



# THE Nigerian STOCK EXCHANGE

NSE/REG/R&I/GTL1/CVM1/04/20

## Guidance On Companies' Virtual Board, Committee, and Management Meetings<sup>1</sup>



<sup>1</sup> The information in this Guidance does not constitute professional investment or legal advice to anyone. Professional advice should be sought by stakeholders or potential investors where required.

## **INTRODUCTION**

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### **0.1 Background**

Meetings, whether of companies' Boards of Directors, or of their Committees, or Management, are an essential aspect of the decision making process in companies, with firm roots in good corporate governance. Members' active participation at meetings is extremely important, and it is desirable, as it provides attendees with the opportunity to make enquiries, provide inputs and objective criticism, receive clarification, and be generally more informed, to guide decision making.

In a bid for companies to constantly keep up with the ever changing business environment and globalization in general, business meetings have been evolving from the conventional round table physical meetings into virtual meetings. Most importantly, due to the challenges and exigencies of doing business in recent times, especially with the occurrence of the COVID-19 pandemic, virtual/remote activities have increasingly become a necessity without which many businesses may not attain continuous operational efficiency. As such, virtual meetings have become standard and are utilized by large and small-sized businesses, with participants/attendees spanning different time zones, whilst interacting simultaneously and seamlessly.

### **0.2 Objective**

The Nigerian Stock Exchange (The Exchange) notes the legal and regulatory uncertainties that Nigerian businesses may face regarding convening virtual meetings, particularly in the wake of current economic and social constraints precipitated by the COVID-19 pandemic, which underscore the need for companies to adopt a more practical style of holding meetings.

This document, which is one of The Exchange's **Guidance and Thought Leadership** series, seeks to provide some guidance to the market and other stakeholders on carrying out successful, productive, and rewarding virtual meetings.

This Guidance addresses virtual participation for the following meeting scenarios:

- i. Board, Committee, or Management meetings/briefings that require on-line presentations;
- ii. Board, Committee or Management meetings with some members physically present at the meeting venue, and others participating virtually; and
- iii. Board, Committee, or Management meetings where all Members are participating virtually.

### **0.3 Stakeholder Concerns**

It is noted that many stakeholders may be concerned that: (a) conducting meetings through virtual participation alone could diminish the ability of the participants to fully participate and have their questions and concerns heard, without the risk of Management exerting excessive control; or (b) that if virtual technology is used to replace physical or in-person meetings, the opportunity for physical and direct engagements, and its attendant benefits, including non-verbal cues, may be lost.

Notwithstanding, The Exchange's position is that upon seeking and receiving proper guidance, every company should decide for itself the best way to conduct its meetings. Our purpose is to ensure that when companies opt for virtual participation in meetings, such meetings are conducted in an accessible, transparent, efficient, and cost-effective manner, while meeting the important business and corporate governance needs of all relevant stakeholders. Each company must consider its own objectives, preferences, and costs, as well as its stakeholders' concerns in deciding whether to convene and conduct virtual meetings.<sup>1</sup>

## **1.0 VIRTUAL MEETINGS**

### **1.1 Description**

Generally, virtual meetings occur when people, irrespective of their physical location, are able to communicate effectively during pre-scheduled teleconferences, web conferences, or video conferences, with the ability to utilize video, text or audio features via the meeting medium, whilst being in the same virtual space for a specific period.

A virtual meeting can also refer to a meeting in which participants are able to attend the meeting online via the Internet, be certified to attend electronically, ask relevant questions, and if desired, cast their votes online in a secure manner while the meeting is in progress. It may or may not include a physical or an in-person component, i.e., a hybrid meeting where certain participants are together in one location and others attend virtually.<sup>2</sup>

The Exchange recognizes that circumstances may occur which warrant the scheduling of an emergency meeting or an urgent situation may arise where Board, Committee, or Members of Management cannot be physically present for necessary meetings. A virtual meeting can be convened in such instances.

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<sup>1</sup> Principles and Best Practices for Virtual Annual Shareowner Meetings; Posted by Anne Sheehan and Darla C. Stuckey, The Best Practices Committee for Shareowner Participation in Virtual Annual Meetings, Thursday, May 31, 2018; Harvard Law School Forum on Corporate Governance - <https://corpgov.law.harvard.edu/2018/05/31/principles-and-best-practices-for-virtual-annual-shareowner-meetings/>

<sup>2</sup> Ibid

## 1.2 Statutory and Regulatory Considerations

Section 263 (1) of the Companies and Allied Matter Act, Cap. C20 LFN 2004 (CAMA) provides that directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit. CAMA is silent on the issue of virtual meetings and does not expressly prohibit virtual meetings. This is not surprising given that at the time CAMA was enacted in 1990, virtual meetings were not within the purview of most professionals involved in governance discussions.

In light of the foregoing, it is recommended that the Articles of Association of a company or its Board, Committee, and Management Charters or Terms of Reference should provide for and authorize virtual meetings. For example, the Articles or Charters or Terms of Reference may authorize the company's Board, Committees or Management to make use of virtual/electronic media in enabling their members' participation in meetings. The authorization may also prescribe that persons who are entitled to attend, but are not physically present at the meeting venue, can choose to attend via electronic means – with the right to speak, and vote at such meetings electronically. Furthermore, Directors, Committee Members or Members of Management who attend such meetings virtually or remotely, will be taken into consideration in determining whether there is quorum at such meetings.<sup>3</sup>

## 1.3 Other Relevant Considerations

In deciding whether to implement a virtual meeting, companies should take the interests of all relevant stakeholders into account. Although a virtual component of a meeting can enhance participation, it is important that the meeting be handled in a way that affords remote participants a considerably similar amount of access as they would have had in person. Some pertinent questions that companies should consider include<sup>4</sup>:

- a. Do we have adequate technology to reach all stakeholders who wish to participate?
- b. Do we have a plan in place to give equal opportunities to both in-person and online participants (in the case of a hybrid meeting)?
- c. Are we enabling meaningful engagement with relevant stakeholders?
- d. Do our stakeholders broadly understand why we are holding the meeting virtually?
- e. Is this virtual meeting in the best interest of the majority of our stakeholders?
- f. Do we have a plan in place to ensure that all stakeholders have opportunities to ask questions or otherwise engage outside of the parameters of the virtual meeting?

<sup>3</sup> Section 360A, UK Companies' Act 2006, is of persuasive authority on this issue and provides as follows:

- (1) *Nothing in this Part is to be taken to preclude the holding and conducting of a meeting in such a way that persons who are not present together at the same place may by electronic means attend and speak and vote at it.*
- (2) *In the case of a traded company the use of electronic means for the purpose of enabling members to participate in a general meeting may be made subject only to such requirements and restrictions as are:*
  - (a) *necessary to ensure the identification of those taking part and the security of the electronic communication, and*
  - (b) *proportionate to the achievement of those objectives.*

<sup>4</sup> Principles and Best Practices for Virtual Annual Shareowner Meetings. Ibid.

## 2.0 PREPARATION

The Company Secretary<sup>5</sup>, under the direction of the Board/Committee Chairperson or the Chief Executive Officer, is responsible for convening and facilitating virtual meetings of the Board, Committee, or Management, respectively. Whilst facilitating a virtual meeting, the following important points should be noted:

2.1 **Precise Agenda**: The Company Secretary should prepare an agenda, which clearly sets out the matters to be considered, for the Chairperson's approval. Prior to this, the persons responsible for documents to be considered, the various presenters, the desired outcomes, and time allotted for each agenda item, would have been carefully identified, decided and noted.

The Chairperson should ensure that the agenda is strictly adhered to in order to keep attendees and discussions focused, on-topic, and engaged. Meetings at which all attendees are attending virtually should be kept focused to avoid losing the attendees' concentration to distractions such as multi-tasking, especially where attendees are not using their video conferencing facilities. Where the meeting is for a lengthy timeframe, it is advisable for the Board to take breaks at convenient intervals. What is an appropriate convenient interval will vary from one situation to another.

2.2 **External Attendees**: Where external attendees, i.e., persons, other than Board or Committee Members, or Management, are participating, it is advisable for the Company Secretary, with the Chairperson's approval, to arrange for their presentation(s) to be made, or for their matter(s) to be addressed at the beginning of the meeting, unless otherwise requested by the external attendees. This is to allow the external attendees leave the meeting after their presentation, to allow members to focus on other items on the agenda. In order to ensure that external attendees do not join virtual meetings before their attention is required, as well as for the security of company information, the Company Secretary should consider how the technology utilized for the virtual meeting can be deployed to address these issues, and give appropriate instructions to both the external attendees and internal participants before the meeting.

2.3 **Confirm Attendance**: The Company Secretary should ahead of the meeting time, be aware, of those participating virtually. This is to ensure that the relevant equipment, connection requirements, codes/links are made available to participants for their seamless connection and participation. The Company Secretary should prior to the meeting, ensure that the Chairperson is informed of the names of the virtual attendees

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<sup>5</sup> In the ensuing parts of this Guidance, the term, Company Secretary will be referenced as the person who is responsible for the administrative tasks relating to the convening of meetings. Users of the Guidance should note, however, that other persons may be charged with these tasks. This may more so be the case for Management meetings.

or their authorized representatives, to ensure that the meeting is structured to accommodate them.

- 2.4 **Engage Attendees:** The Chairperson should ensure that all virtual attendees stay engaged, are active contributors, and do not feel ignored. It would be helpful for the Company Secretary to have at hand, other means (including electronic mail and means for voice and data contact), of reaching participants, who lose their connection during the meeting in order to enable their reconnection.
- 2.5 **Timely Distribution of Meeting Materials:** The Company Secretary should ensure that all meeting materials are circulated ahead of time in line with CAMA and the Board/Committee or Management's Charter or Terms of Reference, to give participants sufficient time and opportunity to read such materials and prepare for the meeting. Also, where it becomes necessary and as the circumstances permit, a shorter timeframe for circulation of the documents may be agreed upon.
- 2.6 **Equipment:** As the organizer, the Company Secretary should ensure that the required equipment is proactively procured and made available for the virtual meeting, i.e., a conference phone, call-in number/links for accessing selected meeting media set up, Internet connectivity, microphones strategically placed around the room, or other equipment that may be necessary to facilitate a hitch free meeting. There are a number of companies that specialize in providing virtual meeting services and equipment, which the Company Secretary may want to consider. In choosing the appropriate equipment, some questions to consider include: How much control should the Company Secretary, under the direction of the Chairperson, have over the meeting? Can you centrally mute all the participants? Can you share your screen for presentations? Can you temporarily lock participant(s) out of a meeting in order to discuss matters on which they are conflicted? Do you have a virtual meeting waiting area where invitees can wait for their turn to be called into the meeting in order to minimize delays? Virtual participants and invited attendees are responsible for ensuring ahead of the meeting, that they have the necessary equipment available for their connection and seamless participation in the meeting. It may be necessary to invest in user friendly gadgets which are compatible with the organizer's selected equipment and other necessary tools such as Internet connectivity and portable power generation tools or chargers, as appropriate. Moreover, if virtual meetings will become an integral part of the governance process, these arrangements may not be of a one off nature and ought to be budgeted going forward.
- 2.7 **Support:** Virtual attendees may contact the Company Secretary if they experience any difficulty with connectivity or such other challenges. The Company Secretary should ensure that all virtual attendees are promptly contacted to notify them of any changes

to the agenda, conference call-in number / links for accessing selected meeting media, or any major disruption or changes prior to the meeting.

- 2.8 **Information Security**: The Company Secretary should seek guidance and assistance from the technology and information security team/personnel to devise means of protecting virtual meetings from being hijacked, eavesdropped on, infiltrated, or manipulated. At reasonable intervals and from time to time, the Company Secretary should invite all meeting attendees to revalidate their connection credentials such as electronic mails, telephone numbers, and electronic profiles. This is to ensure that meeting invites and material are not sent to obsolete addresses which the intended recipients no longer use or have lost control of, to cybercriminals. Meeting log-in details may be sent on the day of the meeting or a day prior to the meeting, in order to limit the time for data mining by cyber-criminals. At the same time, security steps should be carefully calibrated so as not to breach due notice requirements under relevant law.
- 2.9 **Dry Run/Rehearsal**: For efficiency, the Company Secretary should arrange for a dry run/rehearsal prior to the virtual meeting to confirm that all equipment are in good working order. This is to ensure that virtual attendees' audio, video, and text facilities (as applicable) are functioning well, so that attendees can connect, stay connected, and are appropriately engaged during the virtual meeting.

### 3.0 **TECHNICAL SUPPORT**

- 3.1 Technology plays a major role in the ability to hold seamless virtual meetings. Although teleconferencing, web-conferencing, video conferencing etc. are all tools which make virtual meetings possible, the successful use of these tools to achieve the desired outcomes requires planning and attention to detail.
- 3.2 The Company Secretary should ensure that good technical support is available for meetings. The Company Secretary should promptly notify the company's technology team/personnel of the details of the virtual meeting (i.e., date and time), as well as the technology media to be used. An appropriate and practical means of contacting attendees and the technical team, i.e., phone number, text message, etc., should also be agreed upon in the event of any disruptions, and where technical assistance is required.
- 3.3 Virtual attendees should ensure that they are well equipped and prepared to use the necessary technology tools for participating virtually. Aside from impromptu disruptions, where virtual attendees require assistance with setting up or utilizing the tools, they should contact the Company Secretary prior to the date of the virtual meeting, or well ahead.

- 3.4 The Company Secretary should ensure that all required information to connect to the meeting is sent to virtual attendees ahead of the meeting. The Company Secretary may commence the meeting prior to the scheduled start time to give all participants the opportunity to check that their connections, equipment, and their access codes or links are functioning properly.

#### **4.0 PROTOCOLS AND PARTICIPANTS' RESPONSIBILITIES**

- 4.1 A successful virtual meeting requires participants' compliance with established protocols and responsibilities, and diligent adherence to expected conduct. Accepting responsibility for and adhering to the following practices will help ensure an effective and productive meeting and relevant engaged participation.

#### **4.2 Company Secretary's Responsibilities**

In addition to the above stated responsibilities, the Company Secretary should:

- a. Ensure that materials being reviewed are, as much as possible, projected on to the media platform/screen so that each participant's attention is focused, they can follow the discussions efficiently, where required, and make references with ease.
- b. Continuously monitor messages from virtual attendees, (for example, in order to quickly identify and attend to any disruption of connection, or request for a copy of any presentation, or other similar requests/concerns), so that attendees can effectively communicate without interrupting the flow of the meeting.
- c. In collaboration with the technology team/personnel of the company, ensure that virtual attendees are provided with a secure method of virtual presence, to communicate with, or pass across requests and concerns to either the Company Secretary or the Chairperson, as the case may be.
- d. Monitor the Internet collaboration software or chat window and alert the Chairperson when a question is raised or a participant wishes to speak.
- e. Share any Virtual Meeting Policies of the company with new participant(s) before they join any virtual meeting.

#### **4.3 Virtual Attendees' Responsibilities**

Virtual attendees should:

- a. Promptly notify the Company Secretary of their intention to attend a part of, or the full meeting virtually.
- b. Ensure confidentiality and sensitivity of information received, and ensure that the locations from which attendees are joining the meeting are private, so that conversations are not overheard by third parties.

- c. Give due attention to matters being discussed and as much as is practicable, avoid distractions and multi-tasking.
- d. Log into, or call in to the meeting early to check and ensure that all software and connections are working properly.
- e. Ensure they have sufficient understanding of the technologies to be used to connect with/support a virtual meeting before the meeting, so as to limit any obstructions to their participation in the meeting, attributable to issues that could not reasonably have been anticipated before the meeting.
- f. Limit background noise by muting speakers unless at the instance of speaking or making contributions.
- g. Provide accurate identification when joining a virtual meeting, and always signify any desire to ask a question or comment on an issue, by approved methods such as show of hands, where there are video facilities, or other agreed modes of signalling.
- h. If adopted as the mode to signal the desire to ask a question or comment on an item, participants can type into the "chat" box, which must be constantly monitored.
- i. Upon being permitted, speak clearly and be explicit about their thoughts, opinions and feelings. Cite meeting materials being referenced with specificity, and pause often to allow others the chance to break in to ask questions or voice their opinions.
- j. Wait for the participant speaking to conclude before speaking, to avoid interrupting speakers, or having more than one participant speaking at the same time.
- k. Ask for clarification on any point or issue that is unclear, due to issues with sound, connectivity or lack of face-to-face feedback.
- l. Provide verbal cues to fill in gaps in the flow of the meeting, and add context in the absence of visual cues. (For example: *"I'm just going to take a minute to write down a few notes. . . please."*)
- m. Be polite and particularly mindful of voice tone and how hitherto acceptable conduct might come across without the visual cues, where there is no video facility.
- n. Whilst managing allotted presentation time as efficiently as possible, give other attendees some time for note taking, as most participants will have to toggle or switch between screens/applications to identify relevant material or make important notes.
- o. Observe information security and confidentiality protocols, including keeping uninvited people off the call or vicinity of the virtual meeting media in use.
- p. Use best endeavours to attend all meetings, read all documentation and prepare thoroughly in advance of meetings. Board, Committee, and Management members are expected to participate fully, frankly, and constructively in discussions and bring the benefit of their knowledge, skills and abilities to bear.

#### 4.4 **Chairperson's Responsibilities**

As with conventional face-to-face meetings, much of the success of a virtual meeting rests with the Chairperson or facilitator. Careful attention to the following practices will help

ensure a smoothly run and productive virtual meeting where all participants feel included and engaged:

- a. Set expectations at the beginning, and establish meeting goals and objectives.
- b. Create rules of engagement, i.e., regarding muting<sup>6</sup> and whether cameras should be switched on.
- c. Remind/encourage all virtual attendees to adhere to their responsibilities, including those outlined above.
- d. Adhere as practicably as possible, to the timeframes stipulated in the agenda.
- e. Remind participants of virtual meeting protocols and expectations for staying engaged to ensure successful virtual interactions.
- f. Adopt and communicate the method by which attendees should signal their desire to ask a question or comment on an item. Where video facilities are in use, the attendee's hand should be raised in a visible manner.
- g. Keep a list of virtual attendees and their phone numbers for ease of reach in the event of a technological glitch.
- h. Between agenda items and presentations, return to the agenda and indicate the current item.
- i. Control discussions to maintain order, ask relevant questions, and encourage dialogue.
- j. Build team rapport and keep virtual attendees engaged.
- k. Reconfirm that attendees are present/connected upon resumption after each break.
- l. Debrief at the end of virtual meetings.
- m. Encourage virtual attendees to provide feedback and share lessons learned regarding these or any additional best practices.

## 5.0 **OTHER MATTERS**

There are a number of other matters regarding which all participants in virtual meetings ought to be mindful. Some, but by no means all, of these matters are discussed below:

- 5.1. **Appearance**: The Charter or Terms of Reference for the Board, Committee, or Management meeting may include provisions specifying how participants should dress. Where specific provisions are thought to be too much of a restraint on personal freedom, a rule of thumb for participants is to remember that a virtual meeting is not an excuse for sloppy appearance. A well-groomed, business casual appearance should suffice where there is no formal guidance. The Chairperson or facilitator can also provide direction on a case by case basis. For example, a virtual meeting which includes

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<sup>6</sup> Whether non-speakers should mute to prevent background noise or unmute to ensure all attendees stay engaged, pay attention and respond quickly without spending time un-muting, causing a long pause, and derailing the meeting flow. Whether all attendees have their cameras on for a balance in engagement and prevention of distractions and multitasking?

an agenda item for a regulator to discuss a potential violation with a Board may have a different appearance requirement from a strategy session led by an external consultant.

- 5.2 **Residential Work Space:** The idea of participating virtually in a meeting from the comfort of one's surroundings may sound very pleasant for some participants. However, participants should give some thought to their location. Participating in meetings while relaxing in one's bedroom, for example, may be considered disrespectful to other participants, especially where the meeting protocols require that all participants should use the video facilities. Our research reflects that there is growing support for the notion that persons who participate in virtual meetings on a regular basis should have a dedicated work space in their residences from where they do so. Some of the factors to consider when choosing the work space are lighting and angle, for video purposes, and sound for audio purposes.

Confidentiality is also important in both obvious and not so obvious ways; for example, if the participant's residence is a smart home connected to the Internet of Things, confidentiality could be breached inadvertently. Additionally, unless a participant is a sole occupant, it is not unlikely that other residents of the participant's residence may intrude on a meeting inadvertently or otherwise. Thus, in choosing the work space, regard should be had to the needs of others in the residence, external or background sounds (e.g., the noise of a power generator, television/radio/music, gates and doors opening or closing, street noise, a children's playroom, or animals to name a few) as well as the comfort of the participant. A considerate participant ought not to consider it too much of a burden to test run a number of alternative work spaces, taking the foregoing into account, before settling for a particular work space, from which to participate in virtual meetings.

## 6.0 **CONCLUSION**

In conclusion, it is hoped that this Guidance will assist our stakeholders with identifying and adopting best practices and procedures, and complying with applicable corporate governance standards whilst conducting their virtual meetings.

**Issued this 15<sup>th</sup> day of April 2020**