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**THE APPLICATION TOWARDS IMPROVING NOTICE OF
MEETING UNDER NIGERIAN COMPANY LAW**

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Abstract

The right of the shareholders to participate at the AGM depends on proper service of notice of meeting. The Companies and Allied Matters Act 1990 (CAMA 1990) recognises this right and stipulates time frame within which shareholders shall receive notice as well as the method of serving notice. However, many shareholders in Nigeria claimed that they do not receive notice of meeting on time because personal service and service through postal delivery are weak and therefore hinders their participation at AGM. This study seeks to examine the legal provisions regulating notice of AGM in Nigeria. The study adopts socio-legal and doctrinal research methodology. Accordingly, references were made to relevant statutory provisions and case law in the United Kingdom and Malaysia while qualitative interview complement the doctrinal aspect. The findings reveal that service of notice by post is not effective. There is need for the CAMA 1990 to incorporate certain provisions that will recognise the application of ICT in corporate meetings. This will improve shareholders' participation at the AGM when notices are effectively served.

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1. Introduction

One of the ways to improve shareholder democracy is through increased participation of shareholders at the annual general meeting (Hague Van der Schee, 2011; Heilscher, Beckmann & Pies, 2014). Various reasons influence shareholder participation at the AGM. According to Mallin and Melis (2012), shareholders being informed about what should be discussed at an annual general meeting (AGM) influenced their decision to attend the meeting. Therefore, shareholders mainly rely on AGMs as a forum to exercise their rights (Lafarre, 2014).

The board of directors and the shareholders/members at the general meeting are the two primary organs of a company (Robert, 2015; Nelson, 2015). The board is responsible for running the affairs of the company (Chiu, 2015) and has a fiduciary duty to act in the best interest of the company (Johnson, 2016; Paul, 2013). Consequently, the board is accountable to the shareholders at the general meeting (Frankle, Gregory, Varallo & Lyon, 2015). In contrast, the shareholders are having a distinct position in the company. They are the owners of the company (Bhadmus, 2009; Chassagnon & Hollandts, 2014). The Companies and Allied Matters Act 1990 (CAMA 1990) as the principal law governing company affairs in Nigeria under section 81 recognised the right of shareholders to participate and vote at the meeting subject to receiving adequate notice based on s. 220 of the CAMA 1990.

Service of notice enables shareholders an opportunity to scrutinise and planned for the meeting (Atte, 2015). In *Mahesan and Ors v. Ponnusamy and Ors* (1994) 3 MLJ 312 and *Jerry Ngiam Swee Beng v. Abdul Rahman bin Mohd Rashid and Anor* (2003) 6 MLJ 448, the court held that notice of the meeting must be served properly, according to the constitution of a company. Since the validity of a meeting solely relies on proper service of the notice (Baldacchino et al., 2016). According to s. 219 of the CAMA 1990 there are certain category of persons that are entitled to receive notice of the meeting. They include shareholders, directors, secretaries, auditors. In this study, shareholders are the focus, though not undermining the role played by other stakeholders. Most shareholders in Nigeria received notice of the AGM very lately. In examining the above, reference would be made to relevant provisions of the United Kingdom Companies Act 2006 (CA 2006) and Malaysian Companies Act 2016 (CA 2016) as well as decided cases where relevant.

2. Problem Statement

According to s. 217 of the CAMA 1990 notice of AGM shall be given to shareholders at least notice of 21 days before the AGM. However, there are exceptions under the CAMA 1990 where shareholders may receive less than 21 days' notice. In this regard, s. 217(2)(a) of the CAMA 1990 provides that the exceptions depend on whether it is an AGM or other general meetings of the company. In the case of an AGM, shareholders may receive less than 21 days' notice where all the shareholders with the right of attendance and voting at the meeting agree on shorter notice. Furthermore, s. 217(2)(b) of the CAMA 1990 provides another instance where notice of less than 21 days' notice may be given. This is where the majority of the shareholders with not less than 95% of the nominal value of shares, for company having a share capital or majority of the shareholders holding not less than 95% of total voting right in the case of a company without share capital agree on shorter notice. Many shareholders do not receive notice AGM on time and sometimes after the AGM has been held (Atte, 2015). This problem was

because of the method of service of notice under the Companies and Allied Matters Act were not effective. There is postal inefficiency in Nigeria, as such notices take a long time to reach their destinations.

Methods of service relate to the procedure used in serving notice of AGM. In this regard, s. 220(1) of the CAMA 1990 provides, "Notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or if he has no registered address within Nigeria to the address, if any, supplied by him to the company for the giving of notice to him." Based on the above provision, notice of meeting shall be serve either personal service or through postal service. Accordingly, s. 220(2) of the CAMA 1990 provides, "where a notice is sent by post, service of the notice is deemed to be effected by properly addressing, prepaying, and posting a letter containing the notice, and to have been effected in the case of a notice of a meeting at the expiration of seven days after the letter containing the same is posted." Thus, after 7 days of service, such notice is deemed to have been served properly.

On the service of notice by post, Respondent 6 states, "There used to be complain by some shareholders about the delay in receiving notice. This is mainly because our postal services particularly the (government owned) is almost dead. We need to make sure that the law adopts a system that ensures fast delivery of notices," (Interview, Respondent 6, November 21, 2016). In this regard, Respondent 2 added, "It is an understatement to talk about the inefficiency of the postal service in the country. This is a problem because it takes a longer period, time or duration between postage and receipt of notices of AGM (Interview, Respondent 2, October 27, 2016). Furthermore, s. 220(4) of the CAMA 1990 recognised the right of personal representatives of a deceased or bankrupt shareholder to receive notice, in the same manner, a shareholder is served.

The above challenge prevents the shareholders from attending the AGM and exercising their voting rights because the CAMA 1990 has no provision that recognised the application of ICT in serving notice of meeting (Atte, 2015). In this regard, Respondent 4 states, "The CAMA 1990 needs to be reviewed to incorporate present realities. The world is going "e," everything is "e." It will be a welcome development that companies should also try to incorporate ICT in holding AGM," (Interview, Respondent 4, November 24, 2016). The problem persisted despite the requirement under s. 222 of the CAMA 1990 that requires a company to make additional publication of notice of AGM in at least two national dailies, in addition to personal notices sent to shareholders.

3. Research Questions

The research questions are formulated below:

1. How does the law in Nigeria regulate notice of shareholder's AGM?
2. Why do shareholders in Nigeria receive notice of AGM lately, as against the stipulation of the law?
3. To what extent the application of ICT under Nigerian company law can improve service of notice of AGM?

4. Purpose of the Study

The study seeks:

1. To examine how the law regulates notice of AGM in Nigeria,
2. To analyse the challenges hindering effective service of notice in Nigeria, and
3. To examine how development in ICT would improve service of notice of AGM.

5. Research Methods

This study employed socio-legal research methodology (Watkins & Burton, 2013). It involved doctrinal (library based) and field work. The doctrinal aspect was conducted in the library (Yaqin, 2007). It is a problem-solving method (Dent, 2017). In this study, reference was made to various provisions of laws in Nigeria, UK and Malaysia besides other rules, regulations and other code of governance as well as decided cases were equally referred to in this study. On the other hand, the field work involved 14 in-depth interviews. Thus, an interview as one of the means of collecting qualitative data was conducted to get practical experience of the Respondents in the area study (Seidman, 2013). The respondents were chosen based on their expertise (Baskarada, 2014) in company law and practice. They were selected from the academic discipline, corporate practice, the board of directors and shareholder representatives. There is the need to carry out a quantitative study to corroborate the findings in this study on the suitability or otherwise of the application of ICT in sending notice of meeting under the CAMA 1990.

The analysis of data in this study was conducted using thematic analysis (Vaismoradi, Turunen & Bondas, 2013) which was based on the themes and sub-themes that emerged from the study. In this regard, Namey, Guest, Thairu and Johnson (2008) explained, thematic analysis stressed on identifying and describing both implicit and explicit ideas. All the 14 Respondents interviewed were coded (Saljana, 2016) as R1 to R14 to ensure confidentiality. The theme was developed based on the study question(s).

6. Findings

The findings of this study are presented below:

6.1. Notice of Meeting

According to the Code of Good Corporate Governance for Insurance Industry in Nigeria 2009, shareholders have the right to participate in the company meetings, and they shall be given sufficient information on all corporate matters, including being informed about a meeting. In the same context, the Code of Corporate Governance for Public Companies in Nigeria 2011 requires the management of a company to ensure effective communication between the shareholders and the company which is only possible through notice of meeting. In this regard, the Rules and Regulations of Nigerian Stock Exchange, 2015 requires that a draft copy of the notice of meeting, circulars, annual report, audited account and any other accompanying document shall be sent to the Nigerian Stock Exchange (NSE) for review before it is served on the shareholders. This requirement seeks to protect the interest of shareholders against defective notice of meeting. According to Respondent 3, "Notice is a fundamental requirement for attendance at AGM, without the notice, you won't be able to attend and exercise your powers or right as a shareholder.

Notice is a very fundamental, very critical right of a shareholder. From my understanding, most of the powers of the shareholders are exercised at the AGM,” (Interview, Respondent 3, October 26, 2016).

The right to receive notice of meeting is a legal requirement that must be complied with by the company (Amupitan, 2006; Wijayati, Hermes & Holzacker, 2016). In *Young v. Ladies Imperial Club* (1920) 2 KB 523, the court held that failure to serve notice of shareholder’s meeting invalidates all the proceedings at the meeting. In the Malaysian case of *Jerry Ngiam Swee Beng v. Abdul Rahman bin Mohd Rashid and Anor* (2003) 6 MLJ 448, the court held that, except where proper service of notice has been effected, the meeting shall be invalid. Similarly, s. 221 of the CAMA 1990 provides that where notice of meeting has not been issued as stipulated by law, such meeting shall be invalid.

A shareholder must be served with the notice irrespective of the fact that he has earlier expressed his intention to the company that he need not be served with notice of meeting (*Speechley & Others v. Alott & Others* (2014) EWCA Civ 230). However, in *Young v. Ladies Imperial Club* (1920) 2 KB 523, it was held that shareholder’s right to receive notice of meeting can be waived due to the critical health condition of a shareholder. According to the Malaysian case of *Phuar Kong Seng v. Lim Hua* (2005) 2 MLJ 338, the defendant was entitled to 14 days’ notice although he refused to attend the meeting earlier on. The court maintained the view that the defendant shall be served with the notice because the company has only two shareholders and failure to attend by the defendant could result in a deadlock. The above case explained the significance of notice of meeting to the extent that even where a shareholder on a previous occasion refused to attend the meeting, nevertheless the right must be protected.

On the contents of a notice, s. 218(1) of the CAMA 1990 as well as the Rule and Regulations of the Nigerian Stock Exchange (2015) provides that “notice of meeting shall specify the place, date and time of the meeting, and the general nature of the business to be transacted thereat in sufficient detail to enable those to whom it is given to decide whether to attend or not. Where the meeting is to consider a special resolution, shall set out the terms of the resolution.” Where a notice has been sent to shareholders, its content cannot be changed except where a company has the approval of the Nigerian Stock Exchange. All these were put in place to protect the interest of shareholders so that shareholders should not be taken by surprise during AGM. In the case of *Indian Corridor Sdn Bhd and Anor v. Golden Plus Holdings Bhd* (2008) 3MLJ 653, the court held that, notice of meeting need not be too detailed. A notice of meeting that does not contain details of the meeting may satisfy legal requirement provided it is attached with a circular that contained details of the business transaction at the meeting (*Mohd Tahir bin Abdul Rahim & Ors v. Syarikat Permodalan Kebangsaan Bhd & Ors* [1991] 2 CLJ 1155).

6.2. Lack of Recognition of ICT under the CAMA 1990

According to Chen (2017), application of internet saves time, costs and improve effective communication. However, there is no provision under the CAMA 1990 that recognised the use of ICT in sending notice of meeting (Atte, 2015, p. 64). Thus, 14 Respondents were interviewed on the application of ICT under CAMA 1990, and they unanimously opined the need to incorporate ICT under CAMA 1990. Some of the excerpts from the interview are reported. According to Respondent 9, “When you look at the law, there is no place where the use of ICT is mentioned. I honestly think that stakeholders need to come together and take a position and possibly channel that to the National Assembly and see how it

could be repealed. The use of ICT should be taken into consideration under the CAMA 1990 particularly for public companies because we should be moving with time,” (Interview, Respondent 9, November 14, 2016). In the same regard, Respondent 3 mentioned, “Our CAMA is a legislation of the 1990s. It was enacted in 1990, and when it was enacted, the world has not developed to this extent and therefore is understandable that it has not made any provision regarding the ICT. Technology is a necessary imperative today. It is permitting all aspects of our lives, and all successful corporate organisations employ technology to facilitate their production processes. Therefore, the company management structure and the legal framework should also move with the time to recognise the role that ICT can play in advancing corporate management and administration in Nigeria,” (Interview, Respondent 3, October 26, 2016). All the above responses pointed out on the need for the CAMA 1990 to incorporate ICT as that would facilitate service of the notice.

Based on the responses, it is essential for the CAMA 1990 to consider the incorporation of ICT as relates to service of the notice. Additionally, the analysis of the interview suggests that ICT can be applied under the CAMA 1990. In this regard, Respondent 7 believed, “If the law can make provision for ICT, it is okay. Everybody wants things to be easier and faster. Make sure the right environment is there,” (Interview, Respondent 7, October 27, 2016). In the same view, Respondent 5 added, “Application of ICT may be a gradual process, and it will be good,” (Interview, Respondent 5, October 25, 2016). The above responses indicate the prospect of using ICT under the CAMA 1990, although there may be some challenges.

6.3. Method of Service

As earlier mentioned, s. 217 of the CAMA 1990 only recognised two methods of service of notice namely, personal service and service through postal delivery. These two methods were not effective. In this regard, Respondent 2 believed, “It is an understatement to talk about the efficiency of the postal service in the country. This is a problem because it takes a longer period, time or duration between postage and receipt of notices of AGM,” (Interview, Respondent 2, October 27, 2016). This necessitates the examination of other methods that facilitate effective service of notice under the CAMA 1990. In this regard, 9 Respondents out of the 14 that were interviewed representing 64.2% maintained that, “email addresses” should be used in sending notice of meeting to shareholders while 5 Respondents out the 14 representing 35.7% suggest the use of “mobile text messages” or “websites” to publish notice of AGM.

From the excerpts, Respondent 5 mentioned, “I would recommend sending notices via emails so that they can be received anywhere on time before the 21 days,” (Interview, Respondent 5, October 25, 2016). In the same context, Respondent 14 believed, “At least majority of us 60-70% of Nigerians have e-mail addresses. A company can use email to send notice of AGM to its shareholders,” (Interview, Respondent 15, November 28, 2016). Based on the above responses, it may be concluded that application of ICT in sending notice would help significantly in improving shareholder participation at the AGM.

The findings in this study reveal that, both methods of service prescribed under the CAMA 1990 namely; personal and postal service were not effective in Nigeria. Furthermore, the requirement for additional publication of notice in a newspaper is equally ineffective because only small percentage of people read newspapers in Nigeria. In this regard, Respondent 11 states, “How many people read

newspapers, most people are inclined to watching foreign stations. They don't have the time actually to see those notices." It is of great significance if the CAMA 1990 can make provision that facilitates service of notice that will be very effective, namely using of the ICT.

To draw inference as a guide to reform the CAMA 1990 some provisions of the CA 2006 and CA 2016 were cited. In this regard, s. 308(a)(b)(c) CA 2006 provides, "Notice of a general meeting of a company must be given in hard copy form, in electronic form, or by means of a website or partly by one such means and partly by another." The above provision recognised advancement in ICT by making provision for electronic service of notice. Similarly, s. 333(1) of the CA 2006 provides that, where an electronic address is given in relation to notice of meeting, such address is to be used for any proceedings at the meeting. Furthermore, the CA 2006 set details regarding publication of notice of meeting on the company website. It provides, "Notice of a meeting is not validly given by a company by means of a website unless it is given in accordance with this section" (s. 309(1) CA 2006). For the validity of notice of meeting published on company website, s. 309(3) of the CA 2006 provides, "The notice must be available on the website throughout the period beginning with the date of that notification and ending with the conclusion of the meeting." All the above provisions explicitly recognised the use of email and website to send/publish notice of AGM which the qualitative interview above also suggest.

In Malaysia for example, there is equally a provision under the CA 2016 that recognised service of notice through the electronic form, in addition to the hard copy of the notice (s. 319(1)(b) and (c) CA 2016). The section further provides that, "Unless otherwise provided in the constitution, a notice given in electronic form shall be transmitted to the electronic address provided by the member to the company for such purpose or by publishing on a website" (s. 319(2)(b) CA 2016). This provision clearly recognised not only the application of ICT but, the use of electronic address or website to send or publish notice of meeting as it is the case of the CA 2006. Furthermore, s. 320(1) of the CA 2016 provide that, notice of a meeting of members published on a website shall only be considered valid when a notification to that effect is given in accordance with this section. In this regard, members must be informed about the publication of notice on the website. Based on s. 320(2)(a)(b) & (c) of the CA 2016, the notification shall be in writing either in a hard copy or electronic form stating the following, "that it concerns a meeting of members, the place, date and time of the meeting and in the case of a public company, whether the meeting is an annual general meeting." Additionally, s. 320(3) of the CA 2016 provides "Notice shall be made available on the website throughout the period beginning from the date of the notification referred to in subsection (2) until the conclusion of the meeting." Despite the absence of the above provisions under the CAMA 1990, there is a prospect that if this is incorporated in the future, they would have a great impact on shareholder participation at AGM in Nigeria.

6.4. Application of ICT

The advancement in technology allows shareholders to participate in an AGM through electronic means and thus improves the value of the company in several ways (Boros, 1999; Chen, 2017). The prevalent view today centered on the incorporation of ICT to improve and ensure the effectiveness of the AGM. Chen (2017) argued that the use of Internet would help in saving time, costs and as well as

effective communication. In another word, the difficulty associated with shareholder participation at the AGM may be remedied by the advancement in the ICT (Hayati & Hasani, 2015).

Thus, electronic communication is a necessary imperative of business today (Marthinus, 2015). Currently, electronic mail (email) is one of the most widely means that facilitates business communication (Gluck, 1994; Hoffmann & Aeschlimann, 2017). In one study, it shows that 84% of communications through electronic medium uses email (Arvey, 2009). Rule 19.8(b) of Rule and Regulations of the Nigerian Stock Exchange 2015 states that upon request of a shareholder and where practicable, a company must send to the email addresses of shareholders the soft copies of the approved documentation.” This clearly recognised the use of ICT in sending relevant documents to shareholders through email addresses supplied by the shareholders to the company. It is one of the recent Rules that recognise the use of ICT in a corporate meeting in Nigeria. However, since the CAMA 1990 does not recognised service of notice by electronic means, it would be unrealistic to attribute to the legislature that they intent the use of ICT to send notice of meeting (Bolodeoku, 2007). Shareholders may not be willing to provide their email addresses to the company except where there is a law that sanctioned the confidentiality of their email addresses (Bidin, 2013). However, no such provision under the CAMA 1990 recognised electronic service of notice of meeting (Atte, 2015).

6.5. The Telecommunication Industry as Internet provider

The Nigerian telecommunication industry provides internet access to subscribers (Israel, 2015; Oladipo et al., 2016). There are challenges affecting internet access ranging from the slow pace of network, lack of constant electricity supply, cost of subscribing data among other reasons (Adomi, 2005). In Nigeria, many of the shareholders are relatively the working class, most of whom reside in the cities where Internet services are readily provided (Bolodeoku, 2007). However, for one to access the internet uninterruptedly, a subscriber must have a stable electricity supply in addition to the costs of subscribing internet data. This is a challenge since not every subscriber can afford stable electricity and internet subscription (Adomi, 2005). Today, the telecom industry in Nigeria is taking a new phase regarding development and service delivery. This was facilitated by a series of reforms aimed at transforming the sector by allowing private sector participation in the industry (Iwuagwu, 2014). The Nigerian telecom industry is described as one of the world’s fastest growing telecommunications markets (Connors & Maylie, 2011; Ojo, 2017).

Based on the recent (Report of the Nigerian Telecommunication Services Sector, 2016) there is a significant improvement in the number of subscribers in the telecom industry. The report indicates that as at the end of 2005 there were only 19,519,154 subscribers, but by December 2015 there were 151,017,244 which signifies an increase of about 13,149,809 every year. In the same report, it shows the total number of Global System for Mobile Communications (GSM) subscribers as at March 2016 was 147,398,854, which represents an increase of 5,756,018, or 4.06% compared to the statistics in March 2015. This indicates some of the prospects for the application of ICT in sending notice of meeting, because many Nigerians are now having access to mobile phones and the internet by extension.

7. Conclusion

Notice of meeting is a condition precedent to shareholder participation at the AGM. Without notice, there is no way shareholders can attend the AGM. Unless shareholders are giving the chance to participate in the meeting, it would have an adverse effect on the company and thereby defeat the aims of AGM as a counter balance mechanism. That would ensure efficient delivery of notices to shareholders and improve their overall participation. Thus, reference to the provisions of CA 2006 and CA 2016 in this study would give Nigerian legislature a road map to follow in effecting the necessary reform(s) while mindful of special peculiarities in the Nigerian context.

Despite some of the challenges relating to internet access and affordability in Nigeria, there is a bright prospect for the ICT application in Nigerian company law. This was revealed based on the highlights of the telecom industry in Nigeria as well as from the perspectives of the Respondents in this study. It is suggested that, the CAMA 1990 need to incorporate the use of ICT in corporate meetings. This would facilitate effective service of notice of AGM with speed and less costly against the current provision that has no provision for electronic delivery of notice. The application of ICT under the CAMA 1990 has the potentials to improve not only service of notice but corporate meetings in general.

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