

## EXPLORING ANNUAL GENERAL MEETINGS AND THE IMPORTANCE OF PROPER PROCEDURE

### INTRODUCTION

Company meetings serve as a platform for establishing strategic plans to help organizations achieve their goals, keep members informed about the company's activities, and ensure compliance with regulatory requirements. Annual General Meetings (AGMs) in particular, are a mandatory annual assembly of a company's executives, directors, and interested shareholders, and are vital for corporate governance as they provide a platform for shareholders to express their views, ask questions, and vote on important matters related to the company's management and direction.

Being the beginning of the year, companies are preparing their meeting schedules in order to hit the ground running. However, holding a meeting is one thing, while ensuring statutory and regulatory compliance before, during and after those meetings is another. Failure to properly hold a general meeting such as an AGM could sometimes lead to liabilities for companies, and even their directors. Beyond the immediate legal and regulatory ramifications, which may include fines or penalties imposed by regulatory authorities, there are broader implications for the company's reputation and investor confidence. Shareholders who perceive the AGM process as flawed or unfair may also lose trust in the company's leadership, leading to reputational damage and potentially affecting the company's ability to attract investments or secure business partnerships.

It is therefore imperative for companies to meticulously plan and execute their AGMs, ensuring compliance with all statutory and regulatory requirements. This includes timely issuance of notices, accurate preparation of meeting agendas and supporting documentation, and adherence to voting procedures and disclosure requirements. By prioritizing transparency, fairness, and compliance in their AGM processes, companies can ensure observance with due process and maintain the trust and confidence of their stakeholders.

This article will focus on AGMs and the importance of following proper procedure.

## **PROCEEDINGS AT AN ANNUAL GENERAL MEETING**

Proceedings at Annual General Meetings (AGMs) typically follow a structured agenda that includes various items such as the approval of financial statements, election of directors, appointment of auditors, and any other business that shareholders may wish to address. The meeting is presided over by the chairman of the board or another designated officer, who ensures that the agenda is followed and that shareholders have an opportunity to participate.

**Section 237 of the Companies and Allied Matters Act (CAMA) 2020** mandates companies to hold their first AGM within eighteen (18) months of their incorporation and subsequently to hold it each year, not later than fifteen (15) months after the last AGM.

According to **Section 238 of CAMA**, the ordinary businesses conducted at AGMs are:

- a. Declaration of dividends
- b. Presentation of financial statements and reports of directors and auditors
- c. The election of directors in place of those retiring; the appointment and fixing of remuneration of auditors; and
- d. The disclosure of remuneration of managers of a company

While the special businesses conducted are, any other business not listed as an ordinary business, an example is increase and reduction in share capital.

Several activities take place during an AGM beyond those listed above, such as voting, passing of resolutions, etc and it is imperative that when carrying out such activities, they are done in compliance with relevant laws and the articles of the company. This is because a decision at an AGM may be invalidated if proper procedure is not followed.

## **ROLE OF THE CHAIRMAN**

During an AGM, the Chairman plays an important leadership role. He is an impartial umpire who calls the meeting to order and ensures due procedure is followed throughout and adhered to. He ensures the formation of a quorum, facilitates the adoption of the agenda, counts the votes and among other things ensures the contribution of members who indicate interest to make contributions.

**Section 265(4) of CAMA** states that the Chairman of a general meeting must vote in the best interests of the company. However, if the Chairman is also a shareholder, he may cast his

vote based on their individual interests. In the case of an equal number of votes by the shareholders, the Chairman has a second or casting vote to break the tie as provided in **Section 289(2) of CAMA**. These sections emphasize the importance of impartiality and fairness in decision-making processes at general meetings, while also acknowledging the role of the Chairman in maintaining balance and objectivity when making calls on close votes.

Most importantly the Chairman holds the reins of peace during the meeting to ensure that the meeting proceeds hitch free. If the Chairman does not play his role well, the proceedings may devolve into chaos which could also invalidate its proceedings or lead to long drawn legal battles which are both time and money consuming.

For instance, in the case of **UOO Nigeria Plc v Okafor (2020) 11 NWLR Pt. 1736, 409 SC**, the company held its AGM on the 9<sup>th</sup> of March 2007. The special business on the agenda was:

“To receive and adopt ~~₦~~2.65k as the value of each share of U.O.O. Nigeria Plc., as agreed by the members of the Revaluation Committee.”

However, as the Chairman, Mr. Nze Edozie Okafor, mentioned the said unit price of ~~₦~~2.65k during his address, there was commotion, and the meeting became very rowdy. The Chairman left the venue of the meeting when the first Respondent moved a motion for his removal as Chairman of the company. He was later informed that the Directors and Shareholders, who stayed behind, voted to remove him as the Chairman and that the first respondent, who moved the said motion, was appointed the new Chairman. He instituted an action in the federal high court which eventually made it to the Supreme Court, challenging his removal as Chairman and the court held that:

“In company law, the AGM represents the source of ultimate authority within the corporate governance. In the instant case, so long as majority of the shareholders voted for the removal of Mr. Edozie Uche Okafor as the chairman of the company at the AGM of 9<sup>th</sup> March 2007, that conduct, or exercise was in law and by virtue of section 65 of CAMA deemed to be a lawful act of the company (appellant) itself.”

Hence his removal as chairman was upheld.

This case affirms that a certain level of responsibility is expected from a Chairman and as such, he should not have made drastic decisions such as leaving a meeting abruptly, while same was ongoing, on the grounds of the meeting getting rowdy. The proper thing to do would have been to call the meeting to order and address the grievances of the shareholders concerned. If a Chairman however wishes to excuse himself from a meeting due to an emergency or extenuating circumstances, then he simply needs to ask for an adjournment, according to **Section 264 of CAMA** and the meeting would stand adjourned.

## **PRESENTATION OF REPORTS**

During an AGM, errors in presenting reports can undermine transparency and shareholder trust. The responsibility for presenting reports typically falls on key company officials such as the CEO, CFO, or Company Secretary. Some common errors include inaccuracy, where reports may contain factual errors or inaccuracies in financial data, leading to misinformation and loss of credibility. Additionally, lack of clarity in poorly organized or unclear reports can confuse shareholders and hinder their ability to assess the company's performance. Omission of key information is another issue, as failure to include essential details or omitting important developments may result in incomplete assessments of the company's operations. Moreover, failure to address concerns adequately is problematic, as reports should address shareholder questions and concerns to avoid fostering distrust and dissatisfaction among investors.

This is why one of the roles of the Company Secretary is to ensure that the presentations and reports to be discussed at an AGM have been circulated to the shareholders and everyone entitled to attend the meeting, ahead of time. This would enable shareholders to give informed opinions on the documents being presented and give the directors and other management personnel present the opportunity to respond. While this may not rule out one or more dissenting shareholders, it will ultimately aid in transparency and ensure that both the shareholders who constitute ownership of the company and the officers who run the company are on the same page. This also fosters trust between management, shareholders and other stakeholders making it possible for long-term growth discussions and resolutions to be agreed upon, because where there is a lack of such agreement, strife and litigation are inevitable.

## **RESOLUTIONS**

AGMs are essential gatherings where shareholders and company officials convene to discuss pertinent issues, make decisions, and ensure the smooth operation of the organization. However, the effectiveness of these meetings can be compromised when resolutions are inadequately formulated or improperly executed.

Inadequately formulated or improperly executed resolutions can arise due to various factors, including insufficient preparation, lack of clarity in the proposed resolutions, or failure to comply with legal requirements. Such resolutions may result in confusion, legal challenges, and undermine the credibility of the decision-making process within the company. One common example of ineffective resolutions is when proposed resolutions lack specificity or fail to address key concerns raised by shareholders. In such cases, shareholders may reject the resolutions or seek clarification, leading to delays and disruptions during the meeting.

Another issue arises when resolutions are passed without the requisite quorum or proper voting procedures. Failure to adhere to voting rules can render resolutions invalid and open them up to legal challenges from disgruntled shareholders. Additionally, resolutions that are contrary to the company's articles of association or legal requirements can also be deemed ineffective. For example, resolutions that exceed the company's borrowing limits or violate regulatory guidelines may be deemed null and void.

To address these challenges, companies must ensure thorough preparation and adherence to legal requirements when formulating and presenting resolutions at AGMs. This includes providing adequate notice to shareholders, clearly articulating proposed resolutions, and following proper voting procedures. Furthermore, companies should seek legal guidance when drafting resolutions to ensure compliance with corporate governance standards and regulatory requirements. By taking proactive measures to prevent ineffective resolutions, companies can uphold transparency, accountability, and the integrity of their decision-making processes.

**Sections 258 - 259 of CAMA** provide for resolutions- their form, the notice period and other factors needed to give them validity. Other sections of CAMA also provide for actions to be taken by special resolution and those to be done by ordinary resolution. Where these provisions are not adhered to, such a resolution could also be challenged. For instance, a shareholder may object to a resolution passed at an AGM by bringing an action in court against the company where the procedural provisions of law or the stipulations of the articles of association have been breached, especially if the breach had an effect on the contents of the resolution or otherwise on the rights of the shareholder.

In the South African case of **Tiron Theart v Rene Theart** the validity of the resolution taken at a shareholders' general meeting held on 28<sup>th</sup> October 2021, where the applicant was removed as a director and the first respondent was appointed as a director was questioned. The applicant contended that the appointment was invalid due to the failure to notify and

invite all shareholders of the company to the meeting. The court found that the failure to comply with the peremptory requirements of **Section 62 of the Companies Act** was not saved by the invocation of **Section 60**. The resolution was therefore set aside.<sup>1</sup>

Conclusively, the importance of resolutions cannot be overstated as captured in the case of **Okeowo v Milgore (1979) 11 SC 138**, where the Supreme Court per Idigbe JSC (as he then was) declared that:

“A resolution of the proper majority of shareholders in the general meeting is the proper mode of declaring the will of the corporation.”

## NOTICES

Under the provisions of CAMA, the notice required for convening AGMs is critical for ensuring compliance and transparency. **Section 241** specifies a 21 days' notice to be given from the date on which the notice was sent out. **Section 243(1) of CAMA** also specifies all those who are entitled to receive the notice of an AGM namely:

- (a) every member;
- (b) 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.
- (c) every director of the company.
- (d) every auditor for the time being of the company; and
- (e) the secretary, and Commission in the case of public companies.

This period allows members to adequately prepare and make necessary arrangements to attend the meeting.

The content of the notice must specify the place, date, and time of the meeting, as well as the general nature of the business to be transacted. In the case of AGMs, the notice should outline the ordinary business to be conducted, such as the declaration of dividends, presentation of financial statements, election of directors, and appointment of auditors.

Notices can be delivered personally, by post, or electronically to members who have provided their email addresses. The registered address supplied by the member to the company determines the mode of delivery. Additionally, notices posted on the company's website or shared through other electronic platforms may suffice, provided they comply with legal requirements.

Failure to comply with these provisions invalidates the meeting unless such failure is an accidental omission on the part of the person giving the notice. Courts have consistently ruled

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<sup>1</sup> (<https://www.saflii.org/za/cases/ZAWCHC/2023/130.html>)

in favor of shareholders when notices are not properly served, emphasizing the importance of adherence to statutory requirements.

In the case of **Funmilayo Williams v Glaxosmithkline Consumer Nigeria PLC (2019) LPELR-47498(CA)** the Respondent in the matter held its 36<sup>th</sup> AGM without first and foremost issuing a valid notice of the meeting to the Appellant who was/is a shareholder of the Respondent. The Court of appeal set aside the said meeting including all businesses transacted and all resolutions proposed and passed. The importance of serving notices was also emphasized in the case of **Ayodele & Ors v Ekocorp Plc & ors (2021) LPELR 53306 (CA)** where the private placement of the company's shares was challenged by the shareholders who did not receive notice of the meeting where the said private placement was done. Furthermore, in the Australian case involving the Wilderness Society, the board deliberately under-advertised its Canberra AGM in a small local newspaper, when the law provides that the AGM should be advertised in a widely read newspaper. This was done to ensure low shareholder turnout and the meeting eventually had only fourteen (14) people in attendance. Upon litigation, the Supreme Court declared the meeting, its associated elections, and resolutions, invalid.<sup>2</sup>

In conclusion, company secretaries play a crucial role in ensuring compliance with notice requirements for company meetings. By meticulously adhering to legal obligations and exercising due diligence in issuing notices, companies can avoid legal challenges and uphold the integrity of their meetings.

## CONCLUSION

In today's corporate landscape, adherence to statutory requirements and best practices in conducting company meetings, particularly AGMs is paramount. As shareholders become more aware of their rights, it behoves on companies to ensure that all company meetings are held in a statutorily correct manner. AGMs are crucial for maintaining good corporate governance, transparency, and stakeholder engagement in Nigeria. By adhering to legal requirements, promoting compliance, and engaging in activities that encourage the proper conduct and procedure during AGMs, companies can foster a positive environment for effective stakeholder engagement and long-term growth.

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<sup>2</sup> <https://probonoaustralia.com.au/news/2010/04/tasmanian-supreme-court-rules-against-wilderness-society-management/>