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RESEARCH ARTICLE

THE POWER OF MEETINGS IN CORPORATE GOVERNANCE

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ABSTRACT

As a juristicyet inanimate person, the company exercises its powers through the members in general meeting, the board of directors and committees set up by the company. It is at meetings that members exercise ultimate control of the company, give directors the opportunity to explain results and applaud or denounce managements. The humongous power of especially transnational companies makes the conduct of their meetings a very crucial factor not only in corporate governance or social responsibilities but also in national development. Most corporate actors donot adequately graspthe rules on company decision-making processes to participate effectively and legally at meetings. The lapses and ineffective decision making were manifested in the phenomenal scandals of Enron 2001 & Worldcom, 2005 as well as Nigerian bank failures in 2005 causing job losses of multitudes of employees, and large scale diminution of stakeholders. Furthermore, the global reach of many companies across national borders makes it necessary to restate the laws on company meetings so as to enlighten local and foreign investors, educate company administrators, and also reduce unnecessary family feuds, litigation and company disharmony. Consequently, this paper attempts to provide a compendium of statutory, common law and judicial dictates on company meetings especially as regards investors' protection & controls. This paper also serves as a compass for navigating the murky waters of decision making in order to enhance managerial value through shareholder-centric governance.

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INTRODUCTION

Crucial decisions of a company are generally taken at the meeting of its members which constitute its primary organ. Such decisions include key economic matters like Mergers and Acquisitions, acquisition or development of new technologies for operations, factory locations, products development, redundancies, appointment of directors especially the CEO, declaration of dividends, borrowing, appointment of Auditors and Audit Committees, capital restructuring, winding up etc. To ensure control by the shareholders and also to protect investors, all resolutions are required by law to be passed at general meetings and shall not be effective unless so passed.[1]
A person who has signed the memorandum of Association as a subscriber, oran allottee of shareswho has paid for his/her shares can participate in company meetings, as a member.[2]

Types of meetings: The procedure of meetings of the company depends on the type of meeting being held. Basically, there are three types of general meetings, namely, the statutory meeting, annual general meeting and extraordinary meeting.

Statutory meetings: Most companies operate a three-layered governance structure i.e. the Annual General Meeting (AGM), the Board of Directors and other committees e.g. the Executive Committee. The shareholders authorise the Board of directors to manage the company for the purposes for which the company is established and in accordance with the Articles of Association of the company which are a contract between the shareholders and the companies. Every public company must hold a statutory meeting of the members of the company within a period of six months from the date of incorporation.[3] The meeting is inaugural and holds only once in the company's life time. The directors must, at least, twenty-one days, before the meeting (or any shorter period agreed by all the members entitled to attend and vote), forward a report called the "statutory report" to every member. The report must state the following[4] –

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;

[1] Cap C20, Laws of the Federation of Nigeria, (LFN), 2004.
[2] Ezeonwu v Onyechi (1996) 3 NWLR (PT 438) 499
[3] S. 211, CAMA
[4] S. 211(1), CAMA

c. The names, addresses and descriptions of the directors, auditors and mangers, if any, and secretary of the company;
d. The particulars of any pre-incorporation contact, 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 every director; and
g. The particulars of any commission or brokerage paid in connections with the issue or sale of shares or debentures to any director or manager.

The company and any officers in default are guilty of an offence punishable by afine of N50 per day from the day of default.[5]This ridiculous amount has been proposed for review in the on-going review of the CAMA. A copy of the statutory report must be delivered to the Corporate Affairs Commission (CAC) for registration after copies have been sent to members. Failure to deliver the report to the Commission is a ground for possible winding-up proceedings. The court may, however, order that the Statutory Report be delivered and that the defaulter shall pay the penalty and other costs.[6] The provision that the company may be wound-up on the petition of a member shows how important the statutory report is considered.[7]However, where there is harmony amongst shareholders the meeting may be held outside the six-months period and backdated.[8] At the commencement of the meeting, a list is usually displayed showing the names, descriptions and addresses of members of the company, and the number of shares held by each shareholder. The Register must be produced and remain open and accessible to all members throughout the duration of the meeting.[9] The members present may discuss any matters relating to the formation of the company or arising from the statutory report but no resolution of which due notice has not been given should be passed[10].

Annual General Meetings (AGM): There is long standing judicial notice that "it is a very strong thing indeed to prevent shareholders from holding a meeting of the company".[11] The meeting gives shareholders the opportunity to meet, discuss and question directors on the company and accounts. The AGM is a very vital organ of the company and provides important protection for shareholders/investors. Every member of the company is entitled to attend the general meeting and vote.[12] In Nigeria, weighted voting and non-voting shares are abolished as every share must have one vote. [13]Consequently the Common Law position on weighted voting has been abolished.[14] All business transacted at the AGM is deemed special business except declaration of dividend, presentation of financial statements and report of directors and auditors, election of a director in place of retiring director, appointment and fixing remuneration of auditors and appointment of audit committee members which shall be ordinary business.[15] The financial statements are laid for debate, and consideration but not for a resolution. It is usual for companies, particularly public companies, to produce a Business Review that will inform the shareholders of the company and help them to discuss how the directors have performed their duty to promote the success of the company. Also, Directors Reports (DR) and Strategic Reports (SR) are required in England.[16]Discerning shareholders may use the information contained therein to bring derivative action or even to remove underperforming directors or the entire Board.[17] The company's statutory and annual general meetings must be held in Nigeria[18]. The annual general meeting must be held each year, that is January to December, but not more than fifteen months should elapse between the date of one annual general meeting and the next[19]. However, if a company holds its first annual general meeting within eighteen months of its incorporation, it need not hold the meeting in the year of its incorporation or the following year.[20] The word "year"is not every 12 months but one calendar year.[21] The audited accounts must be presented regularly, i.e at least annually.[22] It is a legal requirement that a copy of any resolutiontaken at a meeting ordered by the court[23]must be sent to the Corporate Affairs Commission (CAC) within 15 days of passing the resolution[24].

Extraordinary General Meetings (EGM)

a) By directors: The Board of Directors may convene the meeting whenever they deem fit to deal with urgent matters which cannot wait till the next annual general meeting, and if at any time there are not within Nigeria sufficient directors capable of acting to form a quorum, any director may convene an extraordinary meeting.[25] There is no exhaustive list of circumstances the Board will deem fit for convening an Extraordinary General Meeting. The circumstances include unexpected issues likeerosion of the company's capital, deadlock of the Board, serious regulatory breaches, authorisation of conversion of reserves, issue of subordinated or unsubordinated loans, bonds or debentures, where there is need to react quickly to market opportunities, mergers, partial or full acquisitions of strategic alliances, unforeseen urgent need to amend Articles[26] etc.

b) By requisition: One or more members may require the directors to convene a meeting. A Requisitioner needs to state the purpose of the meeting[27]. The requisition is made as follows:

(i) In the case of a company having a share capital, by members holding not less than one-tenth of the paid-up capital carrying voting rights at general meetings; or
(ii) In the case of a company having no share capital, by members representing not less than one-tenth of the

[5] S. 212, CAMA.
[6] S. 211(6), CAMA
[7] S. 408(b), CAMA.
[8] Guardian Express Bank Plc. v Odukwu (2009) 14 NWLR (pt 1160) 43
[9] S. 211 (7)
[10] S. 211 (8), CAMA
[11]Isle of Wight v Tarhoudin (1884) LR 25 Ch. D. 320; Directors' Liability: A worldwide Review, 3rd ed by Alexander Loos: Walters Kluwer. Laws & Business, 2016.
[12]S. 79 CAMA
[13] S. 116 CAMA
[14] Burchell v Faith (1970) AC 1099
[15] S. 214 CAMA
[16] Gower, Principles of Modern Company Law, Davies L. Paul & Worthington, Sarah, 2016; p. 362. S. 415A of the UK 2006 Companies Act
[17] Gower, Principles of Modern Company Law, Supra Pp. 714 & 715
[18] S. 216 CAMA
[19] S. 213 CAMA, Odumody & Teil Enterprises V Mohammed et al, (1973) (3) African L. R (Comm) 1
[20] S. 213, CAMA
[21] Gibson v Barton (1875) L.R 10 Q.B 329
[22] S. 370 CAMA
[23] S. 213 (3), CAMA
[24]S. 213 (4) CAMA
[25] S. 215, CAMA
[26] S. 371 CAMA
[27] S. 213 (3), ditto

total voting rights of all members having a right to vote at general meetings[28].

(iii) The reasonable expenses incurred towards the meeting may be refunded from the directors' fees of defaulting directors.[29]

(iv) To protect investors, all businesses transacted at an extraordinary general meeting are deemed special requiring 21 days' notice and voting of 75% majority.[30]

c) General Meeting Convened by the Court: Whenever it is impracticable, for any reason, to call or conduct a meeting of the company, or of the Board of Directors in a manner that the meeting may be called,or there is default in holding an AGM,or in a case of reduction of membership resulting in lack quorum[31], the court may, on its own motion, or on application of a director or a person entitled to vote at such meeting, order a meeting to be called, held and conducted as the court may direct. The court may give such ancillary or consequential directions as it deems fit, including the direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting and may apply to the court to take a decision[32].The question for the court is whether it is impracticable[33] to hold the meeting and not whether it is impossible. Under this provision, impracticable should cover circumstances where all the shareholders and directors except one are dead in an accident since one person cannot normally hold a meeting or also where the members and directors are warring themselves on the control of the company[34], or simple lack of quorum due to various inevitable circumstances[35]. Thus, "in case of serious rift in ranks and scenario of monumental injustice perpetrated under a barrage of legal technologies by a group controlling the company"[36], Aniagolu, JSC acknowledged that impracticability is not synonymous nor co-terminous with impossibility. The learned Lord Justice accepted that "if for any reason" stated in the Act is wide in scope, and that there was no need to demand unanimity of shareholders in exercise of the court's right to order a meeting. The statutory provision contained ins. 223 CAMA is an attempt to codify the Court's inherent powers. The aim of this provision is to secure business continuity[37]. Once such difficulties/bottlenecks are removed, the investors present at the meeting can conduct only such business which could have been conducted at a meeting legally called in any other manner[38].

Meeting of classes of shareholders: The process for meetings of classes of shareholders is according tothe general provisions of calling general meetings[39]. Sometimes, separate class meetings or debenture holders meetings may be held to consider variation of class rights, creditors' rights in a reconstruction or winding up. The quorums and voting capacity to demand polls for resolutions apply to class meetings but not to debenture holders meeting. Similar rules of meetings are however usually incorporated into debenture trust deeds. The General meeting of the company and class meetings may hold together for convenience and cost reduction subject to no objection by anyone present. There may be no need for a meeting for variation or abrogation of the class of shares if the consent in writing of holders of 3/4th of the issued shares of that class i.e. without formal meeting is obtained. If a special resolution is proposed it will have to be at a separate meeting from the general meeting, even if by one person. Thus, the court has appointed a single person to hold a general meeting.[40]

Meetings of Board of Directors: In Nigeria, there are two broad types of companies i.e. public and private companies which operate through a single board structure comprising all the directors. In both types of companies, the boards are unitary. Directors must comply with a number of duties when managing the company's business i.e. to act within the conferred powers, to promote the business of the company, exercise reasonable skill, care and diligence, to avoid conflict of duty and interest[41], not to accept secret benefits[42], and duty to declare interest in dealing with the company's affairs[43]. The board must have its first meeting within 6 months of incorporation[44]and thereafter it may hold weekly, fortnightly or monthly meetings according to the Articles of Association. It is usual for the Board to have a committee of executive directors to oversee the day-to-day affairs of the company. At all meetings of the Directors, each director is entitled to one vote[45]. As members of a unitary Board, non-executives are expected to challenge the Board and develop proposals on strategy. Also, Non-Executive directors are to scrutinize the performance of management in meeting agreed goals and objectives and satisfy themselves on the integrity of financial statements and controls, develop and approve remuneration of executive directors[46].

Responsibility of the Board: Typically, the Articles provide that the Board is responsible for the management of the Company's business and expressly permit the Board to delegate any of its powers to any committee, executive director or CEO. In Nigeria, every company must have at least 2 directors[47];however, in the U.K, every private company must have at least one director, and every public company must have at least 2 directors for FTSE 350 Companies listed in the Financial Times Stock Exchange, the Corporate Governance Code requires all directors to be subject to election by the shareholders at the 1st AGM after their appointment and to annual re-election. A separate shareholder resolution is required in relation to appointment of each director, of a public company[48]. Under the Corporate Governance Codes of the UK[49] and Nigeria[50], matters relating to approving financial statements and approving major contracts must not be delegated by the Board.[51] In the discharge of their duties,

[28] S. 215 (2) CAMA
[29] S. 215(6)CAMA
[30] S. 217 CAMA
[31] S. 223 CAMA
[32] *Okeowo v Migliore.*Supra, (1979) NCC 210.
[33] Re El Sombrero Ltd. (1958) Ch. 900
[34] Ezeonwu v Onyechi Supra
[35] S. 223 CAMA
[36] Okeowo v Migliore, supra
[37] Paul Iro v Robert Park & 5 Ors. Supra.
[38] Okeowo v Migliore, Supra
[39] Chianu, Emeka. Company Law, Lawlords Publications 2012, Pp. 571.
[40] Re El Sombrero Supra
[41] S. 263 (9) CAMA
[45] SEC Corporate Governance Code 2008, National Code of Corporate Governance 2016 by the Financial Reporting Council of Nigeria (FRCN).
[46] CadburyAdrian, Corporate Governance and Chairmanship. "A personal view Oxford 2002.
[42] S. 5.5 of SEC Code of Corporate Governance in Nigeria
[43] S. 261 CAMA
[44] 2016 Financial Reporting Council
[45] Wachukwu v Cooperative Bank Ltd (1974) (1) African L.R Comm 387.
[46] S. 284
[47] S. 246 CAMA
[48] S. 263 (9) CAMA
[49] S. 5.5 of SEC Code of Corporate Governance in Nigeria.
[50] S. 246, CAMA.
[51] Cadbury Adrian, Corporate Governance and Chairmanship. "A personal view Oxford 2002.

directorsmust exhibit high standard of corporate governance. In spite of the business judgement rule, a director will be personally liable for failing to act in good faith or in an informed and unconflicted basis,[52]or with diligence, skill, degree of care as a reasonably prudent director and must follow due process. In practice, accordingly directors must[53];

- Formulate and implement overall strategy of the company
- Attend to all Board matters, avoid self-dealing,
- Fulfil their duties, considering integrity and that of their colleagues
- Be well-prepared to engage actively at Board meetings with particular attention to the agenda;
- Understand all Board agenda and demand integrity of reports
- Approve financial statements of the company.

Thus, where the Board considered a sale of a Company for less than 2 hours with no advance notice, no formal documentation and with uninformed presentations, a case of breach of duty of care was found[54]. This was in *Smith v Van-Gorkom*[55]. The Board recommended a merger of related companies which created disabling conflict of interest involving managers. Where the articles provide the specific number of directors to form a meeting of directors, a resolution declared by less than the quorum is invalid. In *Martins v Ogunbadero & Ors* [56]The Articles provided that any two of the three directors can form a quorum. The two directors removed the plaintiff and one director died. The other director's purported execution of forfeiture of plaintiff shares was held invalid. It is crucial to note that directors act collectively as a Board and not individually. Thus, the power to allot shares resides in the Board of Directors as a whole, and not on individual directors. The Articles usually provide how directors are to be removed from office e.g. if the director fails to attend a number of meetings or is declared a bankrupt.

Division of Powers between the General Meeting and the Board: The general management of the company is vested in the directors. The shareholders have no power by resolution or otherwise to give directives to the Board on the day-to-ay management, or to overrule its business decisions or to usurp its management power[57] provided the directors acted in good faith, with due diligence within the powers conferred on them by the Articles. This rule, also, applies to committees with delegated powers of the Board.[58] Consequently, a resolution of the general meeting which disapproves of legal action by the directors is a nullity, under the law. Also, in *Automatic Self Filter Syndicate v Cunningham*[59]shareholders could not dictate to the Board on sale of assets being a general management issue[60]. However, where the Board is unable to act, the General meeting has ultimate and residual powers of management e.g. to dismiss a recalcitrant secretary.[61]The articles empowered the Board to dismiss the plaintiff secretary. One director had been terminated remaining only one director representing the alien company. The members could act. A resolution of the majority of shareholders in general meeting is the proper mode of declaring the will of the company, but if all the individual shareholders, and not a majority only, expressly assent to a transaction the absence of a resolution taken simultaneously in a general meeting is immaterial.[62] Where[a] transaction is *intra vires* and honest, and especially if it is for the benefit of the company, it cannot be upset if the assent of all the corporators is given to it. A board resolution on the company's position on operational matters or day-to-day decisions may not always be needed nor must a meeting of the board hold.This is because the intention of the officers and agents of the company can be attributed to the company's intention depending on the nature of the matter under consideration, the relative position of the officer or agent and the other relevant facts and circumstances of the case[63]. Thus, shareholders would not dictate to the Board on sale of assets being a general management issues. To protect investors, maintain their supremacy and ultimate control, the shareholders have various overriding powers as they may use their votes at the general meetings, amend the articles and act where there is board deadlock[64]. As owners of the company, the shareholders may also waive irregularities or breaches of duty committed by the directors. In further exercise of their rights as investors, a director who is interested in a matter before the general meeting may vote in support of his personal interest, as shareholder, provided he discloses his interest.[65] A *bona fide* but otherwise improper use of the director's power may also be ratified by the general meeting.[66]

Transition of General Meeting to Directors' Meeting: Usually, there is confusion between the scope of the authority of the Board of directors and that the General Meeting by company secretaries and also by even judges and the general business community. Where all members of a company are present at a meeting and there is no suggestion of fraud, the company is bound in a matter *intra vires* by the unanimous agreement of the members[67]. In small and medium scale private enterprises, the members are usually the directors. Nevertheless, the two meetings of General Meeting and Board meeting must be separated, held and recorded. In the first meeting, the shareholders appoint (usually themselves) directors and the subsequent meeting will be the Board Meeting. The minutes should correctly describe the second meeting as a board meeting. Debentures issued and sealed at the continuous meeting or other actions of shareholders will be upheld and the minutes should distinguish between both meetings. Thus, where the respondent applied to court for a meeting of its directors, but the trial judge ordered a meeting of the members[68] of the company, the members' meeting was held to have been duly held.[69]

The proper process for Transmitting shares: The mistake between Board meetings and General meetings can become clearer when the death of a majority shareholder occurs.[70] The

[52] S. 282 CAMA
[53] Cadbury Adrian supra P. 34 - 37
[54] 488 A. 2nd 858 (Del) 1985 supra. See also FBN v Bernand Longe (2010) 6 NWLR pt 1189.
[55] S. 246, CAMA
[56](1967) 2 ALR Comm 393.
[57] S. 63 (4)
[58] S. 64 (a) CAMA
[59] (1906) 2 Ch. 34 CA
[60]John Shaw & Sons (Salford) Ltd v Peter Shaw: (1935)2 K.B 113 in the UK, Ejekam v Devon Industries Ltd (1998) NWLR (pt) 534.
[61]Ukpilla Cement Company Ltd v Igiekhume (1979) 1 FCA 64.
[62]*Salomon v Salomon & Co Ltd* (1897) AC 22 (Lord Davey)
[63]*HL Bolton (Engineering) Co Ltd v TJ Graham & Sons Ltd - See Denning L.J.*(1957) 1QB 159, Okeowo v Migliore Supra, Also, S. 65 CAMA
[64] Borland Trustees v Steele Bros & Co Ltd (1901) 1 Ch. 279.
[65] S. 284 CAMA
[66] S. 63 (5c) CAMA
[67]*Re Express Engineering Works Ltd* (1920) 1 Ch. 466, Onwuka v Taymani (1968) 2 African L.R (Comm) 313
[68]*Okeowo v Migliore*Supra
[69] Hon. Dr. Olakunle Orojo, Company Law & Practice in Nigeria, supra. P. 233
[70] Ukeje v Ukeje. (2001) 27 WRN 142.

children mostly male of, usually, intestate shareholder, who are neither directors nor shareholders purportedly appoint family heirs to step into the shoes of their fathers without a formal meeting of the board or the general meeting. In some cases, all the shareholder's children have been made members without meetings being held. In some other cases, managing directors are appointed with no resolution of the company passed.[71] Family members who assume such positions without due meetings run the risk of being seen as imposters under the eyes of the law, and could be personally liable for their actions. In the case of death, the company should request for letters of administration and the nomination (not appointment) of the heirs of the controlling shareholder of the company by the administrators of the estate.[72]Letters of Administration will pre-empt litigation by female children of deceaseds' shareholders who are unlawfully excluded from inheritance[73]. Thereafter, the shares of the deceased shareholders will be transmitted or transferred to the heirs and their names inserted in the register of members.

Where a shareholder appointed his son as managing director before death although the widow was already managing the company, the male child was not otherwise active in the company's management, but prepared resolutions for banks to change the signatories for the company's accounts. The resolution was adjudged a ruse as the directors never met to resolve that signatories will be changed. The widow successfully proved to the court that her step son only got involved in the company after payments were made and had changed bank mandates without a meeting.[74] Entitlement to dividends as heir of a shareholder does not automatically mean that the heir can attend meetings and vote as a member. Unless the company's articles provide otherwise, until the heir's name is inserted in the register of members, the heir cannot attend meetings or vote thereat.[75] Where directors are hesitant to insert the heir's name in the register, such an heir may apply to court for a rectification of the register to substitute his/her name for the deceased.[76] To exercise voting rights, the heir must be appointed by the administrator of the estate[77]or trustee in bankruptcy, but the company has the right to decline or suspend the registration. The proper procedure, therefore, is that upon obtaining letters of administration, the heirs can apply for the rectification of the register of shares so as to substitute their names for the deceased's, and also for a share certificate to be issued.[78] Sometimes, out of ignorance or compassion, the administrators of estates are invited, to the company's general meeting to participate in resolutions without registration as members. Allotment of shares made and other decisions made at such meetings are irregular as the administrators had no right to exercise voting rights.[79] Pertinently, minors or under-aged widows lack legal capacity to resolve to remove any management of the company or appoint a receiver to manage the company.[80]This is because traditional process of inheritance and ascendancy may be automatic, as in in Agbor Kingdom in Nigeria; a 2 year old son ascended his father's (monarch) throne. In contrast, transfer of share ownership must be legally effected to adults who can take responsibilities of membership.[81] Further complexities arise from gratuitous transfer of shares in the company. The board of directors may acknowledge the transfer but until there is rectification of the register and entry of the shares the transfer of shares is void and inchoate.[82] Although, the law does not require any specific form for transfer of shares, the deceased must, at least, hand over the share certificate to a claimant/heir.[83] Inevitably, global socio-economic characteristics of impunity and corruption readily manifest in corporate decision making. Thus, there have been other cases where surviving directors have proceeded to appoint one associate to replace the deceased founder from outside, award themselves substantial remuneration and take decisions which required participation of directors representing the deceased founder.[84]The proper procedure is for the Administrators of the founder's estates to have their names entered in the register of members. Once achieved, any meeting held without their notification becomes a nullity and the conduct of the majority will be deemed oppressive.[85] This is a crucial investor protection as derivative actions for breach of fiduciary duties can also be sustained.[86]

Notice of Meeting: For private companies and non-listed public companies, the notices required for Board and Committee meetings are usually provided in the Articles. However, every notice of meeting must convey the nature of the business[87] and must also be specific enough to enable a shareholder decide whether or not to attend[88].Every member of a company is entitled to notice of a general meeting[89]. The following persons are also entitled to notice of meeting[90]:

a. Legal representatives, receivers, trustees in bankruptcy of a member,
b. Every director of a company,
c. Every auditor for the time being of the company,
d. The secretary.s

The notice required for all types of general meetings is 21 days from the date on which the notice was sent out. However, where all the members are present at a meeting, the statutory requirement shall be deemed waived:[91]

A meeting is deemed to have been properly called by a shorter notice[92], if;

- at an AGM all the members entitled to attend and to vote, thereat, agree,
- at any other general meeting, a majority of members having the right to attend and vote, being a majority having not less than 95% of the voting rights at the meeting of all the members agree.

The requirement of 21 days' notice for any meeting for a special resolution is to ensure that investors who are likely to

[71] Mokwe v Ezeuko (2000) 14 NWLR (pt 686) 143, Ejukorlem v Ejulorlem (1994) 8 NWLR (pt 364) 652
[72] S. 155 (5), CAMA.
[73] Mojekwu v Mojekwu (1997). 7NWLR 283.
[74]*Egbuna v Egbuna, (1996), NWLR (pt 425) 421*
[75]Section 155(5) CAMA
[76]Section 155(2) CAMA
[77]*S. 155 (5); Dipcharima v Bornu Holding Co Ltd (1969) NNLR 104.*
[78]*Metal Construction (West Africa) Ltd v Migliore. (1971) NSCC. 145*
[79]*Tika-Tore Press Ltd v Abina (1973) 3 ECS LR 321*
[80] Dipcharima v Bornu Holding Co. Ltd Supra
[81] S. 80 CAMA
[82] S. 157 CAMA
[83]*Faloughi v Faloughi (1995)3 NWLR (pt 384) 434 S. 157 (3)*
[84]*Re Jermyn Street Baths Ltd. (1970) 1 WLR 1194*
[85] S. 301 – 303 CAMA
[86] Foss v Harbottle (1843) 2KB 461
[87] Batcheller & Sons v Batcheller (1945) Ch. 169.
[88]Ososanya v J.A.O Obadeji Ltd & Ors (1966) (2) ALR Comm 431
[89] Smith v Darly (1849) 2 HL Cas 789, S. 219
[90] S. 219 CAMA
[91]S. 217, CAMA
[92]S. 217 (2)

opposeany resolution have enough time to articulate their positions. The meeting of the Board is usually convened on a 14 days' notice and is usually in the Articles. In calculating days, the days must beclear days i.e, excluding the day of service and meeting. Any other meeting may be convened by shorter notices if all the participants agree. Unless the articles provide otherwise, the notice required for the Board Meeting is 14 days, in writing.[93] Shorter notice will invalidate the meeting of the Board of directors unless the Articles provide otherwise.[94]Nevertheless, the court held that, where a director is told that a meeting will be held on the same day and documents are given to him,[95] such a director should attend the meeting and raise the objection later. Ethically, adequate notice of meetings of the Board bequeaths the directors with time to prepare to discharge their duties effectively. Further investor protection exists in the provision that service of notice should be personal or by post to members' registered addresses.[96] Where proxy is to be used, the notice must state with reasonable prominence that members are entitled to vote by proxy.[97]Any member who is entitled to attend a meeting is entitled to appoint a proxy.[98] Failure to give notice of a meeting invalidates the meeting[99], unless, such failure is accidental on the part of the person giving the notice. Also, ifthere is unanimity of all its members,[100]the defect could be ignored by all the members entitled to attend and vote. In particular, failure to give notice to only one member invalidates the meeting even if the member had given notice of inability to attend.[101] These rules apply as due diligence for strict compliance even if the plaintiff had not attended any single meeting except the meeting which purported to remove him.[102] Adequate notice period is an instrument to protect the company and the shareholders against the tyranny of the majority or of the minority. Thus, directors and auditors who may be whistle blowers and diligent in their work, are also protected in that Special Notice is required in the following resolutions;

(a) To dismiss a director by ordinary resolution[103]
(b) To appoint auditors in certain circumstances or to remove them[104]
(c) To appoint or retain a director of a public company who is liable to retirement under an age limit[105].

The notice required is first to the company of intention to move the resolution. Thereupon, thecompany will give another notice of the resolution with the notice of the meeting of not less than 21 days before the meeting.[106] The notice must provide for the opportunity of the director or auditor to state his case[107]. It is also noteworthy that;[108]

- A copy of the notice should be sent to the director
- The director is entitled to make representation and circulate to the Board
- If the directors' representation is late, it could be read at the meeting[109]

Furthermore**,** the law creates a distinction between failure to serve notice on a person entitled to it and failure to give adequate notice. Failure to give adequate notice of any meeting to a person entitled to receive it shall invalidate the meeting, unless such failure is accidental on the part of the person giving the notice.[110] Failure to give notice, at all, is an incurable defect.[111] To ensure effective circulation of notice, because of the huge land area of Nigeria, newspaper publication of notice is allowed or any other mode provided by the Articles.[112]

Quorum: It is essential that a quorum be present in a meeting. The Articles may provide that the members may be present by proxy. Unless otherwise provided in the articles, the quorum for a meeting of a company shall be one-third of the total number of members of the company or 25 members whichever is less, present in person or by proxy.[113]Where the number of members is not a multiple of 3, then the nearest number to one third shall be the quorum. Also, where members are 6 or less, then two persons constitute a quorum.[114] Not only should there be quorum at the commencement of the meeting but the quorum must be maintained throughout the meeting.[115] If, at any point in the meeting, there is no quorum by virtue of a member leaving the meeting, the meeting must be adjourned as anything done thereafter, would be a nullity.[116] For the Board of Directors, the quorum needed for its meetings is two where there are not more than 6 directors. Where there are more than 6 directors, the quorum shall be one third of the number of 6. Where the number is not a multiple of 6, the quorum shall be 1/3rd to the nearest number.[117] Where the Articles provide that a specific business of the company will be conducted by specific categories of directors, a Board meeting or Executive directors meeting so constituted and resolutions passed therein are valid.

Resolutions: As a company is an artificial persona, its decisions are made by resolutions which must be passed at the General Meeting.[118]

Written Resolutions: To give way to modernisation of the decision-making process, the rule[119], that individual consents given separately cannot bind the company, is no longer the law. In the case of a private company, a written resolution signed by all the members entitled to attend and vote shall be as valid and effective as if passed in a general meeting.[120] The main reasons for this provision are obviously to save costs and achieve convenience especially for small companies and allow shareholders to decide informally on issues within their

[93] S. 266
[94] S. 266 (3)
[95]In Haslir v C. Zard & Co 1976 (1) A. L. R. Comm 149.
[96]S. 220
[97] Alexander v Simpson (1889) 43 Ch. Div 139. S. 230 (2)
[98] S. 230 (2) CAMA
[99]S. 221. Tiesson v Henderson (1989) 1 ch. 861. Onwuka v Taymani (1968)(2) African L.R (Comm) 313
[100] Re Express Engineering Works Ltd (1920) 1 Ch. 466; S. 217 (2)(a) CAMA
[101]YOUNG V LADIES IMPERIAL CLUB (1920) 2 K.B 523. Longe v First Bank of Nigeria Plc. supra, Yalaju – Amaye v Associated Registered Engineers Contractors Ltd (1990) 4 NWLR (pt 145) 422.
[102]*Baffa v Odili. (2001)15 NWLR (pt 737) 709. Section 266(2)*
[103] S. 262 (1) CAMA
[104] S. 364 CAMA
[105] S. 256 CAMA
[106] Onwuka v Tayimani (1965) LLR 62
[107] S. 262(3) CAMA
[108] S. 262 (3)
[109] S. 262 (3)(b)
[110] Ososanya v Obadeyi (1963) 2 ALR Comm-1. Section 217 (2a)
[111] Awoyemi v Solomon (1979) FRCR 165. S. 221 (2a)
[112] S. 236 CAMA
[113]Section 232(2); Imonioro v Seemuth Electro (Eng.) Nig. Ltd. Suit No. FR/L 45/78.
[114] Martins v Ogunbadero supra. S. 232 (2) CAMA (the proviso)
[115] Re London Flats Ltd (1969) 1 WLR 711. S. 232 (1)
[116] S. 232 (5) CAMA
[117] S. 264
[118]S. 234 (1) CAMA
[119]Re George Newman (1895) 1Ch. 674.
[120] S. 234 CAMA

competence. Articles may adopt modern technology to facilitate communication by corporate participants through conference calls and Skype discussions across continents. The company cannot dispense with the requirement for Special and Extraordinary Resolutions to be in writing. The requirement for unanimity in private companies where there is no meeting is to protect minorities and small investors.[121]

Types of Resolutions

There are basically three types of Resolutions:

a. Ordinary Resolution: This requires 21 days' notice and simple majority[122]
b. Special:–21 days' notice[123]and at least 75% majority of votes cast by such members entitled to vote at a general meeting specifying intention to propose the resolution as a special resolution.
c. Extraordinary: –75% majority of members and no special notice[124]. This includes members Resolution.[125]

The Notice of the meeting must state the intention to propose the resolution as a special resolution.[126] The votes recognised are those of members not others in attendance like auditors, directors, company secretaries, as voting is a membership right.[127] Special Resolution is required for important matters as alteration of the objects of a company,[128] changing the name of the company[129] altering the Articles[130] reduction of share capital[131] winding up of a company by the court[132] voluntary winding up[133] making liability of directors to be unlimited.[134]

i. Registration of Resolutions Ordinarily, resolutions are indoor management affairs. However, extraordinary and special resolutions agreed to by all members must be filed at the CAC e.g.;

- Resolutions to Recapitalise and alter memorandum[135]
- Resolutions of class rights[136]
- Resolutions of members voluntary winding up[137]
- Resolutions on Arrangements compliance to merge and take over[138]

Amendment of Resolutions: A resolution may be amended only within the scope of the notice given. Generally, amendments to special resolutions and extraordinary resolutions are not permissible unless framed in a way to allow amendment; otherwise another notice to propose the amended resolution is required[139]. Grammatical and other non-substantial errors are always allowed.[140] The test of the permissibility of amended resolution is whether the business transacted was specified in great detail to enable members decide whether to attend. The proposed amendment must not, in the opinion of the chairman of the meeting, materially alter the scope of the resolution. Thus, where it was proposed to reduce the company's share premium account by £1,356,900.48 and before the meeting £ 327.17 was found, confirmation of the resolution amended at the meeting was refused, although the substance of the resolution was not altered.

Circulars: Usually, the Board presents its position on any issue in order to secure approval. In that case, directors must ensure that circulars donot misre present the facts as stated in the notice and the final resolution. However, being in management, the Board, in their normal function, uses the company's resources to circulate their position, as well as despatch proxy.[141] Equally, knowledgeable members could use the company's machinery to circulate resolutions at AGMs to counteract the position of the Board. Also, shareholders are allowed to circulate statements not exceeding 1000 words and can deposit their amended resolution in the company, not less than one week before the meeting.[142] Acting independent of the Board on controversial issues like mergers, take overs, unethical awards etc. may occasion costs to opposition members, but presents strategic advantages e.g.

1. Prevention of delays in providing Board with contrary views,
2. There is no limit of 1000 words on circulars zallowed.
3. Opposition can add details of their proxies,showing their numerical voting power.
4. Board is not aware ofthe opposing view in advance,
5. Board may not have time to articulate its reply to the circular of opposition.

Voting: One of the core rights of a shareholder is to attend and vote at general meetings and appointa proxy who need not be a member.[143]This principle is subject to two members being legally required for a valid meeting.[144] Unless the company's regulations provide otherwise, voting is usually on a show of hands, or by some other electronic gadgets. This is usually done on a basis of one vote per person irrespective of the number of shares owned by a member. Where a matter is controversial or where a resolution proposed by the Board is defeated on a show of hands, a poll may be demanded.[145] Accordingly, the chairman will direct for a deed poll. It is noteworthy that the Articles cannot exclude deed poll for election of chairman, adjournment of meeting, demand of not less than 5 members having voting rights or members having 10% of total voting rights.[146] These regulations effectively allow democratic corporate governance by accommodating, reasonable minorities and opposition. In Nigeria, postal balloting is not yet practised for obvious limitation of logistics. This process allows arguments and discussions of those present for the resolution but voting will be done later outside the meeting. This system of voting ensures that members are not unduly influenced by the watchful eyes of the opposition who

[121] S. 234 CAMA
[122] S. 233(1), CAMA
[123] S. 233(2), CAMA
[124] S. 217 (2)(b) CAMA
[125] S. 235 CAMA
[126] S. 233 (2) CAMA
[127] S. 81 CAMA
[128] S. 46 (1) CAMA
[129] S. 31 (3) CAMA
[130] S. 48 (1) CAMA
[131] S. 106 (1) CAMA
[132] S. 408 (a) CAMA
[133] S. 457 (b) CAMA
[134] S. 289 CAMA
[135] S. 237(2)
[136] S. 237 (4c)
[137] S. 233 (4d), S. 457
[138] S. 538 (7a)
[139] Re Moorgate Mercantile Holdings Ltd (1980) 1 WLR 227.
[140] Gower, Principles of Modern Company Law. Supra. P. 428.
[141] Gower, Principles of Modern Company Law, supra. Pp 435 – 436.
[142] S. 235(1) (b) CAMA
[143] S. 230 & S. 227 CAMA.
[144] Sharp v Dawes (1876) 2QBD 26 CA – S. 232 (2) CAMA
[145] S. 224 (1) & S. 233 (3) CAMA – Tika Tore Press Ltd v Ajibade Abina (1973) LPELR – SC 276/1969.
[146] S. 225 (1)(a) CAMA

may be the management or influential shareholders. Through proportionate/cumulative voting system, minority shareholders may successfully vote in at least one director. Otherwise an owner of majority of the shares can appoint all directors by ordinary resolution.[147] Usually, the Articles provide that holders of a certain percentage of shares are entitled to proportionately appoint a director.

Proxies: Under Common law, attending meetings and voting must be done, personally.[148]However, in Nigeria proxies are agents of shareholders and a proxy may or may not be a member.[149] Usually, proxy forms may be lodged in advance which tend to enhance Board control as members may want to attend but may not be bold enough as to vote against the Board. The particular nature of proxy rights is nebulouse. g. proxies are agents but are not compelled to exercise authority conferred on them.[150]Proxies may vote on a poll, and not on a show of hands and may speak at private meetings and demand a poll. However, shareholders must be informed of these proxy rights in the notice of meetings. Both the Company and the shareholders must disregard the requirement that any notice of proxy may be out of time, unless lodged at least 48 hours to the meeting as this is not a legal requirement but an act of convenience.[151] Advance lodgement of proxies allows verification of authenticity of the proxies. If the period for lodging proxies is too short, the Board may dispatch the notices with proxy forms stamped and addressed at company's expense to the proxies directly. Company administrators must be aware that proxy voting and the rules may seem democratic in corporate governance but has an intrinsic tendency to enhance Board dictatorship, because the Boards usually manipulate the use of proxies. Gower put the position succinctly thus, "Although proxy voting gave an appearance of stockholder democracy, this appearance was deceptive and in reality the practice helped to enhance the dictatorship of the Board".[152]

Adjournment: Under common law, unless there is reason, the chairman cannot just adjourn a meeting.[153] However, when the agenda of a meeting is not completed, the meeting will stand adjourned till the next meeting, at same place, the following week, when members shall form a quorum. Only the left over matters will be dealt with as the meeting is considered a continuation of the original meeting. When a resolution is passed at an adjourned meeting, it shall be treated as being passed on the day it was actually passed.[154] Public companies usually set out the grounds for adjournment in the company's articles. i.e. if those present agree, or at the chairman's suggestion or by resolution of members. The chairman may, unilaterally, adjourn a meeting if it appears to the chairman that an adjournment is necessary to protect the safety of any person attending the meeting or ensure that the meeting is conducted in an orderly manner. The chairman must exercise the power bona fide and reasonably to facilitate the meeting and not as a ploy to prevent or delay a decision to which the chairman objects[155]. An adjournment may enable cross checking of the votes exercised. Scrutineers may be appointed by parties to reconcile the results. When, however, the venue of the meeting was too small and the chairman adjourned the meeting, it was held that the chairman's exercise of his power was residual and he should have sought the consent of those present even though he acted in good faith.[156]

Minutes of the Meeting: Minutes are evidence of the proceedings of the meeting. They are open for inspection by only members. Every company shall cause minutes of all proceedings of general meetings of directors and meetings of managers to be entered into books kept for that purpose. If minutes are not kept, actions of companies may be challenged.[157] The minutes must not be "draft"[158], otherwise they could be rejected as inauthentic in evidence. Thus, S. 633 (1) states that; "Any register, record, index, minute book or book of account required by this Act to be made and kept by a company may be made by making entries in bound books or in loose leaves, whether pasted or not, or in a photographic film form, or may be entered or recorded by 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".[159]

Basic contents of minutes of meeting are as follows:-

- Time, date and location of the meeting
- Names of all present
- Apologies for absence
- Proposals for consideration
- Proposed Resolutions
- Decisions taken/Resolutions passed
- Queries or objections raised
- Signatures

Chairman: There is no legal requirement for the roles of the Chairman and CEO to be held by two separate people. For listed companies, the Corporate Governance Codes of England and Nigeria[160] require the roles of the Chairman and CEO to be held by two different people. Although the Corporate Governance Code is not mandatory, Listing Rules of the Stock Exchange require their compliance. In Nigeria, the chairman, if any, of the Board of directors shall preside as a 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 or is unwilling to act, the directors present may elect one of their member to preside over the meeting. [161] if no director is willing, or is present, the members may after one hour appoint one of their members to act as chairman. If the Articles are silent, the members may choose a person present and willing to act as Chairman. The Chairman's position is crucial as the proper conduct of the meeting is his responsibility e.g. on points of order, motions, amendments. The chairman should use his wisdom to ensure that decisions are made according to the sense of the meeting. His/her duties are statutorily provided as follows;[162]

a. Preserve order and power to take reasonably measures
b. To see that proceedings are conducted in a regular manner

[147] S. 262 CAMA
[148] Harben v Phillips (1883) 23 Ch. D. 14, CA.
[149] S. 230 CAMA
[150] S. 230 (1) CAMA
[151] S. 230 (3) CAMA
[152] See Gower Supra p. 443
[153] National Dwellings Society v Sykes (1897) 3 Ch. 159.
[154] S. 238, CAMA
[155] Gower, Principles of Modern Company Law. 10th Edition at p. 428.
[156] Byng v London Life Assurance (1990) Ch. 170 CA.
[157] S. 241 CAMA
[158] Migliore v Metal Construction (W.A) Ltd (1977) 3 F.RCR 119
[159] Onwuka v Taymani Supra.
[160] SEC Code of Corporate Governance (2014)
[161] S. 240
[162] S. 240 (3)

c. Ensure that all questions arising are promptly decided
d. Act in the bona fide interest of the company

Usually, the chairman will direct the poll to be taken although results may be announced after adjournment of the meeting. Some companies may give the Chairman a casting vote if he is a member.

Media Publications & Privilege: Under Common Law, statements made at board meetings are not actionable as defamation unless there is malice.[163]Defamation Laws[164]also specifically provide that fair and accurate newspaper or broadcast reports of general meetings of public companies are not actionable unless there is malice. Newspaper reports and TV to the world at large relating to the company or its meetings are not privileged,[165] and the defence of fair comments, may only be available if the publication is in the public interest. Press publication has been an investor/creditor protection which the law continues to encourage.[166] Invitation of the press to cover character assassination of opponents may, however, be evidence of malice.[167] Traditionally, the press is invited by public companies to report and circulate, in advance, chairman's speech, and to publish the results. The press have no legal entitlement to attend meetings of companies, public or private.[168] Resolutions passed by private companies which have public interest or connotations e.g. on prospectuses, proposals to public companies are of public interest and defences of fair comment will apply. A libel suit has been used to suppress further publication on allegation of contempt of court.[169]

Conclusions

- Company meetings are veritable instruments of participatory governance of companies so as to achieve corporate success. Shareholders' involvement through well-structured meetings ensures effective controls and investor protection as well as curb managerial disharmony and attendant economic losses.
- Conflicts in corporate governance can be pre-emptively resolved within the legal framework through compliance with both the spirit and letter of the decision making processes provided by the law rather than the costly disruptions of breaches and resort to expensive litigation.
- The meeting of corporations is the fulcrum for balancing the powers of management who supply the expertise and initiatives against the powers and control of the investors who supply the capital. Consequently, managements and shareholders must be educated appropriately for sustainability of corporate success.
- The rules of corporate decision making are likely to change towards leveraging governance with technology and other best practices of corporate governance. Institutions like the OECD, the Corporate Governance Task Force of Basel Committee, the FSA[170], the Nigerian SEC, the ISAN, are all already reviewing corporate governance techniques through voting techniques, contents of Directors Report and circularisation of reports. It is proposed that all shareholders can have PIN numbers, biometric registration and personal mail addresses for digital voting to enhance shareholder participation and corporate democracy.
- Artificial intelligence of technology can leverage more on company's performance and communication processes. However, humanparticipation in decision making through meetings of the organs of company cannot as yet be replaced by technology. Thus, development of corporate administrators in the proper processes as well as in substantive issues of content to Directors Report and Strategic Reports is crucial to effective decision-making.

[163] Langdon John-Grffiths v Smith (1951) 1KB 295
[164] Defamation Laws of Lagos State, Cap D 12; the UK Defamation Act of 2013 and S. 373 of the Criminal Code of Nigeria.
[165] Pansford v Financial Times (1900) 16 TLR 248
[166] Gower's Principles of Modern Company Law, 4th Edition. Stevens P. 552
[167] Pittard v Oliver(1891) 1 QB 474.
[168] Gower's Principles of Modern Company Law, 4th Edition. Stevens P. 553.
[169] Wallasteiner v Mois. No. 2 1975 QB 373
[170] Gower Principles of Mod ern Company Law 10th Ed. Supra p. 425 and 459.

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