



FULFILLING CORPORATE COMPLIANCE OBLIGATIONS AMID COVID-19

The COVID-19 pandemic (the “**Pandemic**”) has evolved significantly across the world following its outbreak in Wuhan China in November/December 2019. Due to the outbreak of the Pandemic in Nigeria, the Federal Government like several governments across the world, implemented a lockdown¹ of the three (3) most affected states including Lagos (the country’s commercial hub) and Abuja (where most of the government regulatory agencies are located).

The Pandemic and resultant lockdown has stalled operations and activities of companies in various sectors worldwide, thereby leaving stakeholders including shareholders, Board of Directors, management and regulators at their wits end regarding modalities for undertaking corporate actions and fulfilment of compliance obligations. In response to this uncertainty and confusion caused by the Pandemic, various regulatory agencies in Nigeria have issued circulars and guidelines (both referred to as the “**Publications**”) geared towards providing guidance to companies and modifying compliance requirements to enable companies fulfill attendant compliance obligations amid the Pandemic.

¹ The lockdown which is for an initial period of fourteen (14) days became effective at 11pm on Monday 30th March 2020.

This newsletter highlights the salient points of the Publications issued by different regulatory agencies, as well as the practicality of the directives in the Publications in light of the evolving realities due to the continuous spread of the Pandemic.

Company Meetings

The Corporate Affairs Commission (“CAC”) issued Guidelines on Holding of Annual General Meetings of Public Companies Using Proxies (the “Guidelines”)² on 26th March 2020. The Guidelines enjoin public companies to capitalise on the provision of the Companies and Allied Matters Act³ (the “CAMA”) which permits shareholders to appoint proxies to attend and vote at meetings on their behalf in order to hold their Annual General Meetings (“AGM”) during the Pandemic. The approval of the CAC is required to be obtained prior to holding the AGM, and the application for approval may be sent to the Registrar-General of the CAC by email at: agabubakar@cac.gov.ng and rg@cac.gov.ng during the period of the lockdown.

The notice of meeting - which should state that attendance at the AGM will only be by proxy due to the Pandemic- together with the proxy forms are required to be sent to every member of the company. The names and particulars of the proposed proxies should also be indicated in the notice to enable the shareholders select their preferred proxy. After the AGM, evidence of postage or delivery of the notice is required to be provided to the CAC.

Representative(s) of the CAC will attend the AGM to observe the proceedings and only ordinary business⁴ as contemplated under

² <https://www.cac.gov.ng/3956-2/>.

³ Cap C.20 Laws of the Federation of Nigeria 2004.

⁴ By virtue of Section 214 of the CAMA, the following matters are ordinary business and any other business transacted at an AGM is deemed to be special business: Declaration of dividend; Presentation of the financial statements and the reports of the Directors and Auditors; Election of Directors in the place of those retiring; Appointment and fixing of the remuneration of the Auditors.

the CAMA is to be discussed at such meeting. The provisions of the CAMA will apply to determine whether the AGM is quorate and each duly completed proxy form is to be counted as one shareholder.

There are no restrictions in the CAMA regarding the number/percentage of shareholders permitted to be represented by proxies at each meeting⁵. Therefore, we do not understand why companies would need to obtain the approval of the CAC in order to hold a meeting solely by proxies. This, in our view is an additional requirement imposed by the Guidelines at a time when companies could really do with some degree of latitude and flexibility from regulators. It appears the rationale for this requirement is to enable the CAC supervise the meetings, to ensure amongst other things, compliance with prescribed precautionary/safety measures. In our view, the CAC can ensure such compliance by simply attending the meeting without the need to pre-approve the convening of same.

In line with the Guidelines, Guaranty Trust Bank Plc (“GTB”), obtained the approval of the CAC to hold its AGM by proxy on 30 March 2020. The shareholders were urged to watch the livestream of the AGM proceedings by logging into GTB’s website, and the AGM was successfully convened in compliance with the then subsisting directive of the Lagos State Government prohibiting public gatherings of more than twenty-five people.

Whilst the proactivity in issuing the Guidelines by the CAC is commendable, its palliative effect has somewhat been overtaken by the lockdown in Ogun, Lagos and Abuja. Consequently, the directives in the Guidelines can only be exploited by companies/shareholders that have the mechanism in place to convene their meetings in other states and appoint proxies resident in these states to attend and vote at the meetings on their behalf. In such

⁵ Section 230 of the CAMA.

instances, these companies can also in the manner of GTB, employ virtual meeting/online streaming technology for the benefit of shareholders and other essential attendees not required for a quorum such as Directors, Auditors and Company Secretaries. Although the Guidelines are specific to public companies, these can serve as a guide to private companies for conducting their AGMs during the Pandemic, without the requirement to follow the CACs prescriptions strictly, unlike public companies to which it specifically applies.

In addition to the Guidelines, both private and public companies may have recourse to the provision of the CAMA which empowers the CAC to extend the time within which a company may hold its AGM by a maximum of three (3) months⁶.

On a separate note, the Guidelines focus on AGMs, whilst there is no clear directive on the conduct of filings at the CAC, most of which like AGMs have prescribed timeframes for compliance. Registration of new companies can be commenced via the Company Registration Portal (“CRP”) but the CAC is yet to provide any guidance on conducting post-incorporation filings (such as change of Directors, annual returns, change of address etc.) which prior to the Pandemic were carried out in person at the CAC. Therefore, it is important for the CAC to either issue a circular or other directive granting extension of time within which to undertake these filings or automate post incorporation filings by permitting electronic filings. Company registration on the CRP should also be fully automated to enable electronic issuance (via the CRP) of certificates of incorporation and certified true copies of incorporation documents which were issued in person at the CAC prior to the Pandemic.

⁶ Section 213(1)(b) of the CAMA. This section provides that *“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 15 months shall elapse between the date of one annual general meeting of a company and that of the next”*.

In addition to compliance obligations of companies under the CAMA which are superintended by the CAC, some companies by virtue of their character and nature of business also have compliance obligations under other laws and regulations and as such fall within the purview of other agencies such as the Nigerian Stock Exchange (“NSE”) in the case of listed companies and the Securities and Exchange Commission (“SEC”) in the case of Capital Market Operators (“CMO”) and issuers of securities.

Listed Companies and Issuers

The NSE via a circular⁷ published on 23rd March 2020, granted listed companies a sixty (60) day extension for submission of their Audited Financial Statements (“AFS”) for the year ended 31 December 2019 which were due to the NSE on 30th March 2020.

Additionally, on 19 March 2020, the NSE published a circular⁸ on the conduct of 2020 Annual General Meetings (“AGM”) during the Pandemic by issuers listed on the exchange. The NSE, advised all listed companies scheduled to hold their AGMs to adopt adequate precautionary measures in line with guidelines/directives issued by the Nigerian Centre for Disease Control and World Health Organisation, to ensure safety of all stakeholders at the AGMs. Issuers were also advised to capitalise on the flexibility available under the CAMA by applying to the CAC to grant an extension in the time within which the company is required to hold its AGM.

In light of the fact that the NSEs circular of 19th March 2020 predated the lockdown implemented by the Federal Government, it goes without saying that the viable options currently available to listed companies to

⁷ [http://www.nse.com.ng/Listings-site/corporate-disclosure-site/Documents/Circular%20to%20Issuers%20and%20the%20Investing%20Public%20on%20the%20Coronavirus%20\(COVID-19\).pdf](http://www.nse.com.ng/Listings-site/corporate-disclosure-site/Documents/Circular%20to%20Issuers%20and%20the%20Investing%20Public%20on%20the%20Coronavirus%20(COVID-19).pdf)

⁸ <http://www.nse.com.ng/Listings-site/corporate-disclosure-site/Documents/Circular%20to%20Issuers%20on%20the%20Conduct%20of%202020%20AGMs%20of%20Companies%20Listed%20on%20NSE.pdf>

hold their AGMs are; i) appoint proxies in accordance with the Guidelines in the case of companies that would normally hold their AGM in a state not subject to the lockdown, or ii) appoint proxies in other states as recommended above in the case of companies that would normally hold their AGM in any of the states subject to the lockdown, or, iii) apply to the CAC for an extension of the time within which to hold the AGM. Option (iii) can however, only be exercised by a company that is yet to exceed fifteen (15) months from the date of its last AGM in accordance with the requirements of the CAMA.

Capital Market Operators

On 24 March 2020, the Securities and Exchange Commission (“SEC”) issued a circular to all capital market stakeholders. Through the circular, the SEC granted an extension for an initial period of sixty (60) days, for public companies and capital market operators to file their 2019 Annual Reports and 2020 First Quarter Reports. The SEC also stated that it has suspended new applications for registration of CMOs until further notice. However, pending applications and requests by CMOs for update of information will be processed via registration@sec.gov.ng.

All other applications and returns are to be filed electronically through the following email addresses:

Filing of Applications	
Registration of funds and other relevant filings	cis@sec.gov.ng
Registration of securities, Public Offers, Mergers & Acquisition, Debt Issuances, etc.	offerapplications@sec.gov.ng
Filing of Returns	
Public Companies	quotedcoyreturns@sec.gov.ng
Capital Market Operators	brokers@sec.gov.ng , portfoliomanager@sec.gov.ng issuinghouse@sec.gov.ng investmentadvisers@sec.gov.ng ratingagency@sec.gov.ng registrars@sec.gov.ng marketmakers@sec.gov.ng trustees@sec.gov.ng
5% and above shareholding	offerapplications@sec.gov.ng
Anti-Money Laundering/ Combating Financing of Terrorism (AML/CFT)	amlcftreturns@sec.gov.ng

Conclusion

These are indeed uncertain times for organisations worldwide. Nonetheless, it is important that companies continue to fulfill corporate compliance obligations, as far as is legally permitted in the face of physical restrictions, until things return to “normal”. Companies should therefore take advantage of the modalities prescribed by various regulatory agencies in fulfilling these obligations until the restrictions are lifted or the Pandemic ends, and we are hopeful that will be soon.

The Templars team is available to offer guidance and advisory services to companies in relation to adopting these recommendations/directives to fulfill their corporate compliance obligations during the Pandemic.

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