



**Institute Of
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ICSAN's Guidance on the Venue of a **VIRTUAL MEETING**¹

¹ The Information contained in this Guidance does not constitute professional or legal advice to anyone. Professional advice on any issue relating to this Guidance should be sought by stakeholders in order to take an informed decision

ICSAN'S GUIDANCE ON THE VENUE OF A VIRTUAL MEETING

1.0 INTRODUCTION

The recent lockdown witnessed globally as a result of the COVID-19 pandemic has brought the corporate world to the point of seeking alternatives to carrying on business and holding meetings without violating the orders of governments worldwide imposing restriction on movements, in order to help in flattening the curve of the spread of the deadly virus, through physical interactions.

Using Nigeria as a case study, recent statistics have shown that more virtual meetings have been held in the last one month than the number held in the whole of 2019. This indicates that many individuals and organizations have embraced virtual meetings as part of the new normal as far as meeting practice is concerned.

Virtual meetings have been beneficial and provided a major business continuity plan for the corporate world amidst the COVID-19 pandemic. It is envisaged that after the lockdown, the need to continue to obey the directives of health authorities by practising social distancing, regular hand washing, use of face masks and sanitizers, in order to prevent infection, would make both conveners and participants at meetings to still have a preference for virtual meetings over the physical meetings. Consequently, virtual meeting is set to become an entrenched practice.

The Institute of Chartered Secretaries and Administrators of Nigeria (ICSAN) has remained a supportive stakeholder on best governance practices to the various regulatory authorities such as the Corporate Affairs Commission, the Securities and Exchange Commission, the Nigerian Stock Exchange, Financial Reporting Council of Nigeria, etc., and will continue in that line. Therefore, as a leading voice in promoting the ethos of Corporate Governance and the practice of chartered secretaryship generally, ICSAN has identified a gap in the law and procedure of corporate meetings, which the current lockdown has exposed.

In order to address the identified gap, enlighten stakeholders on the controversial issue relating to the venue of a virtual meeting and to help governance practitioners deal with the challenges engendered by the COVID-19 lockdown ordered by the governments, ICSAN held a webinar on Friday, 24th of April 2020 and hereby issues this Guidance from a practical and best practice perspective:

2.0 DEFINITION OF A VIRTUAL MEETING

A virtual meeting is one which enables participants, regardless of their location, to use video, audio, and text to link up online, during which participants can share information and data in real-time, without being physically located together, and can hear other participants and be heard.

A virtual meeting can occur in two possible instances:

- 2.1 Absolute or full virtual meeting arises when every attendee connects electronically via an electronic platform, without being physically located together with any other participant
- 2.2. A hybrid virtual meeting on the other hand is one in which the host of a meeting and a few other people congregate physically at a location, while others dial in via an electronic platform, and all can participate and interact with one another virtually.

2.3 The Companies and Allied Matters Act, Cap. C20, Laws of the Federation of Nigeria, 2004 (“CAMA”) does not have a provision for virtual meetings. It should also be noted that CAMA does not prohibit corporate bodies from holding virtual meetings.

3.0 THE VENUE OF A VIRTUAL MEETING

It is important to note that electronic platforms such as Zoom, Skype, Microsoft TEAMS, etc., are mere transmission platforms and, therefore, cannot be regarded as the venue of virtual meetings. In determining the venue of a virtual meeting, ICSAN provides the following guidance:

- 3.1 If the law stipulates that a meeting should be held at a particular location, (e.g. the provision of s. 216 of CAMA which provides that all statutory and annual general meetings of every company incorporated in Nigeria shall be held in Nigeria), then, the venue of such meeting must conform to the mandatory provisions of the law, even where all the participants joined the meeting from different parts of the world.
- 3.2 Where the Governance documents of a Company, viz, Articles of Association in the case of Annual General Meetings (AGMs); Board Charters in the case of the Board; Terms of Reference or Committee Charters in the case of Board Committees; expressly state the venue of a virtual meeting, the venue expressly stated should be recorded for such corporate meeting.
- 3.3 Where there is no such express / written provision regarding the venue of a virtual meeting, the default position to be recorded as the venue could be any of the three options below:
 - 3.3.1 The Registered Office or the Corporate Head Office of the company or organization or such place as is the practice of the company to hold such meetings if it were to be a physical meeting, should be stated as the venue of the virtual meeting in the Notice.
 - 3.3.2 The office address of the host of the meeting who should be either the Chairman or the Board Secretary stated in the relevant corporate documents (e.g. FORM CAC 7A

and FORM CAC 2.1 – Particulars of Directors and Secretary or the Constitution of an organization) filed with the Corporate Affairs Commission, should be the venue of the virtual meeting.

3.3.3 In the case of an outsourced Secretarial firm that serves as Board Secretary to an organization, the venue should be the address of the organization whose meeting is to be held.

3.4 In the case of a hybrid virtual meeting, the physical location in which the host of a meeting and a few other people congregate physically at a location, would be recorded as the venue.

4 ANNUAL GENERAL MEETINGS HOSTED VIRTUALLY

4.1 Where there is no provision in the Articles of Association or the Constitution of an organization authorizing it to hold an Annual General Meeting virtually, the Board should propose for the approval of the shareholders, an amendment of the Articles to authorize the organization to hold Annual General Meeting virtually at the agreed location.

4.2 This procedure should be followed notwithstanding that the Board is empowered to convene a general meeting, decide the date, venue and time, which they will thereafter communicate to the shareholders or members.

4.3 It is recommended that the Board should sensitize the shareholders on the need for an express provision in the Articles of Association authorizing Annual General Meeting to be held virtually where a physical meeting would not be possible, such as in case of the current restriction on movements due to COVID-19 or natural disaster.

4.4 The Board should also make appropriate arrangements for the information technology infrastructure that would be required to facilitate adequate participation by the shareholders in such Annual General Meetings held virtually and promptly communicate the details of the platform to be used and login details.

4.5 In exercising this power, companies or organizations must go beyond barely meeting the legal requirement of a meeting; they should ensure they have an adequate and a user-friendly infrastructure in place to ensure maximum participation by the shareholders in a virtual meeting.

5 NOTICE OF MEETING

5.1 In drafting the notice of a meeting, the Board Secretary should indicate that the meeting being convened is a virtual meeting. For example, the notice of the Board meeting could be drafted as follows:

“NOTICE IS HEREBY GIVEN that the meeting of the Board of Directors of ABC DIGITAL PLC will be hosted virtually at its registered office at 123 Broad Street, Lagos, on Monday, May 4, 202X at 1.00 pm for the following purposes:”

5.2 In the alternative, the information that a virtual meeting is to be held could be included in the ‘Notes’ under the agenda of the meeting. There should be an annotation on the Notice of Meeting indicating that the meeting is a virtual meeting. This is good for the information of the participants and for historical purposes. The above could also be adapted for the notice of an Annual General Meeting.

5.3 Notwithstanding the fact that it is a virtual meeting, the notice of meeting must still indicate a physical venue for the meeting. The venue may be the one provided in the Articles of Association of the company or the Constitution of the organization, if there is such a provision. However, if there is no such provision, any of the three default positions stated in paragraphs 3.3.1, 3.3.2 and 3.3.3 may be used.

6 QUORUM

6.1 Unless otherwise provided in the Articles of Association, a quorum shall be present at any general meeting at the time when the meeting proceeds to business and throughout the meeting.

6.2 The quorum as contained in extant law or Articles of Association of the company shall also apply to virtual meetings.

7 ATTENDANCE

7.1 The login details to the virtual platform for the meeting shall be sent only to those entitled to attend the meeting.

7.2 The electronic platform used for the virtual meeting takes the record and details of attendees at the meeting. The list of those who participated in the virtual meeting should be retrieved by the Board Secretary after the meeting and kept as the record of attendance.

7.3 Alternatively, the Board Secretary should write the names of those who participated in the virtual meeting in the attendance register and indicate in front of each name, how they participated e.g. "attendance via telepresence or teleconference".

7.4 The record of attendance in electronic or physical form which is recorded in the minutes of the meeting would be conclusive evidence of participation in the virtual meeting by those mentioned. Therefore, the fact that the record of attendance is not physically signed by participants would not be a ground on which the meeting could be challenged.

8 MINUTES OF MEETING

8.1 The minutes of the meeting must also reflect the fact that the meeting was held virtually.

8.2 In the case of a hybrid virtual meeting, the location at which the host of a meeting and a few other people congregate physically, would be recorded as the venue.

8.3 For full virtual meetings, the venue will be determined based on any of the parameters stated in paragraphs 3.0 to 3.3.3 and would be reflected as the venue of the meeting.

8.4 The minutes of a virtual meeting should be recorded as follows:

“Minutes of the Board Meeting of ABC DIGITAL PLC hosted virtually at its Registered Office at 123 Broad Street, Lagos, on Monday, May 4, 202X at 1.00 pm”

9.0 THE NEED TO HAVE ANOTHER LOOK AT THE CAMA AMENDMENT BILL 2020

The Institute of Chartered Secretaries and Administrators of Nigeria recommends that for uniformity, the CAMA Amendment Bill 2020 should accommodate the present reality of holding virtual meetings and specify the venue of such meetings. This approach is better than requesting each company to go through the rigors of amending its articles to provide for virtual meetings and the venue.

10.0 OUR COMMITMENT

The Institute of Chartered Secretaries and Administrators of Nigeria, as a leading voice on Corporate Governance and Corporate Secretarial matters, will continue to offer support to relevant stakeholders and provide guidance in the form of publication of Guidance on Corporate Governance and Company Secretarial Practice. This is with the view to expanding the scope of knowledge of practitioners and other stakeholders and in helping to simplify the practice of Corporate Governance.

ISSUED ON FRIDAY, 24TH DAY OF APRIL 2020