup>;
- (b) action in damages and compensation; In *Georgewill v. Ekinne*<sup>294</sup> a director was held liable in damages for diverting and misappropriating company funds for her personal benefit.
- (c) action in the name and on behalf of the company if the board of directors refuse or neglect to do so<sup>295</sup>. In *Ladejobi v. Odutola Holdings Ltd*<sup>296</sup>, the respondents sought inter-alia, a declaration against the convening of a

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<sup>292</sup> Section 63 (5) CAMA; *Eboni Finance & Securities v. WoleOjo Technical Services* (1996)7 NWLR (Pt.461) 464

<sup>293</sup> Section 280 (4) CAMA 2004

<sup>294</sup> (1998) 8 NWLR (Pt.562) 454.

<sup>295</sup> This would be pursuant to section 63(5) CAMA

<sup>296</sup> (2003) 3 NWLR (Pt.753) 121

meeting by the directors of the respondent company, which adversely affected their respective right in the company.

- (d) restoration of the company's property<sup>297</sup>;
- (e) winding up proceedings on just and equitable grounds<sup>298</sup>; members may also pursuant to section 507 CAMA institute misfeasance proceedings in a winding up proceedings against directors who have applied company funds or are in breach of duty in relation of the company.
- (f) relief on grounds that the affairs of the company are being conducted in an illegal or oppressive manner<sup>299</sup>;
- (g) apply to CAC to investigate the company's affairs<sup>300</sup>.

In reality, the members hardly ever exercise its powers as they should because of a combination of many factors. For instance, the point has been made that the general meeting considers and approves the appointment and remuneration of auditors as well as the financial statement of the company. This ensures that the board observes financial discipline in the management of the company. However, in practice, the shareholders usually rubber stamp the financial statements presented to it, sometimes assuming that the financial statements having gone through internal audit controls ought to be in order.

The result in many cases, is that, the general meeting becomes merely an approval or confirmatory body of the Board. This is because in exercising the powers reserved for shareholders at the members' general meeting, shareholders are faced with a number of constraints. It has been argued that shareholders have an incentive to invest resources in curbing both managerial and owner opportunism, however, the recent experiences in Nigeria

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<sup>297</sup>Section 284&286 CAMA prohibit substantial property transactions involving directors or persons connected to him; and such transactions entered into shall be regarded as voidable at the instance of the company

<sup>298</sup> Sections 408& 507 CAMA

<sup>299</sup> Section 311 Ibid.

<sup>300</sup> Section 214 & 215 Ibid

show that shareholders that are most capable of curbing board and managerial excesses and maladministration using the opportunities the general meetings afford them are faced with a number of constraints.

These constraints lie basically with how such meetings are summoned, held and conducted, while others are the result of the inadequacies of the provisions of CAMA on company meetings and some of the constraints, are caused by the shareholders themselves. It must be pointed out however, that although shareholders are sometimes to blame themselves for the constraints they face, it is no valid excuse for the Board's default to ensure sound corporate governance.

Such factors that undermine the powers reserved for shareholders at the members' general meeting, include the cost of attending meetings, ignorance of the powers available to them, lack of understanding of financial report presented at the meetings and the lack of any willingness of even the majority shareholders to press the Board of Directors on issues to mention but a few. It is these constraints faced by shareholders at the members' general meeting that we now turn to.

#### **4.2 Dispersal or Wide Distribution of Share Ownership**

The dispersal of share ownership in quoted companies means that a relatively small concerted block of voting shares will generally be sufficient to control the general meeting. Commenting on this phenomenon, Midgley in his empirical studies, confirmed: "Nevertheless, most of these holdings are relatively small and the holders are for the most part inactive. They are also numerously dispersed and they rarely attend meetings."<sup>301</sup> In normal circumstances, the large majority of small and medium shareholders are unlikely to exercise their voting rights at all, if they do to act in a concerted way. A block of votes amounting to as little as one in ten or

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<sup>301</sup>Midgley, Y.K. (1975) Companies and their Shareholders: The uneasy Relationship. Lloyds Banks, P. 29 & 37

twenty, may thus be sufficient to ensure control. As long as this controlling group acts in a concerted way, its position is virtually impregnable.<sup>302</sup> To get these dispersed shareholders to all attend company meetings, is almost impossible. Consequently, general meetings of companies continue to record very low turnout.

### 4.3 The Directors Effective Control of General Meeting

The BOD has effective control over the proceedings at the general meeting. The rules on meeting are drawn up in such a way that directors have a wide discretion as regards the agenda for deliberation. At general meetings, the chairman of the board who doubles as the chairman of the meeting conducts the deliberation. Questions are preferred from praise singers with little or no room for critics. Recalling shocking experiences at Companies General Meetings in Nigeria, Asalu once Exclaimed: “Many AGM’s ended in 15 minutes. And I was genuinely frightened on two occasions. What sort of thing is going on here? Is that how meetings are held?”<sup>303</sup> There’s hardly any way a dissatisfied shareholder can insist on being heard. On this trend, Dr.Hadden observed:

There is no way in which a dissatisfied shareholder may insist on a satisfactory answer, or indeed an answer at all, to a question which he wishes to raise and discuss. There is no legal obligation on directors to answer questions, though they will normally seek to give at least the appearance of doing so. Where a shareholder wishes to pursue an issue in depth, however, they will usually take refuge in the overall principle that the day to day administration of the company’s affair is a matter for the directors and not the shareholders. Alternatively, the Chairman may rule that any discussion of an issue which is not directly relevant to a resolution which has been duly circulated is out of order. In one recent case in which a shareholder wished to discuss a company’s investment in South Africa, the Chairman, having heard the shareholder’s initial question and given an unsympathetic answer, simply proceeded with the rest of the formal business of the meeting allowing the shareholder in question to continue his harangue at the back of the hall. It is only where a majority of shareholders present wish to pursue an issue that there is an effective pressure on directors to deal with it in detail. Even then, the directors may refuse to reveal the facts on the ground of confidentiality or the absence of any legal obligation to do so.<sup>304</sup>

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<sup>302</sup>Hadden, T., (1972) *Company Law and Capitalism*. WeidenFied and Nicolson, London, 2<sup>nd</sup> Edi. P. 324

<sup>303</sup>Amaefule, E. &Asalu, A. (June 1998) *shareholders Ombudsman*, Industrial leaders Magazine, Vol. 2, No.4, P. 39

<sup>304</sup>Hadden, T. *Op.Cit.* at P. 108

On the sum effect of all these, chief Shonekan once opined:

Unless there is a measure of disunity among the members of the board itself, there is very little that the shareholders can do to exercise significant degree of control over the affairs of the company, even if the company is not doing well. The law and other rules and regulations had been built up in such a way as to make them so.<sup>305</sup>

#### 4.4 Circumventing the Appointment Power of General Meeting

In law, the only power of the shareholders through the AGM relates to the appointment and removal of directors. In *Longe v. FBN Plc*<sup>306</sup> the court held that ‘members of a company at the annual general meeting shall have power to re-elect or reject directors and appoint new ---’. But this power is usually circumvented by the BOD. In addition to the directors’ effective control of the general meeting, the directors have developed tactics to undermine the members’ power of election at the general meeting. To do this, the BOD usually arranges for outgoing directors to resign in mid-year (of course with a golden hand shake) and using the board’s power to fill casual vacancy, the directors will then proceed to co-opt new directors of their choice on board, and who at the next AGM is presented to the members for confirmation. In this way, the BOD is able to avoid presenting any effective choice to shareholders other than the confirmation of the choices of the BOD. In *National oil and chemical Marketing Plc*<sup>307</sup>, two directors vacated the board on the 21st April, 1997 and 9th May, 1997 respectively. On the same date, the board co-opted two new directors and presented them for “re-election” (not election) at the company’s AGM on the 30th July, 1997. This way the power of the shareholders at the AGM was circumvented. And if any opposing candidate is actually put up

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<sup>305</sup>Shonekan, E.O. (1989) Conduct of Annual General Meeting. A Paper Presented at the Nigerian Stock Exchange Conference on ‘Corporate Responsibilities to shareholders and Society’ in Nigeria, held at Abuja on 27th November.

<sup>306</sup>Supra at p. 2

<sup>307</sup> Annual Report and Account of National Oil and Chemical Marketing Plc, 1996 P.2 & 7.

the existing board will usually be able to muster sufficient votes in the manner just described to defeat the attempt.

#### **4.5 Control of Proxy Instrument/Proxy Solicitation**

The proxy instrument was conceived to give members of a company, the opportunity to participate in decision making at the General Meeting even when they are absent. Any member of a company entitled to attend and vote at a general meeting of the company shall be entitled to appoint another person, whether a member or not, as his proxy to attend and vote on his behalf. In reality or practice, individual members seldom and meaningfully utilize the proxy instrument for their benefits. It is a common practice for the directors to send out notice of meeting with proxy papers offering themselves to members especially the large block shareholders as willing proxies, which they often generously get only to secure support for resolution in their favour. Dr. Hadden on this trend observed:

But management can usually count on a sufficient number of general proxies authorizing them to act on their discretion to counteract any attempt by an opposing group of shareholders to dispute an important resolution. Thus even if an opposing group does exist exercise its right to propose critical resolutions the well-established inertia of ordinary shareholders when faced with a request for actual involvement in the affairs of their company by exercising their votes in a specific way removes any serious threat to the position of management.<sup>308</sup>

This practice, gives the directors an edge even at general meeting of the company, that the general meeting cannot constitute any check on the management. It is therefore, hereby recommended that this common practice for the directors to send out notice of meeting with proxy papers offering themselves to members especially the large block shareholders as willing proxies, should be prohibited by the CAMA to close any opportunity to manipulate proxies, to their advantages.

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<sup>308</sup>Hadden, T. Op. Cit. at P. 108

#### **4.6 Mechanics of Meetings**

Some of the procedures of the general meeting are such that members are placed at a disadvantage. For a meeting to be convened and held, due notice of the date, time, place and venue must be given to the members, either personally or by post at the members' registered address at least 21 days before the meeting. Where a notice is sent by post (the method generally used by companies for notice of meeting is rarely sent personally), service of the notice is deemed to be delivered after seven days of posting the notice. This, in practice, is very unrealistic. In Nigeria, the postal system is very slow so much so that mails often take months to get to their destinations. Therefore, to deem a notice sent from Lagos to Sokoto by ordinary post as having been delivered at the expiration of seven days is unrealistic.

Consequently, notices are either not sent or sent late and received after the intended meeting has been held, thereby disenfranchising the members from attending and voting at the meeting. The writer once experienced how the notice of a meeting of the 21st AGM of Zenith Bank Plc scheduled to hold at Victoria Island Lagos on 3rd April, 2012 was received in Abuja together with the 2011 Group Annual Report and Financial Statements by DanAmeh Investments (Nig) Ltd. on the 13th April, 2012 that is to say 10 days after the meeting was held. It was amazing to also see, again, the notice of the 22nd AGM of Zenith Bank Plc scheduled to hold at Lagos on 24th April, 2013 was received together with the 2012 Group Annual Report and Financial Statements by DanAmeh Investments (Nig) Ltd. on the 7th May, 2013, that is to say 13 days after the meeting was held. In 2011, the writer received in Zaria, the notice of EGM of Fidelity Bank Plc. scheduled to hold on Thursday, 16th December, 2010 at Eko Hotel, Lagos. This was the first time and the only time, the writer ever received the notice of general meeting of Fidelity Bank Plc. since 2004, when the writer became a shareholder of the company.

It is therefore the view of the writer that this provision that service of the notice of meeting is deemed to be delivered after seven days of posting the notice is obsolete and no longer serve as an efficient and effective means of communication in view of the emergence of courier services and the advancement in technology. Through advancement in technology notices and correspondence can now be sent through e-mails, text messages to mobile phones and other electronic means of communications and are received immediately.

Moreover, the venue of the meeting is in most cases is very far away from the members that the members find it very difficult to attend meetings even if they received notice of meeting far ahead of time. In Nigeria for example, most of the companies usually hold their meetings in Lagos instead of Abuja the nation's capital which is located at the centre.

Another limiting rule as regards general meeting is section 235 of the CAMA on circulation of members' resolution. While management is at a liberty to include any matter in the agenda for discussion at the General Meeting and can employ the company's funds to circulate proposed resolutions to members, the members cannot freely do so. Members wishing to include any matter for discussion at the meeting and to circulate such proposed resolution to members for deliberation at the General Meeting have two wide rivers to cross.

Firstly, only a member or members representing not less than 1/20th of the total voting rights of all the members having a right to vote at the meeting to which the requisition relates or not less than 100 members holding shares in the company in which there has been paid an average sum per member of not less than N500 can so apply. Secondly, the statement to be circulated with the Notice of Meeting shall not exceed one thousand words and where the statement is more, the company is at liberty to circulate a summary of it. Even when these initial hurdles have been crossed, a company shall still not be bound to give Notice of any such resolution or circulate any such statement unless there is deposited with the requisition a sum reasonably sufficient to meet the company's expenses in circulating the statement.

If on the application of the company or any aggrieved person, the court is satisfied that the right conferred by section 235 of the CAMA is being used to secure needless publicity for defamatory matters, it may deny to the requisitionists, the right to circulate their statements. In addition, the court may order that the cost of the application at the instance of the company or the aggrieved person, be paid in whole or part by the requisitionist who was not even a party to the proceedings.

The sum effect of all these is that stumbling blocks are created in the path of desiring members, who would want to urge the company to circulate a memorandum articulating the members' position on any issue at stake. While the BOD can freely do so at the company's expenses, members cannot and even stand the risk of being penalized in costs. This gives to management an easy reach-out to members sympathetic to their cause at the expense of members, who are opposed to same.

#### **4.7 Apathy of Members and Lack of Requisite Information**

Quite apart from the position of the law, shareholders themselves display great apathy towards the affairs of their companies because of the realities within the corporate set up. The majority of shareholders do not attend meetings, and if they do, they are not accommodated. A good number of those who attend meetings, lack the business knowledge or expertise to confront the directors. In most cases, they may also have no access to information with which to challenge the directors and thus forced to rely on the directors.

#### **4.8 The Rule in Foss v. Harbottle<sup>309</sup>**

The proper Plaintiff rule enunciated in the case above further ensures shareholders apathy to meetings. In this case, it was established that whenever it is alleged that directors or

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<sup>309</sup> (1843) 2 Hare, 46,

management of corporation have breached their duties to the company, the proper Plaintiff to remedy the situation is the company itself, through the action of the majority.

Intrinsically, this rule has some benefits. Since companies are democracies, it recognizes the right of the majority to have their way at meetings. The rule also reinforces the corporate personality principles, prevents multiplicity of suits that would have been the case, if every member is allowed to litigate wrongs done to the company. It helps to prevent court orders from being rendered nugatory by a subsequent decision of the General Meeting to legitimately embark on a contrary course.

The above notwithstanding, the rule does not seem to appreciate the intrigues in the exercise of corporate powers. It reflects the weakness of the minority shareholders' position in the company against those of a controlling faction. The position of the minority shareholders is usually more unstable consequent upon the narrow perception of the rule, which allows only a company through its majority shareholders to assert the legal rights of the company<sup>310</sup>. Simply put, the rule does not take cognizance of the fact that what in practice constitutes a majority in corporate politics is quite different from that in common parlance. To abandon the fate of a corporation to a non-existing majority, in the true sense is to give judicial approval to the exploitation of the minority investors by powerful ones who are able to manipulate the corporation's voting system. In *Bushel v. Faith*<sup>311</sup> by a clever device of loaded voting shares, a single shareholder was able to outvote the apparent majority of two shareholders. At the 32nd Annual General Meeting of Chemical and Allied Products (Cap) Plc., held in June 1997, United African Company of Nigeria (UACN) Plc. with forty-four percent (44%) shareholding in Chemical and Allied Products (Cap) Plc., effectively put on the board of directors of the latter, six of the nine directors of the company, leaving the remaining three directors to be appointed by the majority holding fifty-six percent (56%) shareholding in the company

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<sup>310</sup>Dorathy, N. (2015) The Dilemma of the Shareholders under the Nigerian Company Law. *Journal of Law, Policy and Globalisation*, Vol. 37, P. 89

<sup>311</sup> (1970) ALL ER 53; Kehinde v. Registrar of Companies (1979) LRN 213

#### **4.9 The Dismal Performance of Auditors and Audit Committees**

The origin of auditing is the outcome of the separation of ownership from control in business enterprise. Because of this separation, it becomes necessary for managers entrusted with the financial and economic resources of others, to present their stewardship report to their employers. The report presented may contain errors, omission, fraud or misleading information. To prevent this and to maintain the integrity of the managers, it became necessary to invite an independent party to examine the report and express an opinion on its correctness. To many investors, the company's financial statements, couched in technical accounting terms may appear as cryptograms needing to be decoded, thus the need for an expert examination of these statements and a simplified report thereon made to members in the general meeting. These experts are known as Auditors and the report, which they make, is referred to as Auditor's report.

An auditor is charged with the responsibility of examining the books and accounts of an organization in such detail as would enable him to form an independent opinion as to the correctness and fairness of the financial statements. Primarily, his duty is to audit the company's accounting records.<sup>312</sup> The most important feature of the auditor's report is the assertion that in the opinion of the auditor the financial statements present a "true and fair view" of the company's financial position. A 'true and fair view' has no universal definition neither has the Companies Act attempted to define it. It is, indeed, a relative elusive concept, like the concept of beauty that only the beholder can adequately judge. Consequently, on these criteria, the auditor's opinion does not say that the accounts are correct. It does not imply that the financial policies and techniques are, in the opinion of the auditor, the only ones, or the best

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<sup>312</sup> Section 360(1) CAMA 2004

ones. The emphasis, therefore, is that the opinion confirms the existence of a true and fair view and not the true and fair view. With this subjective latitude, auditors' reports by their nature have become mere cosmetic window dressing and cannot safely be relied upon to make investment projections or formulate corporate policies. The Audit Committee which is one of the most important developments in corporate structure and control was conceived as an investors' protection device. The origin of the Corporate Audit Committee is traceable to the celebrated fraud case involving Mckesson and Robins Inc. in the United States of America in 1939. An enduring legacy of the case was recommendation by the United States Securities and Exchange Commission in 1940, that every public company should establish an Audit Committee to strengthen its structure of corporate governance and accountability.

In Nigeria, the Corporate Audit Committee made its debut in the CAMA. It is to be composed of an equal number of the company's directors and representatives of the shareholders, subject to a maximum number of six members.<sup>313</sup> The committee is mainly charged with the responsibility of examining the auditor's report and making recommendations thereon to the AGM as it may think fit. In concept, it is a standing Committee established to enhance corporate accountability by working with the BOD and management to improve control and strengthen the financial reporting practices of an entity. The goal is to promote proper conduct of the affairs of the corporation in line with generally accepted accounting ethical and legal standards. The achievement of these objectives ought to provide protection for the shareholders. In conception therefore, this innovation is noble.

In practice, however, it is a different story. After nine years of its introduction in public companies, the use of Audit Committees in Nigeria, cannot be described as entirely successful. Its activities remain obscure as little or nothing is heard about the Committees' impact on corporate governance, even those that concern their regular statutory functions. Two factors,

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<sup>313</sup> Section 359(4) CAMA 2004

have poignantly weakened the effective working of Corporate Audit Committees in Nigeria. The composition of the Committee and the qualification of members by the provision of section 356 (4) of the CAMA, the Audit Committee shall be comprised of an equal number of directors and representatives of the shareholders subject to a maximum of six members. In practice, it is often the executive directors that are members of the Committee. The Audit Committee therefore, appears like an extension of the BOD and management whose activities the auditors have reviewed and whose report the Audit Committee is supposed to scrutinize and to report thereon to the members in General Meeting. This membership structure does not give the necessary autonomy to the Audit Committee to execute independent checks on the overall activities of the BOD and management without fear or favour. The CAMA remains mute on the qualification of members of the Audit Committee. It is, therefore, possible to have as members or even Chairman of the Committee, illiterates who can neither understand nor analyse the company's financial statements. This common occurrence in Nigeria tends to defeat the very essence for the institution of this protection device.

## **CHAPTER FIVE**

### **EMPERICAL ANALYSIS AND RESULTS**

#### **5.1 Collection of Data**

In order to grasp the full worth of the topic as analyzed in the previous chapters, questionnaires were formulated, administered and responses collated so as to evaluate the degree of shareholders' awareness of their rights and privileges in meetings of company and the level of their participation in the meetings. See appendix 1 for the questionnaires formulated.

Random sampling of respondents' opinions, perceptions and suggestions on how to protect shareholders' interest and improve participation in company meetings were conducted, the responses were analyzed by the distribution of the various variables. This was augmented by analysis of response to different type of questions that were used in identifying correlation relationship between profiles, behavior and perception of the respondents.

#### **5.2 Target Group**

The target group of the study consisted of only owners of shares in both private and public companies spread across three cities in Nigeria, to wit; Abuja, Kano and Kaduna. A total of 300 questionnaires were distributed. That is to say, 100 questionnaires to each of the three selected cities in Nigeria. Table one below shows the three selected cities in Nigeria, the number of questionnaires distributed, the number of questionnaire returned and the percentage of the questionnaires returned.

**Table One:** Showing the three selected cities in Nigeria, the no. of questionnaires distributed, the no. returned and the returned percentage.

Selected Cities	Questionnaires Distributed	Questionnaires Returned	Percentage of questionnaires Returned
ABUJA	100	75	75
KANO	100	60	60
KADUNA	100	58	58
<b>TOTAL</b>	300	193	193

### 5.3 Table for Distribution of Response to Questions in the Study

The questionnaires for the extent of shareholders' participation were designed to capture the respondents' profile, perceptions and suggestions that will improve participation in decision making of companies. The questions on the questionnaires were divided into the outlined types and corresponding tables were drawn to highlight questions and responses thereto as well as the percentage of representations of the response to the study questions. This was to enable quantitative representations of evaluated data for this study. The table two or four below depicts the number of respondents and their percentage response to the aforementioned structured profiles in the questionnaire that was used for the study.

**Table two:** Showing Distribution of Questions and Response Which Depicts Respondents Profile Age, Occupation, Qualification and their Percentage.

Questions	Response Option Yes /No	Respondents	Percentage Response
1. Age	Adult	193	100
	Minor	Nil	0
2. Occupation	Civil Servants	63	32.64
	Business	100	51.81
	Unemployed	30	15.54
3. Qualification	Ph.D	Nil	0
	Master Degree	10	5.18
	Degree / HND	144	74.61
	NCE/Diploma	39	20.21
4. Do you have shares in any company?	Yes	193	100
	No	Nil	0
5. How many companies Do you have shares?	1-3 companies	193	100
	4-6 companies	Nil	0

	7-10 companies	Nil	0
	10& above	Nil	0

**Table Three:** Showing Distribution of Questions and Responses Which Depicts Respondents' Knowledge of the Status of their Company their Attitude in Relationship to attending Company Meetings and Participating in Decision Making of the Company.

Questions	Response Option Yes/No	Respondents	Percentage Response
1. What is your reason For investing in shares?	Dividend Share appreciation Interest in company Others	144 49 Nil Nil	74.61 25.39 0 0
2. Is your company a private or public company?	Private Public Do not know	144 49 Nil	74.61 19.68 0
3. If public is it so upon Incorporation or it was first private before converting to Public	Public on incorporation Private before converting To public Do not know	Nil Nil 193	0 0 100
4. If public on incorporation Did the company hold its Statutory meeting?	Yes No Do no know	Nil Nil 193	0 0 100
5. Which of these meetings Have you ever attended?	SM AGM EGM None of the above	Nil 10 04 179	5.18 2.07 92.75
6. If none of the above, what Is the reason for not attending?	Venue too far No time Not interested	109 84 Nil	56.48 43.52 0
7. Do you belong to any Shareholder' association in Your locality?	Yes No	20 173	10.36 89.64
8. Have you ever voted in AGM or EGM of your Company?	Yes No	10 183	5.18 94.41

**Table Four:** Showing Distribution of Questions and Responses Which Depicts Respondents Perception and Suggestions on means of Improving Member' Participation in the Decision Making of the Company.

Questions	Response Option Yes /No	Respondents	Percentage Response
1. Which of the Following options will You prefer as a means Of communication with Your company?	Email&SMS	193	100
	SMS	Nil	0
	Mailing	Nil	0
	Telephone	Nil	0
2. Suggest what will Motivate you to attend Company meeting	Gifts & lucky draws	Nil	0
	Refreshment	Nil	0
	Proximity	193	100
	Improving accessibility	Nil	0
3. What is your source of information about the company you Invested	Radio	Nil	0
	Newspaper	Nil	0
	Television	Nil	0
	Email	Nil	0
	Financial statement	193	100
4. Which of the following means of participation will you prefer as a voting medium on a proposed resolution of your Company?	Internet	100	51.81
	SMS	64	33.16
	Raise of hand	29	15.02
	Postal ballot	Nil	0
5. Do you agree that lack of attending company meeting by members is responsible for the mal-administration and expropriation of members' investments by the board of directors?	Yes	193	100
	No	Nil	0
6. How frequent do you access the means of communication you have chosen above?	Daily	129	66.84
	Weekly	54	27.98
	Monthly	10	4.01
	Quarterly	Nil	0

#### **5.4 Data Analysis for Profile Behavior and Perception**

The respondents' response to questions on qualification was recorded in order to capture the extent of respondents' ability to understand the general workings of the company and to impact on the decisions taken on corporate performance in particular. In the same vein, response on the sources of information was tabulated in order to assess respondents' behavior towards being regularly informed about the progress and wellbeing of the company in which they invested. In addition, respondents' interest in rapidly accessing the available information about the companies they invested in was measured by the extent of their understanding of the content of the annual report of the companies usually sent to and read by respondents.

The efforts of the respondents at taking up the opportunity of participation in decisions making of the company they have invested in through the attendance of general meetings were measured. In addition, their preferred means of voting on resolution as well as their reasons for investing in equity shares was also tabulated.

Furthermore, respondents were asked to provide suggestions for increasing their participation in the decision making of their companies. Responses to these questions were tabulated. Hypothesis testing for significant difference in the proportions of those who participated in company meetings was done. The findings depicted on the tables revealed that respondents who had high qualifications level displayed a greater understanding and appreciation of the need to participate in company meetings than those who had low qualification level. For instance, from table two above, respondents with Degree/HND qualification captured were 144 compared to table three where a corresponding 144 respondents responded that dividend were reasons for their investing

in company. The inference that can be drawn here is that, it is only on a fair understanding of company workings that can elicit such recorded responses.

The record in table three shows that about 25.39 percent of respondents gave share appreciation as the driving force for making investments in equity shares. 179 respondents have never attended any of the company meetings, mostly, because the venue of the meeting was too far. Only 84 respondents, gave lack of no time, as a reason for not attending any of the company meetings. The record shows that only 4 respondents attended EGM while 10 attended AGM and even among those who have attended the AGM and EGM only 10 respondents ever voted. Despite the fact that 10 respondents were master degree holders and 144 respondents had Degree/HND, attendance at meetings of companies was abysmally low. The response to suggestions on how to improve participation showed that voting and communication through internet and mobile phones were the most preferred.

## CHAPTER SIX

### SUMMARY AND CONCLUSION

#### 6.1 Summary

This work principally analysed the law of company meetings as it applies to Nigerian modern day corporate practice from a legal perspective as provided by the legislation in Nigeria which is the CAMA, although the work alluded to some experiences drawn from other jurisdictions like England, India, South Africa, Ghana, United States of American (USA), Malaysia and Australia.

The work discussed the important of meetings and its influence in corporate governance. It advocated that meeting is at the heart of a company's decision making from which a company is managed and can either be in the form of board (directors') meetings for the top management or general meetings, to wit; statutory general meetings, annual general meeting and extra general annual meeting all of which involves shareholders (members). The duos are the most common types of company meetings. In terms of role and significance, they are equally important. However, in practice, directors' meeting seems superior because a wider discretionary power is normally vested in the management. Nevertheless, some of the important issues are still left for shareholders to decide such as to alter the memorandum and articles of association. In fact, the position of each director may be determined by the shareholders. e.g. their appointment, removal and reappointment.

The members' meeting is important as it provides a forum for discussion on the conduct of the company's business. It is a place where members exercise their fundamental right of voting. The law regulating members meeting is important but

relatively remains a neglected aspect of corporate governance. The complex problem of corporate governance requires among others, the revival of members' involvement in corporate decision making. Corporate governance is well served where members show keen involvement in gathering information preceding, during and following the meeting. This leads irreversibly to well informed resolutions. In other way, it also establishes a "check and balance" system, against members' expropriation and mismanagement which is the major cause of corporate failure and collapse. It is unfortunately a common practice, to see many shareholders absenting themselves from meetings of their company, especially the General Meeting and thereby withholding what may have been their valuable contribution to the successful running of the company. There is of course, as a matter of law, no enforceable obligation on shareholders or members to attend the Annual General Meeting or any meeting of their company for that matter or indeed actively participate in the affairs of the company. Such member however, remains bound by any decision, the meeting may take, their non-participation notwithstanding.

Non-participation in the affairs of the company means loss of golden opportunities to passively affect the running of the company whose success members stand to benefit. There is no doubt that the progress of a company can be determined by the efficiency of its management which is placed on the board. Members whose interest is at stake have the responsibilities of determining who constitute the board and ensure that any cause of inefficiency is properly eliminated. This can be done easily by attending and participating in the election of persons they consider fit to direct the affairs of their company.

By not participating in the affairs of the company, the members are simply leaving the fate of their company to the board that may or may not manage satisfactorily owing to their passiveness. The active participation of members in meetings is capable of saving a

company from possible lapses that may be a result of mismanagement which tragic end is corporate failure and collapse. Thus, members' activism or militancy must be eminent as watchdogs for not even the constitution can save the indolent from the knavery of his neighbour.

As already pointed out, meetings of company are usually convened by giving of proper notice of every general meeting to members and to all those entitled to receive the notice of meeting and is usually 21 days from the date on which the notice was sent out. There must be a quorum at the meeting to enable the meeting start or before any business can be transacted. As highlighted in this work, the place and obligations of the members in the meeting are very fundamental to the very existence of the company. This fundamental role finds ample expression at company meeting which serve as the company's parliament and the directors' electorate. In reality, this is hardly the case as the empirical survey in chapter four of this work disclosed. The combinations of so many factors have dominantly undermined company meeting as an effective tool of control for corporate governance in Nigeria. This has led to directorial oligarchy that rather than account and be subject to control of the general meeting, tele guide and control the general meeting. In effect the directors are left without any form of practical checks. This does not augur well for corporate management as the experience of corporate collapse in Nigeria clearly showed. Profligate chieftains of some companies through the clever devices mentioned in chapter one of this works ran their companies into insolvency in the absence of meaningful control and checks by the members. A vigilant body of investors through the medium of company meetings could adequately have counter-balanced and checkmated these directors' excesses. This in turn would have prevented the demise of those companies and the attendant social consequences to the overall economy. Against this background, the ultimate aim and intendment of this, is

the empowerment of company meetings as instruments for effective corporate administration. This will substantially reduce the level of mal-administration and expropriation of shareholders. This concluding chapter is devoted to not only the findings but also recommendations for virile shareholders' responsibilities to corporate management in Nigeria. The ensuing recommendations shall be tailored along the lines of legislative reforms.

## **6.2 Findings**

From the foregoing analysis, the findings may therefore be summed up as follows:

- (i) Despite the undoubted improvement introduced by the CAMA, it cannot be said the provision on company meeting has substantially or adequately taken care of investors' protection. The sections devoted to company meeting in the CAMA, the regulatory agencies' role are all good but not enough to ameliorate the rate of mismanagement and expropriation of investors by corporate institutions. There is therefore need to do more especially now that the world has become a global village where a lot can be accomplished with the aid of internet.
- (ii) The CAMA on company meetings, has hitherto not keep pace with the developments in information technology on electronics meetings and application of electronics means in serving of notice of meeting and conducting the affairs of the meeting. The technology itself is still finding it ways to innovate more sophisticated features in satisfying most of the shareholders' rights and expectations.
- (iii) The provision or requirement by section 211 of the CAMA which mandates every public company only to hold statutory meeting within six months of its incorporation still suffer from ambiguity especially relating to whether it binds or

includes companies changed or converted from private to public. Section 211 is interpreted differently hence the debate among different scholars. For instance, while A.R. Agom argued that section 211 of the CAMA does not binds or include companies converted from private to public I.O. Aderibigbe maintained that it includes companies converted from private to public. Moreover, as at the time of this work there is no clear Nigerian reported case on this which settled the matter one way or the other. Consequently, it makes the entire jurisprudential understanding of statutory meeting confusing or difficult to understand.

- (iv) It is also discovered that the law on company meetings has hardly kept pace with corporate commercial realities and practices such like the general practice of not holding statutory meeting by public companies by the device of incorporating a company as a private company and then converting it to a public company. Consequently, in some aspect of company meeting, the CAMA has remained in yesterday while corporate practice moves on to dynamism.

### **6.3 Recommendations**

This study analysed the law on company meetings in contemporary corporate governanceIn Nigeria. Based on the foregoing analysis and findings, the following recommendations are made.

#### **6.3.1 Legislative Reforms**

##### **a) Legal Recognition of Electronic Meeting**

In view of the strategic position of shareholders in the general meeting,it has become necessary that legal recognition be given to electronic meeting in the CAMA. The legislature should recognise the technological advancement by legalizing

participation in company meeting through E-voting, E-ballot, video conferencing or by other audio-visual means. The audio visual means should not only be capable of recording and storing of such proceedings along with date and time. This, it is hoped will provide the necessary flexibility to participate in meeting.

b) Legal Recognition of Electronic Means in Serving Notices of Meetings

Moreover, electronic notice through e-mails, text messages to mobile phones, and other electronic means of communication should also be recognised in the CAMA and be made to replace section 220 of CAMA which provides for sending of Notice of Meeting by post. This is because, notice by post is no longer an efficient and effective means of communications given the contemporary development in technology. Legalising the above under the CAMA, is a means to increase shareholders' participation as it ensures that notices are received through e-mails, internet or mobile phones bearing in mind that Notices through these means come immediately without delay. It offers a low cost and borderless medium of communication hence it could offer a solution to resolve shareholders' passivism. This will, in the long run, help to solidify the check and balance system against miss-management and expropriation of shareholders. Amendment of Section 211 of the CAMA

c) Amendment of Section 211 of the CAMA

There is the urgent need to amend Section 211 of CAMA to remove the ambiguity it creates on whether the section binds or include companies converted from private to public company. Consequently, it is hereby recommended that section 211 of the CAMA should be amended to include any company incorporated first, as a private company and later converted to a public company. That is, the law should make it clear that where a company incorporated as a private company decides to change or convert to public

company, the company should within six months from the date of change or conversion from private to public hold the statutory meeting.

This way, the rights, privileges and protection which statutory meeting affords members of a company, can be maintained. Not only that, the amendment will clear every ambiguity and give the section its true meaning. This will save our company law practitioners and administrators, courts and academia, from the embarrassment of misconceiving the section. Also the general practice of doing away with statutory meeting by the device of incorporating a company as a private company and then later convert it to a public company will be cured. An amendment along the line suggested will be a stitch in time that could save nine.

This is necessary in view of the critical role and importance of a statutory meeting in the affairs of accompany and in order to avoid a situation where the activities sought to be regulated by the CAMA moves far ahead of the law itself, thereby reducing it to a mere adornment of a lifeless Christmas tree.

d) Amendment of Sections 359 & 360 of the CAMA

In view of the critical role of the Audit Committee, it is hereby recommended that section 359(4) of the CAMA on the membership of the committee be amended to provide that only non-executive directors can be members of the Audit Committee. This will give the Committee a measure of independence to check on management activities and report thereon to members in the general meeting. For this purpose, too, it is recommended that the constitution of the committee be tinkered with to permit the majority of the body to be appointed by members in the general meeting. Section 359 of the CAMA deserves to be amended to prescribe some measure of experience, knowledge or education for the members of the Audit Committee to possess analytical skill with strong financial background. This will enable them deal with the complex issue of audit and reduced the

risk of the Audit Committee being misled in their functions and subsequent report to the general meeting. This will go a long way to curb the incessant corporate mismanagement.

Further to the above, Section 360(1) of the CAMA should also be amended to enable auditor's report beyond merely expressing an opinion. This Section on the powers of the auditors, should extend the jurisdiction of the auditors to carry out audit into the operational activities of management. This will help to determine if proper and judicious use are made of the Company's overall resources.

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## APPENDIX I

Faculty of Law,  
Commercial Law Department,  
Ahmadu Bello University,  
Zaria.

Dear Respondent,

### REQUEST TO FILL QUESTIONNAIRE

I am a Postgraduate Student of the above named institution, conducting a research entitled “*Analysis of the Law on Company Meetings in Corporate Governance in Nigeria*”.

Please, kindly assist by expressing your opinions in providing answers to the questions in the attached questionnaire. You are assured that all information supplied shall be kept strictly confidential.

I therefore, solicit for your maximum support to make this research a success.

Thank you in anticipation for your co-operation.

Yours faithfully,

**Joshua E. Moses**  
*LL.M/LAW/07037/2010-2011*