

# THE MECHANISMS OF CORPORATE MEETINGS UNDER THE COMPANIES AND ALLIED MATTERS ACT (CAMA) 1990

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## ABSTRACT

*The purpose of this study was to assess the mechanism of corporate meetings under the Companies and Allied Matters Act (CAMA) 1990. This review revealed two major types of meetings, public meetings convened by individuals or bodies to which there is an open invitation extended to any member of the public, and meetings of bodies of which the members are limited and known. However, the study was preoccupied with the second category. Therefore, there is the need for the various Legislatures of countries to work towards enacting effective and efficient company legislation to that effect. It is recommended among others that in Nigeria that the fine of N50 for every day of default to hold a statutory meeting should be reviewed to be punitive.*

**Keywords:** *Mechanism, Corporate meeting, CAMA*

## INTRODUCTION

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 also gives opportunity for social contacts and development of inter-personal relationships. Families, schools management, town leaderships, grassroots movements, governmental departments, organisational councils and even the legislative and executive arms of the government, all function through the mechanism of meetings. There are however two major types of meetings namely; public meetings convened by individuals or bodies to which there is an open invitation extended to any member of the public and meetings of bodies of which the members are limited and known.

This work is concerned principally with meetings of the second category, the most common type of such bodies is the company incorporated by law. Meetings under the second category are governed by laws or regulations relating to the convening and conduct of the meetings and ancillary matters. These laws or regulations may be statutory as in the case of incorporated companies which are governed by Companies and Allied Matters Act Cap C20, Laws of the Federation of Nigeria, 2004<sup>1</sup>, or it may exist by agreement as in the case of associations. Meetings conducted by incorporated companies are referred to as Corporate Meetings.

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Company meeting is an indispensable tool of corporate governance, it is meant to be a key instrument for the protection of investors and the means by which members tame the activities of overzealous and recalcitrant directors and officers of the company. In practice, the general meetings of member have 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 through these meetings and the instrumentality of the present laws in Nigeria.

Black's Law Dictionary<sup>2</sup> (6th Edition, p. 314) defines meeting as a coming together of persons, and assembly. Particularly, in law, an assembling of a number of persons for the purpose of discussing and acting upon some matter or matters in which they have a common interest, for example, a meeting of the Board of Directors or stockholders of a company. Aiyar's Judicial Dictionary states that for a meeting, there must be at least two persons, because a man cannot meet himself. Oxford Advanced Learner's Dictionary (6th Edition, Oxford University Press) defines meeting as an occasion when people come together to discuss or decide something.

In *Sharp v. Dawes*<sup>3</sup>, it was held thus, a meeting means coming together of persons for the purpose of discussing and acting upon some matter or matters in which they have a common interest. Also in *Re James Prain & Sons Ltd*<sup>4</sup>, the court held that unless the word meeting bears a special meaning under the constitution of the company, a meeting cannot be composed of one individual, even if he holds proxies of other members. However, in *East v. Benneth Bros. Ltd*<sup>5</sup>, Warrington J. held that one member who held all the shares of a class constituted a valid class meeting. In that case, the Memorandum and Article of Association of the company provided that no new shares should be issued so as to rank equally with 10,000 original preference shares unless such issue was sanctioned by an extraordinary resolution of the holders and all the preference shares passed at a separate meeting of such holders, and that a modification or variation of the rights of any class of shares might be effected when sanctioned by an extraordinary resolution of the holders of the shares of such class passed at a separate meeting of such holders. All the preference shares were held by one person as a sole shareholder of the class of shares. It was held that on the true construction of the memorandum and articles, the sole preference shareholder could constitute a meeting to consent to a modification of the rights of preference shareholders.

It has also been held in *Byng v. London Life Association Ltd*<sup>6</sup> that a meeting could be validly held where some of the participants were in the main meeting room and others were in contact with them via audio-visual links. However, the meeting was held to be invalid on the ground that the audio-visual links were not effective in ensuring that all the members could participate fully in the deliberation of the meeting. Meetings are meant to be the coming together of persons, as assembly, particularly, for the purpose of discussing and acting upon some matter or matters in which they have a common interest, but in practice it is the interest of a few that is considered in corporate meetings. Various issues usually arise when a meeting is sought to be

held. They appear in their sharpest form especially where the majority of shareholders wish to use the General Meeting to express their will or challenge some aspect of the management of the directors.

It is imperative to note that under the Company Act 1973 of South Africa, one member can hold a valid meeting. Section 184 provides that in the case of a company having only one member, such member present in person or by proxy shall be deemed to constitute a meeting. Corporate meetings are therefore all the meetings undertaken by a company either by the board members in general meetings, classes of members or the officers/agents.

The word “year” has not been defined by the Act, but the Interpretation Act Cap 110 Laws of the Federation of Nigeria 2004, section 18(1) defines year as a period of twelve months. In *Gibson v. Barton*<sup>7</sup>, the court held that the twelve calendar months must commence from 1st January and end on the 31st December, and not the period of twelve months commencing from the day of registration of the company. There are three main types of meeting under CAMA 1990. These are Statutory General Meetings, Annual General Meetings and Extra-ordinary General Meetings.

**Statutory General Meeting:** This is a compulsory meeting prescribed by law to public companies in Nigeria. Section 211(1)<sup>8</sup> provides thus:

*"Every public company shall, within a period of six months from the date of its incorporation, hold a general meeting of the members of the company (in this Act referred to as the statutory meeting)."*

This section requires a public company to have a statutory meeting within a period of 6 months from the date of its incorporation. At least 21 days before the statutory meeting, the Directors must send out a copy of the statutory report to every member<sup>9</sup> The Statutory report certified by not less than 2 Directors should state details listed in subsection 3(a)-(g). What makes the Statutory Meeting important is the Statutory Report. There are issues required to be stated in the report, but generally it is expected that the Directors give a true and accurate report of the state of affairs of the company, until the date of the meeting to the members. The report shall also contain an abstract of the receipts of the company and of the payments made from them up to a date within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made from such receipts and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company<sup>10</sup>.

The members of the company present at the statutory meeting shall be 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<sup>11</sup>. The statutory report shall, as far as it relates to the 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>12</sup>. A copy of the report must be delivered to the Commission for registration by the Directors<sup>13</sup>. The directors shall also cause a list showing the names, descriptions and addresses

of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting and to remain open and accessible to any member of the company during the continuance of the statutory meeting<sup>14</sup>.

The court in *Gardner v. Iredele*<sup>15</sup> has held that the notice convening a statutory meeting must state that the meeting so convened is the statutory meeting. However, any member who wishes a resolution to be passed on any matter arising out of the statutory report shall give further twenty-one days (21 days) notice from the date on which the statutory report was received to the company of his intention to propose such a resolution<sup>16</sup>. The statutory meeting may adjourn from time to time, and at any adjourned meeting any resolution of which notice has been given in accordance with the articles, either before or subsequently to the former meeting may be passed, and the adjourned meeting shall have the same powers as an original meeting<sup>17</sup>. It is worthy of note that the provisions of section 211 of CAMA does not apply to a private company. However, if a private company becomes a public company alters its articles, thus throws open to the public, subscription towards its capital, it will have to comply with the provisions of section 211 of the Act regarding holding of a statutory meeting.

Where a public company fails to comply with the requirements of section 211 of the Act, the company and any officer in default shall be guilty of an offence and liable to a fine of N50 for every day during which the default continues<sup>18</sup>. It should also be noted that the Statutory General meeting is usually a welcome and familiarity meeting with the intendment of discussing serious business as it affects the company. In *Mussini v. Balogun*<sup>19</sup>, Kazeem, J noted that where a private company converts into a public company, it should comply with the provision of CAMA. In England and South Africa, there is no provision for statutory meeting. The statutory meeting is remarkably important simply because of the agenda on the programme, as these agendas are of utmost importance to the running of the company.

**Annual General Meeting:** In Nigeria, this represents the source of ultimate authority within the company structure<sup>20</sup>. 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 addition requirement that not more than fifteen months must lapse between the annual meeting and the next.

Section 213 (1)<sup>21</sup> provides thus:

*"Every company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than fifteen 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."*

This section creates two offences, that of not holding the meeting in the year and

that of not holding it within fifteen months after the last one. Thus, if a company was incorporated in Nigeria on the 1st of September 2010 it may hold its first AGM in February 2012. The period of holding such a meeting, may be extended by the Corporate Affairs Commission. This meeting is a safeguard for the shareholders. It provides them with an opportunity of questioning the directors on the accounts and reports, which are usually, but not necessary, presented to the AGM and on general matters. In case there is a delay for any specific reason for holding the annual general meeting, an application for extension can be made to the Commission<sup>22</sup>. Such extension cannot exceed three months. If default is made in holding a meeting of a company in accordance with sub-section 1 of this section, the Commission may on the application of any member of the company call or direct the calling of a general meeting of the company and give such ancillary or consequential directions as the Commission thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the company's articles. And it is hereby declared that the directions that may be given under this subsection shall include a direction 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 bind all the members<sup>23</sup>.

A general meeting held in pursuance of subsection 2 of this section shall, subject to any directions of the Commission be deemed to be an annual general meeting of the company; but where a meeting so held is not held in the year in which the default in holding the company's annual general meeting occurred, the meeting so held shall not be treated as the annual general meeting for the year in which it is held unless at that meeting the company resolves that it shall be so treated<sup>24</sup>. Where a company resolves that a meeting shall be treated as its annual general meeting, a copy of the resolution shall within fifteen days after the passing thereof, be filed with the Commission<sup>25</sup>. Where default is made in holding a meeting of the company in accordance with subsection 1 of section 211 of the Act, or in complying with any directions of the Commission under subsection 2 direction of commission that meeting be held, the company and every officer of the company who is in default shall be guilty of an offence and be liable to a fine of N50 and if default is made in complying with subsection 4, filing of resolution, the company and every officer of the company who is in default shall be liable to a fine of N25.

There are two types of businesses conducted at the Annual General Meeting. These are Ordinary and Special Businesses. There is a presumption that all businesses transacted at Annual General Meetings are special businesses, but the exceptions have been stated in the Act. Section 214, provides thus: all businesses transacted at annual general meetings shall be deemed special business, except:

- declaring a dividend,
- the presentation of the financial statements and the reports of the directors and auditors,

- the election of directors in the place of those retiring,
- the appointment, and the fixing of the remuneration of the auditors and
- the appointment of the members of the audit committee under section 59.

An Annual General Meeting can be convened by the following:

1. Board of Directors<sup>26</sup>
2. Members<sup>27</sup>
3. Corporate Affairs Commission<sup>28</sup>
4. The court

In *Okeowo v. Migliore*<sup>29</sup>, the members and directors split into warring factions and the machinery of management had broken down, the court ordered for a meeting to be held and the decision taken will bind the members<sup>30</sup>. Nothing prevents an officer of the company other than the director from calling a meeting but unless the Board has given authority or ratifies the act afterwards, the meeting will be invalid. In *Re Haycraft Gold Reduction and Mining Company Ltd*<sup>31</sup> the secretary called a meeting and it was held to be invalid. In *Ige-Edaba v. West African Glass Industries Ltd*<sup>32</sup>. where the applicant applied by originating summons for an order convening an extraordinary general meeting of the respondent Company. The fact that the two directors whose their presence were necessary to hold a meeting were inaccessible made the court order that meeting, holding that it was impracticable to hold the meeting.

Aniagolu J.S.C in *Okeowo's case*<sup>33</sup> in considering when it is impracticable to hold a meeting adopted the statement of Wynn-Parry J. In *Re El Sombrero Ltd*<sup>34</sup>. where he said inter alia: “the question then arises, what is the scope of the word impracticable? It is conceded that the word impracticable is not synonymous with the word impossible”. However, it should be noted that the ancillary and consequential directions to be given by the court are, however, confined to those that will enable the meeting to be held, and should not cover matters which are properly for the meeting. In *Paul Iro v. Robert Park & Ors*<sup>35</sup>, it was held that although section 128 of the 1968 Companies Act empowers the court to make an order for the holding of a meeting, the consequential order made was ultra vires The court and invalid in that they are matters for the meeting to consider.

***Extra-ordinary General Meeting:*** All general meetings, other than the statutory meeting and annual general meeting are referred to as extra-ordinary general meeting. It is convened when matters other than the matters dealt with at the statutory meeting and annual general meeting arise, for example, the amendment of the Article of Association. All matters transacted at the Extra-ordinary General Meeting shall be deemed special businesses. Section 215 (1) provides thus;

*The Board of directors may convene an extraordinary general meeting whenever they deem fit, 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 general meeting.*

Extra-ordinary General Meeting can be convened by the Board of Directors/a Director,

Resigning Auditor, the court and Requisition of members holding  $\frac{1}{10}$  of the paid up share capital and  $\frac{1}{10}$  of the total voting rights of all the members.

It should be noted that the matter to be discussed at the meeting must be covered by the requisition, otherwise, any matter deliberated outside the requisition is not valid. In *Ball v. Metal Industries Ltd*<sup>36</sup>, the shareholders requisitioned an extraordinary meeting for the appointment of three new directors, subsequently, the chairman of the company gave notice of intention to move at the meeting a resolution for the removal from office of one of the existing directors. The court granted an injunction restraining the company from proceeding with the resolution. In *McGuinness v. Bremner Plc*<sup>37</sup>, the court has held that the word 'convene' in section 215 (2) CAMA means 'summon' or 'call' as distinct from 'hold'.

Section 365 of CAMA sets out the procedure under which the auditor may resign. An auditor's notice of resignation is not effective unless it contain a statement to the effect that there are no circumstances connected with his resignation, which he considers, should be brought to the notice of the members or creditors of the company. The court under its wide powers stated that section 223 of CAMA could order that such a meeting be convened if for any reason it is impracticable to call a meeting of the company or the Board. In *Ige-Edaba v. West African Glass Industries Ltd*<sup>38</sup>, it was held that the court has discretion to convene an Extra-ordinary meeting where it is impracticable to call a meeting in the way prescribed by the article of association of the company. Also in *Okeowo & Ors. v. Miglore & Ors*<sup>39</sup>, the Supreme Court held that it can in the interest of justice, order a meeting of the company instead of the meeting of the Board asked by a party. It has been established from the facts in the trial court and Court of Appeal that it has become impracticable to summon a meeting of the company in the way prescribed by the article of association of the company. The procedure is that the court shall direct a meeting to be convened by notice given in the ordinary way to all members whose name and addresses are known and by advertisement to those whose names and addresses are not known. Note where one member of a two member of a two Member Company has died, the section would empower the court to order a meeting<sup>40</sup>. For the purpose of this section, the directors shall, in the case of a meeting at which a resolution is to be proposed as a special resolution, be deemed not to have duly convened the meeting if they do not give such notice as is required by section 217 of this Act<sup>41</sup>. All businesses transacted at an extra-ordinary general meeting shall be deemed special<sup>42</sup>. In South Africa, there is nothing like Extra-Ordinary General Meeting but section 180 provides for General meetings to be held from time to time. In England, there is no provision for same under the Company Act 2006.

There are other forms of meetings of a company. They include:

**Board Meetings:** The Board of Directors is another arm of the company, which manages the affairs of the company. Section 263 (1) provides thus;

*"The directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings as they think fit: Provided that the first meeting*

*of the directors shall be held not later than 6 months after the incorporation of the company."*

Note, the first meeting of the directors shall be held not later than 6 months after the incorporation of the company. Any question arising at any meeting shall be decided by a majority of votes, and in case of an equality of votes, the chairman shall have a second or casting vote. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors. The directors may elect a chairman of their meetings and determine the period for which he is to hold office; but if no such chairman is elected or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the directors present may choose one of their number to be chairman of the meeting.

The directors may delegate any of their powers to a managing director or to committees consisting of such member or members of their body as they think fit and the managing director or any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be made by the directors. The power vested in the board of directors are to be exercised by them as a group and not individually except to such extent as the board may delegate to any of its members, committee or agent. The decision of the board takes the form of resolutions passed at its meetings. Like companies' resolutions, a resolution of the board of directors is liable to be set aside by the court if it was arrived at in contravention of the rules and procedure for the proper conduct of such meetings. In the case of banks, the regulatory authorities e.g. Securities and Exchange Commission and Central Bank of Nigeria will disregard resolutions passed in contravention of the prescribed procedure. A committee may elect a chairman of its meeting; and if no such chairman is elected, or if at any meeting the chairman is not present within five minutes after the time appointed for holding the same, the members present may choose one of their numbers to be chairman of the meeting.

A resolution in writing, signed by all the directors for the time being entitled to receive notice of a meeting 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. In all the directors' meetings, each director shall be entitled to one vote. Unless the articles otherwise provide, the quorum necessary for the transaction of the business of directors shall be 2 where there are not more than 6 directors, but where there are more than 6 directors, the quorum shall be one third of the number of directors, and where the number of directors is not a multiple of three, then the quorum shall be one-third to the nearest number<sup>43</sup>.

Every director shall be entitled to receive notice of the directors' meetings, unless he is disqualified by any reason under the Decree from continuing with the office of director. There shall be given 14 days notice in writing to all directors entitled to receive notice unless otherwise provided in the articles. Failure to give notice shall invalidate the meeting. Unless the articles otherwise provide, it shall not be necessary to give notice of a meeting of directors to any director for the time

being absent from Nigeria, provided that if he has given an address in Nigeria, the notice shall be sent to such an address<sup>44</sup>. In *Baffa v. Odilli*<sup>45</sup> Chukwuma-Eneh, Justice of the Court of Appeal in his lead judgement at page 741 paragraphs B-F said:

*"I must confess out rightly, that I find the reasoning of the court below with regard to the issue of notice of meeting for 2/7/96 conclusive on the facts and law and sustainable. It is common ground that the said notice of meeting issued on 18/6/96 so that the length of the notice is one day less than the statutory period of 14 days prescribed by section 266 (2) of CAMA"*

Notice should be given to all Directors within a reasonable time depending on the circumstances. In *Homer District Consolidated Gold Mines Ltd, Ex-parte Smith*<sup>46</sup> it was held that three hours notice to Directors who had other business to attend to was insufficient, even though their places of business and the place where the Board meeting was to be held were all in the city of London. Notice need not be given to a director whose whereabouts are unknown.

***Class meetings:*** Where the company's shares are divided into different classes, it may be necessary to convene separate class meetings to consider matters relating to the interest of the holders of those shares. Class meeting is provided for under section 243. The implication of this provision is that the procedure relating to the convening and holding of class meeting is similar to the provisions dealing with general meetings in the Act i.e. Part VIII (Meetings and proceedings of companies). Class meetings are to be attended by members of the class, but it may prove more convenient to hold a combined company general meeting and class meeting, so long as voting is separate and no objection is made at the meeting<sup>47</sup>.

***Liquidators to call Creditors' meetings on insolvency:*** Where there is a voluntary winding up, and the majority of directors have made a declaration of solvency, the liquidator can summon a meeting of the creditors if it is in the opinion of the liquidator that the company will not be able to pay its debts in full within the period stated in the declaration. He will also put before the meeting a statement of assets and liabilities of the company.

***Liquidators to call general meeting at the end of each year:*** Save as provided in section 462, if the winding up continuing for more than one year, the liquidator shall summon a general meeting of the company at the end of the first year commencing from the day the winding up started, and of each succeeding year, or at the first convenient date within three months from the end of the year or such a longer period as the commission may allow. The liquidator shall put before the meeting an account of his acts and dealings and of the conduct or the winding up during the preceding year.

***Meeting of Creditors:*** Where a company decides to wind up voluntarily the company shall caused a meeting of the creditors to be summoned for the day, or the day next following the day, on which there is to be held the meeting at which the resolution for voluntarily winding up is to be proposed.

***The notice of the meeting of creditor is to be sent by post simultaneously with the***

notice of the meeting of the company. The notice of the meeting of the creditors is to be published once in the Gazette and once at least two newspapers printed in Nigeria and circulating in the district where the registered office or principal place of business is situate<sup>48</sup>.

**Management Meetings:** This is the meeting of the officers of the company. It is usually provided for in its Article of Association of the company.

### NOTICE FOR MEETINGS UNDER CAMA

Notice for the Annual and Extraordinary meetings must be 21 days from the date in which the notice was sent, Section 217 (1) CAMA provides thus:

*"The notice required for all types of general meetings from the commencement of this Act shall be twenty one days from the date on which the notice was sent out."*

However, the basic rule of law of meetings is that adequate notice must be given to all persons entitled to receive it. In *Awoyemi v. Solomon & Anor*<sup>49</sup>, adequate notice was not given to the petitioner and a resolution was made by the Board dismissing him, the court held that the due process must be followed and thereby set aside the resolution. Also in *Re Sleepers Supply Co.* x<sup>50</sup>, it was held that 'days' means 'clear days' that the day of service and the day of meeting are excluded from the required number of days. A notice may be given by the company to any member either personally or by sending it by post, e-mail or text message and such shall be deemed to have been effected at the expiration of days after the letter/message is posted or sent. For deceased and bankrupt members, the personal representatives or trustees must get such notice<sup>51</sup>. A public company must also at least 21 days before any general meeting, advertise a notice of such meeting in at least two daily newspapers<sup>52</sup>.

It should be noted that a general meeting of a company shall, notwithstanding that it is called by a shorter notice than that specified in subsection (1) of section 217 CAMA, but shall be deemed to have been duly called if it is so agreed in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and any other general meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than ninety five per cent in nominal value of the shares giving a right to attend and vote at the meeting or, in the case of a company not having a share capital, together representing not less than ninety five per cent of the total voting rights at that meeting of all the members.

It is expedient that the notice of a meeting as stated above shall specify the place, date and time of the meeting, and the general nature of the business to be transacted thereat in sufficient detail, the agenda must not be vague to enable those to whom it is given to decide whether to attend or not, and where the meeting is to consider a special resolution shall set out the terms of the resolution<sup>53</sup>. The logical necessity of a notice of meeting implies that member must know the place, time and when the meeting is to be held. A chance meeting of two shareholders in the street or

more Directors in a restaurant is not a meeting of either shareholders or Directors; see *Barron v. Potter*<sup>54</sup>. In the case of notice of an annual general meeting a statement that the purpose is to transact the ordinary business of an annual general meeting shall be deemed to be a sufficient specification that the business is for the declaration of dividends, presentation of the financial statements, reports of the directors and auditors, the election of directors in the place of those retiring, the fixing of the remuneration of the auditors and, if the requirements of sections 362 and 363 of CAMA are duly complied with, the removal and election of auditors and directors.

If it is intended to move a special resolution at the meeting, notice specifying the resolution as special must be given. In *Re Moorgate Mercantile Holdings*<sup>55</sup>, the court held that the notice of special resolution must contain the 'entire substance' of the resolution<sup>56</sup>. Also Slade J went further to state that "there must be absolute identity at least in substance between the intended resolution referred to in the notice and the resolution actually passed". The following persons shall be entitled to receive notice of a general meeting - every member; every person upon whom the ownership of a share devolves by reason of his being a legal representative, receiver or a trustee in bankruptcy of a member; every director of the company; every auditor for the time being of the company; and the secretary of the company. No person other than those mentioned above shall be entitled to receive notices of general meetings<sup>57</sup>.

In *Young v. Ladies' Imperial Club Ltd.*<sup>58</sup>. The defendant recommended based on the rule of the club that the plaintiff resign, and as she did not do so, the committee erased her name from the list of members. The notice convening the meeting of the committee was sent to every member except one, who had intimated to the chairman that she would be unable to attend meetings of the committee. The court therefore held that the omission to summon the absent member of the committee invalidated the proceedings of that body.

In summary, the notice must not be misleading, the Directors must demonstrate good faith in drawing up the notice, and all disclosures must be frank and full. A general meeting of a company shall, notwithstanding that it is called by a shorter notice than that specified in subsection (1) of this section, be deemed to have been duly called if it is so agreed in the case of a meeting called as the annual general meeting, by all the members entitled to attend and vote thereat; and any other general meeting, by a majority in number of the members having a right to attend and vote at the meeting, being a majority together holding not less than ninety five per cent in nominal value of the shares giving a right to attend and vote at the meeting or, in the case of a company not having a share capital, together representing not less than ninety five per cent of the total voting rights at that meeting of all the members<sup>59</sup>.

In *Imonioro v. Seemuth Electro Engineering (Nig.) Ltd.*<sup>60</sup>, the notice was sent to a wrong address, the court held that the meeting held was invalid. However, in *Re West Canadian Collieries Ltd.*<sup>61</sup> it was held that the omission to give notice to a few members, because the plates for the members were inadvertently kept out of the machine when envelopes for the notice were being addressograph, was an

accidental omission. In *Awoyemi A.D v. Solomon*<sup>62</sup> the petitioner by originating summons filed on the 7th July, 1976, prayed for an order of the court to set aside the resolution of the Board of Directors of the Maximum Insurance Company, represented by the respondents. The respondents had removed the petitioner, but as was alleged and found by the court without complying with the provision of section 127 (a) of the Companies Act 1968. It was held that the resolution to dismiss the applicant was in contravention of the provisions of the Act, and therefore invalid.

It should be noted that every person entitled to be served with notice of a meeting must be served with such notice. Failure to give notice to persons entitled thereto ordinarily invalidates proceedings of the meeting, see *Re Warden & Hotchkiss Ltd*<sup>63</sup>. In *Ososanya v. Obadeyi*<sup>64</sup> it was held that a notice giving by means of advertisement in newspaper or Government Gazette is valid. The law also provides for special notice, for example section 262 (2) . Thus in *Trade link International Nig. Ltd v. Bank of America Ltd and Anor.* , it was held although an ordinary resolution is required for the removal of a Director; special notice is required for the resolution to remove a Director.

#### **VOTING AT MEETINGS UNDER CAMA**

At any general meeting, a resolution put to the vote shall be decided on a show of hands, unless a poll is (before or on the declaration of the result of the show of hands) demanded by the chairman, where he is a shareholder or a proxy; by at least three members present in person or by proxy; by any member or members present in person or by proxy and representing not less than one tenth of the total voting rights of all the members having the right to vote at the meeting; or by a 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 shares conferring that right<sup>67</sup>.

The show of hands is the basic common law method of taking any vote unless a poll was demanded. On the show of hands vote, each member enjoys one vote without regard to the number of votes that a member holding the hand possesses, and if the chairman erroneously counts any individual more than once, the court will not only set aside the decision but will also make a declaration of the correct result. The right to demand a poll should be exercised immediately after a declaration by the result of the show of hands<sup>68</sup>, or where it is required to be taken immediately at the meeting, it must be taken as soon as practicable in the circumstance<sup>69</sup>. The demand could also be made privately to the chairman and by him communicated for the meeting; unless the article of association states specifically the time and place of taking the poll the chairman may direct the method and manner of taking it<sup>70</sup>.

Every member shall have a right to attend any general meeting of the company in accordance with the provisions of section 81 of this Act and vote<sup>71</sup>. In the case of joint holders of shares, the vote of the senior joint holder who tenders a vote, whether in person or by proxy, shall be accepted to the exclusion of the votes of the other

joint holders; and for this purpose seniority shall be determined by the order in which the names stand in the register of members.

A member of unsound mind, or in respect of whom an order has been made by any court having jurisdiction in lunacy, may vote, whether on a show of hands or on a poll, by his committee, receiver, curator bonis, or other person in the nature of a committee, receiver or curator bonis appointed by that court, and any such committee, receiver, curator bonis or other person may vote by proxy<sup>72</sup>. Every person who is entitled to receive notice of a general meeting of the company as provided by section 227 of this Act<sup>73</sup> shall be entitled to attend such a meeting. No objections shall be raised to the qualification of any voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered, and every vote not disallowed at such meeting shall be valid for all purposes and any such objection made in due time shall be referred to the chairman of the meeting, whose decision shall be final and conclusive. It should be noted that on the board voting is based on one-person one vote, but at the general meeting it is based on one share one vote basis, which of course makes those with larger amount of shares control decision making at the general meeting.

It should also be noted that in some cases the court would treat the unanimous acquiescence by the members to a course of conduct as equivalent to the approval of the members in a properly convened general meeting. If it can be shown that all the shareholders with the right to attend and vote at a general meeting had assented to some matter, which a general meeting of the company could carry into effect, the assent is as binding as a resolution in the general meeting<sup>74</sup>. This principle is of practical importance in the case of closely held private companies. In *Re Express Engineering Works, Ltd.*<sup>75</sup>, five persons formed a private company of which they were the only directors and shareholders. They sold property to the company and at a directors' meeting issued debentures to themselves in payment. The articles of the company if no director should vote in respect of any contract in which he might be interested. It was held that it could be ratified by the unanimous agreement of the members.

**Proxy:** The term 'proxy' refers both to the agent appointed by a member to vote on his behalf at a meeting of the company and to the document appointing that agent<sup>76</sup>. Even when a meeting is adjourned, a member can appoint a fresh proxy to attend and vote in his stead on the business to be transacted at the adjourned meeting if the articles so provides<sup>77</sup>. The instrument appointing a proxy shall be in writing under the hand of the appointer or of his attorney duly authorised in writing or; if the appointer is a corporation, either under seal, or under the hand of an officer or attorney duly authorised<sup>78</sup>. There is a problem in ensuring, so far as possible, that members may exercise their voting rights. Most shareholders of large companies do not attend the general meeting. In some cases, to find adequate physical accommodation for all the members if they desired to attend would be impossible.

The solution is to enable voting members of the company to execute this

instrument referred to as proxy in favour of another person, enabling that person to exercise the member's voting rights. Any member may appoint a proxy. A person who holds a proxy to vote at a specified meeting of the company is not deemed to have an interest in the share<sup>79</sup>. Where a shareholder having executed a proxy, himself attends the meeting personally, the authority of the proxy, is revoked automatically. On the death of a shareholder, after he had appointed a proxy, the proxy is revoked if a written notice of death is served on the Company before the meeting. A proxy does not have the title to the shares vested in him unlike a voting trust<sup>80</sup>. A corporation, whether a company within the meaning of this Act or not, may if it is a member of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company.

A creditor (including a debenture holder) of another corporation, being a company within the meaning of this Act, by resolution of its directors or other governing body authorise such person as it thinks fit to act as its representative at any meeting of any creditors of the company held in pursuance of the provisions contained in any debenture or trust deed, as the case may be<sup>81</sup>. It should be noted that proxies are in fact normally solicited, either for or on behalf of management, which wishes the meeting to affirm its policies, or on behalf of dissentient members seeking to oppose the management. In *Peel v. London and North Western Rail Co.*<sup>82</sup> the court held that management was not only entitled, but was bound, to send out circulars explaining their policy, was entitled to solicit votes in support of that policy and could pay the necessary expenses from company funds. This power must be exercised bona fide, but it may well be difficult to prove lack of good faith.

### **QUORUM AND ADJOURNMENTS AT MEETINGS UNDER CAMA**

A quorum can be defined as the minimum number of persons who must be present at a meeting so that business may be conducted or transacted. A meeting that does not have a quorum can be described as "inquorate"<sup>83</sup>. Meetings are adjourned if there is insufficient time to complete the business for which it was called, or for a variety of other reasons. See Section 239 CAMA. The Companies Act, 1968 of Nigeria, allowed any Company to make its own rules in articles with regard to quorum<sup>84</sup>. It also provided for a quorum for Companies that did not provide for one and did not adopt the provisions table A. In the new Act, the provisions regarding quorum in meetings are now very clear and mandatory. See Section 232. The Common Law principle as to quorum is to the effect that the quorum should be formed at the beginning of the meeting and may not affect the proceedings of the meeting if it falls shorter than the required number subsequently.

In *Re Harsley Baird Co. Ltd.*<sup>85</sup>, a class meeting had a bare quorum but one member who opposed the resolution about to be put to the meeting walked out. It

was held that the resolution passed after he had left was valid, as the articles only required a quorum to be at the commencement of business<sup>86</sup>. Under CAMA, where there is a quorum at the beginning, but no quorum later due to some shareholders leaving for what appears to the chairman to be sufficient reasons, the meeting shall 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 shall then be the quorum and their decision shall bind all shareholders and where only one member is present, he may seek direction of the court to take a decision.

The Nigerian case of *Martins v. Ogunbadero*<sup>87</sup> was decided along the line of *Re Harsley Baird Co. Ltd* (supra) where it was held that once a quorum was formed at the start of the meeting, it need not subsist until the end of the meeting so long as more than one member remain present. The American practise is at all fours with the Nigerian position; The American Encyclopaedia Dictionary of Business states thus:

*"A quorum must be present not only to begin a meeting but to transact business. Thus, if during the meeting a number of shareholders (members) depart leaving less than a quorum present, the meeting must be discontinued by adjournment. However, if a meeting is once organised and all the parties have participated, no person or faction, by withdrawing capriciously and for the sole purpose of breaking the quorum can render the subsequent proceeding invalid"*

A meeting may be adjourned for various reasons e.g. where the business cannot be completed on that day, or where there is no quorum. The adjourned meeting is deemed to be a resumption of the original meeting and the articles may provide as to the amount of notice required for it, but no business may be transacted at an adjourned meeting except that which was left unfinished at the meeting. Where a resolution is passed at an adjourned meeting of the company, or at a class meeting or a meeting of the directors, the resolution shall be deemed for all purposes to have been passed on the date when it was in fact passed and not at the date of the earlier meeting<sup>88</sup>. It is trite that an adjourned meeting is legally a continuation of the original meeting<sup>89</sup>, therefore resolution passed at the adjourned meeting will relate back to the original meeting. However, an adjourned ordinary meeting cannot be an extraordinary meeting<sup>90</sup>.

In *Shaw v. Tati Concessions Ltd.*<sup>91</sup>, a poll demanded at a company meeting was directed to be taken at a future date, but the meeting itself was not adjourned, it was held that mere postponement of the poll was not an adjournment ad hoc of the meeting within the meaning of an article allowing the lodgement of proxies forty-eight hours before a meeting 'or adjourned meeting' but the original meeting continued for the purpose of the poll and no fresh proxies could be lodged. Meeting may be adjourned if there is insufficient time to complete the business for which it was called, or for a variety of other reasons. When a meeting is adjourned for thirty days or more, notice of the adjourned meeting shall be given as in the case of an original meeting; but otherwise it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

If within one hour from the time appointed for the meeting a quorum is not present, the meeting if convened upon 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 day and at such other time and place as the chairman and in his absence, the directors may direct. If a meeting stands adjourned under subsection (3), any two or more members present at the place and time to which it so stands adjourned shall form a quorum and their decision shall bind all shareholders, and where only one member is present, he may seek the direction of the court to take a decision<sup>92</sup>.

### **MINUTES OF MEETINGS UNDER CAMA**

Minutes are an authoritative record of the proceeding of a meeting. The Law makes it compulsory for any Company to record, in a book kept for that purposes all the proceedings of its general meetings or the meetings of its Directors and general managers<sup>93</sup>. However, the Supreme Court in *I.A.I. Ltd v. Chika Brothers Ltd*.<sup>94</sup> has held that the minutes need not be kept in a bound book but may be recorded in loose-leaf books or in any other manner if adequate precaution is taken for guiding against falsification and facilitating discovery. Once the minutes has been signed by the Chairman of the meeting at which the proceedings were had, or by the chairman of the next succeeding meeting, it will be evidence of the proceedings and until the contrary is proved, the meeting will be deemed to have been duly held and convened, and all proceedings thereat to have been duly had. The minute shall be prima facie evidence of the proceedings.

The books containing the minutes of proceedings of any general meeting of a company, shall be kept at the registered office of the company, and shall during business hours be open to inspection by members without charge. Any member shall be entitled to be furnished within seven days after receipt of his request in that behalf to the company, with a copy of any such minutes certified by the secretary at a charge not exceeding ten kobo for every hundred words.

If any inspection required under this section is refused or if any copy required under this section is not sent within the proper time, the company and every officer of the company who is in default shall be guilty of an offence and liable in respect of each offence to a fine of N25. In the case of any such refusal or default, the court may by order compel an immediate inspection of the books in respect of all proceedings of general meetings, or direct that the copies required shall be sent to the persons requiring them. It has been held in *Nasir v. Berini Beirutriyad (Nig.) Bank Ltd*.<sup>95</sup> that a transaction not recorded in the appropriate minute book is not enforceable against the company. However, the non-entry of the resolutions or decisions reached in a meeting in the minute book does not render the decision reached thereat invalid or illegal<sup>96</sup>. Under section 633<sup>97</sup>, minutes books need no longer be in bound books but be in loosed leaves or photographic fill form or in any other storage system capable of easy and accurate retrieval.

## RESOLUTION AT MEETINGS UNDER CAMA

A resolution is a formal agreement as to adoption of proposals put before an assembly of persons or meeting. It is thus a decision or an exposition of opinion or consensus of a proposal submitted before a meeting. The decisions of members at a meeting require a vote or poll from members having voting rights, a question on which a vote is about to be taken is called a motion. A motion is a proposal put forward for consideration by the meeting, once the motion has been put to the members and they have voted in favour of it, it becomes a Company Resolution.

**Ordinary resolution:** A resolution is termed an ordinary resolution when at a general meeting notice required under section 217 CAMA has been complied with to the effect that the resolution is proposed to be passed as an ordinary resolution and the resolution put for voting before the members of the Company entitled to vote in person or by proxy is passed by a simple majority either by show of hands or on a poll<sup>98</sup>.

**Ordinary resolutions are used for the following:**

- Ordinary business of an Annual General Meeting
- Increase of Share Capital
- Removal of a director<sup>99</sup>

**Special Resolution:** A special resolution deals with matters more vital and important from the point view of the Company. Under the English Act, section 283 provides that a special resolution of the members (or of a class of members) of a company means a resolution passed by a majority of not less than 75 %.)

In Nigeria, under the Companies Act of 1968, there was provision for extraordinary resolution, but CAMA 2004 only provides for ordinary and special resolution.

**Written Resolution:** All resolutions shall be passed at general meetings and shall not be effective unless so passed: Provided that 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 at a general meeting<sup>100</sup>.

**Seconding Resolution:** The chairman can put any resolution to the meeting without its being seconded though not if the article forbids it. Whether a resolution requires a seconder and whether the seconder must be a member depends on the Articles, see the English case of *Re Horbury Bridge Coal, Iron & Wagon Co.*,<sup>101</sup>.

**Elective Resolution:** Private companies are allowed to pass elective resolution to disperse with the certain formalities and requirement e.g. appointment of Auditors. Where special notice is required of a resolution, the resolution shall not be effective unless notice of the intention to move it has been given to the company not less than twenty-eight days before the meeting at which it is to be moved, and the company shall give its members notice of any such resolution at the same time and in the

same manner as it gives notice of the meeting or, if that is not practicable, shall give them notice thereof, either by advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the articles, not less than twenty one days before the meeting: Provided that if, after notice of the intention to move such a resolution has been given to the company, a meeting is called for a date twenty eight days or less after the notice has been given, the notice though not given within the time required by this section shall be deemed to have been properly given for purposes thereof<sup>102</sup>.

A printed copy of every resolution or agreement to which this section applies shall, within fifteen days after the passing or making of the resolution or agreement, as the case may be, be forwarded to the Commission. Where a resolution is passed at an adjourned meeting of a company; the holders of any class of shares in a company; or the directors of a company, the resolution shall for all purposes be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date<sup>103</sup>. It is trite that an adjourned meeting is legally a continuation of the original meeting<sup>104</sup>, therefore resolution passed at the adjourned meeting will relate back to the original meeting. However, an adjourned ordinary meeting cannot be an extraordinary meeting<sup>105</sup>.

### **PROVISIONS AS TO CHAIRMAN UNDER CAMA**

For there to be fair participation in corporate meetings, the Chairman must be given adequate powers. It has been held that impartiality on the part of the Chairman is an essential part of conducting a meeting<sup>106</sup>. The chairman of a meeting is a person who presides over the meeting. The position of chairman is an important and onerous one, for he will be in charge of the meeting and will be responsible for ensuring that its business is properly conducted. Section 240 CAMA provides that; the chairman, if any, of the board of directors shall 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 shall elect one of their number to be chairman of the meeting.

If at any meeting no director is willing to act as chairman or if no director is present within one hour after the time appointed for holding the meeting, the members present shall choose one of their numbers to be chairman of the meeting.

The duties and powers of the chairman shall include the duty to:

- a. preserve order and the power to take such measures as are reasonably necessary to do so;
- b. ensure that proceedings are conducted in a regular manner;
- c. 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. act bona fide in the interest of the company.

The Chairman has extensive powers to preserve orderliness in the conduct of the proceeding of the meeting. Megarry. J. In *John v. Rees*<sup>107</sup> held that when facing disorder, the Chairman should:

- i. make 'earnest and sustained effort to restore order.' If these efforts are in vain the Chairman should:
- ii. attempt to put into effect any provisions for adjournments which appear in the rules, but that:
- iii. if this seems impossible he should use his inherent power to adjourn the meetings for a short while, taking due steps to ensure so far as possible that all know of the adjournment:
- iv. if instead of mere disorder there is actual violence, i.e. blows are being exchanged, that the knives are out or there is a real possibility of grievous bodily harm, the position is exactly as above, but the Chairman should curtail his attempt to restore order before adjourning.

Another duty is to conduct the meeting with utmost care and attention, peacefully and with dignity. He should conduct the proceedings with regularity as per the agenda<sup>108</sup>. He is also to ensure all questions are promptly decided; he can cast his vote provided he is a shareholder<sup>109</sup>. In *Re Braford Investment Plc.*<sup>110</sup> It was held that where no Directors are present and there is a dispute as to who may vote then any member may appoint a chairman. Impartiality on the part of the chairman is an essential part of conducting a meeting as observed in the case of *Reg v. Doyly*<sup>111</sup>.

## **SHORTCOMINGS OF CORPORATE MEETINGS UNDER CAMA**

### ***Inadequate notice of meetings***

The basic rule of law of meetings is that adequate notice must be given to all persons entitled to receive it. In Nigeria, notice for the Annual and Extraordinary General Meetings must be 21 days from the date in which the notice was sent. This has been seen to be inadequate especially for a public company as a greater number of members are usually not aware of meeting due to the archaic means of service provided by the current law. The law provides that either a notice may be given by the company to any member personally or by sending it by post, obviously these methods are outdated in lieu of the current technological advancements in modern times.

The law also states that a public company must at least 21 days before any general meeting; advertise a notice of such meeting in at least two daily newspapers, it will however be more effective if public companies are to advertise in more than two daily newspapers and if the notice will be in these daily newspapers continuously for 21 days. Service generally will be more effective if mobile and electronic means such as text messages, electronic mail, and the internet are statutorily provided for like in England.

### ***Emerging strides in the nature of meetings***

The meaning of the word 'meeting' is not defined under the Nigerian law; however, several definitions have been advanced. Aiyar's Judicial Dictionary<sup>112</sup> states that "... for a meeting there must be at least two persons, because a man cannot meet himself." In *Sharp v. Dawes*<sup>113</sup>, it was held thus, "A meeting means coming together of persons for the purpose of discussing and acting upon some matter or matters in which they have a common interest." Thanks to modern technology, it is no longer necessary that a meeting should require all those attending in the same room, a valid meeting can still take place without every participant in the same room, but with audio-visuals or audio links to enable everyone concerned participate in the discussion. It should be noted also, that a valid meeting requires a two-way communication among participants.

It is imperative to note that under the Company Act 1973 of South Africa, one member can hold a valid meeting. Section 184 provides that "In the case of a company having only one member, such member present in person or by proxy shall be deemed to constitute a meeting." This position, trend if adopted and reflected in the Nigerian law will resolve the reluctances members express to attend meeting very far from their location and it will ameliorate the expenses they undertake to attend meetings.

### ***Excessive time distance between meetings and high cost of constituting a meeting.***

In Nigeria the law provides that 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 annual meeting and the next. In practice, the statutory 15 months are excessive for members in general meetings to effectively control the company. The law further provided for Extra-ordinary meetings convened when matters other than the matters dealt with at the statutory meeting and annual general meeting arise, the procedure for convening such a meeting is so rigorous and difficult, this has made such a meeting very rare in practice.

In addition, most companies budget an exorbitant amount to constitute a meeting, they contract almost everything, from the renting of the venue to the provision of refreshment for attending members. These companies draw out these monies from the purse of and they are usually mismanaged and not properly accounted for. In England the time frame is every six months, if this is adopted in Nigeria it will provide greater access for members/investors to see to the affairs of their company constantly. In addition, the fine of N50 for every day of default to hold a statutory meeting should be reviewed to be more punitive. The fine of N500 for default to hold an annual general meeting and default of filing of resolution of N25 should also be reviewed, as the current position has not achieved much.

### ***Inadequate provisions as to adjournment and quorum***

Under the Nigerian law, where there is a quorum at the beginning, but no

quorum subsequently due to some shareholders leaving for what appears to the chairman to be sufficient reasons, the meeting shall be adjourned to the same place, and time, in a week's time. In addition, if there is no quorum still at the adjourned meeting, the members present shall then be the quorum and their decision shall bind all shareholders. In addition, where only one member is present, he may seek direction of the court to take a decision.

*Where there is a quorum at the beginning, but no quorum later due to some shareholders leaving for what appears to the chairman to be sufficient reasons, the meeting shall 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 shall then be the quorum and their decision shall bind all shareholders and where only one member is present, he may seek direction of the court to take a decision<sup>14</sup>.*

Quorum is the lifeline of a meeting; serious attention should be paid to it. The Common Law principle as to quorum is different and more effective, it is to the effect that the quorum should be formed at the beginning of the meeting and may not affect the proceedings of the meeting if it falls shorter than the required number subsequently. This will curb intentional delays in decision-making; this should be adopted in Nigeria. It will also be a viable means of protecting the rights of minority members.

#### ***Misuse of proxy mechanisms.***

The term 'proxy' refers both to the agent appointed by a member to vote on his behalf at a meeting of the company and to the document appointing that agent<sup>15</sup>. Even when a meeting is adjourned, a member can appoint a fresh proxy to attend and vote in his stead on the business to be transacted at the adjourned meeting if the articles so provides. However, directors have in practice used this mechanism to their advantage; they send out proxy forms at the expense of the company to members, leaving them with little options but to appoint a named member of the board to vote on their behalf, the position of the law on proxies ought to be amended to check this excess.

## **CONCLUSION AND RECOMMENDATIONS**

Throughout this work, it is evident that the mechanism of corporate meetings is essential in corporate governance. In the words of Will J. in *Mayor, of Merchants of the Staple of England v. Governor and Company of Bank of England*<sup>16</sup> which states thus:

*the acts of a corporation are those of the major part of the corporators, corporately assembled ... By 'corporately assembled' it is meant that the meeting shall be one held upon notice which gives every corporators the opportunity of being present...*

It is obvious that the mechanism of meeting is the major means of corporate governance. The law is replete:

*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<sup>17</sup>.*

With the legal personality of a company, which it attains at incorporation, it is trite that as a legal person it would have legal body parts with which it is to operate and carry out its day-to-day activities. From the above stated provision, it is clear that an incorporated company whether public or private, should have three major arms, which carry out the intention namely; Members in general meeting<sup>118</sup>, Board of Directors<sup>119</sup> and Officers or Agents<sup>120</sup>.

The General Meeting, obviously, is the most superior arm<sup>121</sup> but it should be noted that most decisions of a company is usually taken by the Board in its meetings, nevertheless, the shareholders meeting has an important and crucial role to play in the governance of a company, for example the traditional model of directorial accountability to the shareholders depends heavily upon the ability of the shareholders in general meeting to review the performance of the board or even take decisions if it is perceived that the board has not been efficient, decisions such as the removal of directors<sup>122</sup>. The General Meeting and the board derive their powers from the Article of Association while the officers and agents derive their powers from the General Meeting and the Board. It is through the mechanism of corporate meetings that shareholders exercise their powers and influence. The issue for determination is how much influence, power or control the member have over the conduct of the meeting, considering the fact that shareholders are vested with immense powers which are exercised in general meetings, but the conduct of these meetings fall within the control of the Board.

First, the directors control the proxy machinery; secondly, shareholders generally do not have a right of access to confidential information and account books or records, which they must be familiar with if they are to be able to exercise any meaningful control over the management of the company. Inadequate notice of meetings, excessive time distance between meetings and high cost of constituting a meeting, inadequate provisions as to adjournment and quorum and the inability of our Laws to meet up with the emerging strides in the nature of meetings has been the major problems of corporate meetings in Nigeria.

Company meeting is an indispensable tool of corporate governance, it is meant to be a key instrument for the protection of investors and the means by which members tame the activities of overzealous and recalcitrant directors and officers of the company, but in practice, the general meetings of member have in reality turn to a yearly gala affair or an annual ritual and the board of directors, through inducements and divers means of influence have perpetuated their interests through these meetings and the instrumentality of the present laws in Nigeria.

Corporate meetings remain the most viable means of improving the management of a company. Therefore, there is the need for the various Legislatures of countries to work towards enacting effective and efficient company legislation to that effect. It is recommended in Nigeria that fine of N50 for every day of default to hold a statutory meeting should be reviewed to be punitive. The fine of N500 for default to hold an annual general meeting and default of filing of resolution of N25

should also be reviewed. The Companies and Allied Matters Act should be amended to meet up with the current technological advancement. As regards attendance at meetings, it has become rare for institutional shareholders to attend meetings; nevertheless, there should be an increasing pressure on all shareholders to attend meetings of companies, which they hold shares. The inability of our Laws to meet up with the emerging strides in the nature of meetings has made it expedient for CAMA to be amended to meet up with the new trends in corporate meetings.

## NOTES

<sup>1</sup> Hereinafter referred to as CAMA

<sup>2</sup> The Law Book Company Ltd. 10th Edition. Allahabad India page 87.

<sup>3</sup> (1876) 2 QBD 26

<sup>4</sup> (1947) S.C 325

<sup>5</sup> (1911) 1 CH. 163

<sup>6</sup> (1989) 1 All E.R 561

<sup>7</sup> (1875) LR 10 QB 329

<sup>8</sup> CAMA

<sup>9</sup> See Section 211 (2) CAMA

<sup>10</sup> Ibid section 211 (4) CAMA

<sup>11</sup> Ibid section 211 (8) CAMA

<sup>12</sup> Ibid section 211 (5) CAMA

<sup>13</sup> Ibid Section 211 (6) CAMA

<sup>14</sup> Ibid section 211 (7) CAMA

<sup>15</sup> (1912) 1 Ch. 700

<sup>16</sup> See section 211 (9) CAMA

<sup>17</sup> Ibid section 211 (10) CAMA

<sup>18</sup> Ibid Section 212 CAMA

<sup>19</sup> (1968) 2 ALR Comm. 197

<sup>20</sup> Sofowora M.O, 2002, Modern Nigerian Company Law, Lagos, page 161

<sup>21</sup> CAMA

<sup>22</sup> See section 213 (1) (b) CAMA

<sup>23</sup> Ibid section 213 (2) CAMA

<sup>24</sup> Ibid section 213 (3) CAMA

<sup>25</sup> Ibid section 213 (4) CAMA

<sup>26</sup> Ibid section 215 (1) CAMA

<sup>27</sup> Ibid section 215 (2) CAMA

<sup>28</sup> Ibid section 213 (2) CAMA; Where a company fails to hold its annual general meeting under the law, the Corporate Affairs Commission may on the application of a member of the company call, or direct the calling of a general meeting of the company.

<sup>29</sup> (1979) II SC 138

<sup>30</sup> See section 223 CAMA

<sup>31</sup> (1900) 2 CH 230

<sup>32</sup> (1978) N.C.L.R 250

<sup>33</sup> supra

<sup>34</sup> (1958) CH D 900, 904

<sup>35</sup> (1972) 1 ANLR pt. 2 pg. 474

<sup>36</sup> (1957) S.C. 315

- <sup>37</sup>(1983) BCLC 673
- <sup>38</sup> (1978) N.C.L.R 250
- <sup>37</sup>(1979) 12 N.S.C.C. 210
- <sup>40</sup>see *Jarvis Motors (harrow) Ltd. v. Carabott & Anor* (1964) 1 W.L.R. 1101 and *Sasegbon D.*, 1991, Nigerian Companies and Allied Matters Law and Practice, DSc Publication Limited, Lagos, Page 347.
- <sup>41</sup>See section 215 (7) CAMA
- <sup>42</sup>*Ibid* section 215 (8) CAMA
- <sup>43</sup>*Ibid* section 264 (1) CAMA
- <sup>44</sup>*Ibid* section 266 CAMA
- <sup>45</sup> (2001) 15 NWLR pt. 737 at 709
- <sup>46</sup> (1888) 30 CH.D. 546
- <sup>47</sup>*Carruth v. ICI Ltd* (1937) AC 707
- <sup>48</sup>Section 467 (1) and (2) CAMA
- <sup>49</sup> (1978) 2 F.R.C.R. 165
- <sup>50</sup> (1978) 2 F.R.C.R. 165
- <sup>51</sup>See section 220 CAMA
- <sup>52</sup>*Ibid* section 222 CAMA
- <sup>53</sup>*Ibid* section 218 CAMA
- <sup>54</sup> (1914) 1 Ch.895
- <sup>55</sup> (1980)1 ALL ER 40
- <sup>56</sup>See also section 233(2) CAMA
- <sup>57</sup>*Ibid* section 219 CAMA
- <sup>58</sup> (1920) 2 K.B 523 (C.A)
- <sup>59</sup>See section 217 (2) CAMA
- <sup>60</sup>Suit NO. FRC/L/45/78 of 12/3/81 Unreported
- <sup>61</sup>(1962) 1 All E.R 26
- <sup>62</sup> (1978) 2 FRCR 165
- <sup>63</sup> (1945) Ch. D 270
- <sup>64</sup> (1963) 2 ALR COM 341
- <sup>65</sup>CAMA
- <sup>66</sup>*supra*
- <sup>67</sup>See Section 224 (1) CAMA
- <sup>68</sup>see *Campell v. Maund* (1836) 5 Ad & El 865
- <sup>69</sup>see *Jackson v. Hamlyn* (1953) Ch. 577
- <sup>70</sup>see also *Re Chillington Iron Co.* (1885) 29 Ch. D. 159
- <sup>71</sup>See section 226 CAMA
- <sup>72</sup>*Ibid* section 227 CAMA
- <sup>73</sup>CAMA
- <sup>74</sup>*Northey and Leigh Introduction to Company Law*, page 230
- <sup>75</sup> (1920) 1 Ch. 466
- <sup>76</sup>see *Tolley's Company Law*, 1990, Tolley Publishing Co. Ltd., England, p. G.2021
- <sup>77</sup>See Section 230 CAMA
- <sup>78</sup>*Ibid* section 230 (6) CAMA
- <sup>79</sup>*Northey & Leigh*, op cit , page 222
- <sup>80</sup>*Sasegbon D.*, op cit, page 355
- <sup>81</sup>See section 231 CAMA
- <sup>82</sup> (1907) 1 Ch. 5
- <sup>83</sup>*Sofowora M.O.*, op cit, page 169
- <sup>84</sup>article 53 table A part 1

- <sup>85</sup> (1955) Ch. 143
- <sup>86</sup> See also Martins v. Ogungbadero Lagos High Court suit No LD/95/66 of 30/10/67.
- <sup>87</sup> (1967) N.C.L.R 393
- <sup>88</sup> Smith & Keenan Company Law for students, page 366
- <sup>89</sup> see Scadding v. Lorant (1851) 3 HL CAS 418
- <sup>90</sup> see Wills v. Murray (1850) 4 Exch. 843
- <sup>91</sup> (1926) WN. 78
- <sup>92</sup> See section 239 CAMA
- <sup>93</sup> See Section 241 (1) CAMA
- <sup>94</sup> (1990) 21 NSCC (pt 1) 66.
- <sup>95</sup> (1968) All N.L.R 285
- <sup>96</sup> Nsirim v. Onuma Const. Co. Ltd. (2001) 7 NWLR pt. 713 page 742
- <sup>97</sup> CAMA
- <sup>98</sup> See also section 282 Companies Act 2006
- <sup>99</sup> Section 262 CAMA
- <sup>100</sup> Ibid section 234 CAMA
- <sup>101</sup> supra
- <sup>102</sup> See Section 236 CAMA
- <sup>103</sup> Ibid Section 238 CAMA
- <sup>104</sup> see Scadding v. Lorant (1851) 3 HL CAS 418
- <sup>105</sup> see Wills v. Murray (1850) 4 Exch. 843
- <sup>106</sup> see Reg v. Doyly (1840) 12 A & E 139
- <sup>107</sup> (1969) 2 W.L.R. 1294.
- <sup>108</sup> Sasegbon D., op cit. page 369
- <sup>109</sup> See Neel v. Longbottom (1894) 1 Q.B. 767.
- <sup>110</sup> (1991) B.C.L.C 224
- <sup>111</sup> (1840) 12 A & E 139
- <sup>112</sup> The Law Book Company Ltd. 10th Edition, Allahabad India, page 87.
- <sup>113</sup> (1876) 2 QBD 26
- <sup>114</sup> Section 232 (5) CAMA
- <sup>115</sup> Tolley's Company Law, 1990, England, Tolley Publishing Co. Ltd page 2021
- <sup>116</sup> (1887) 21 Q.B.D. 160
- <sup>117</sup> Section 63 (1) Companies and Allied Matters Act Cap C20 Laws of the Federation of Nigeria, 2004 (herein referred to as CAMA).
- <sup>118</sup> Annual General Meeting under Section 213 CAMA & Extra-Ordinary General Meeting under Section 215 CAMA
- <sup>119</sup> See Section 244 CAMA
- <sup>120</sup> See Section 66 CAMA
- <sup>121</sup> See section 63 (2), (3) (4) & (5)
- <sup>122</sup> See generally Gower and Davies, 2003, Principles of Modern Company Law, London Sweet & Maxwell Ltd, 7th Edition, pg 327.