

## CAC Issues Guidelines on AGMs Convened By Proxy

GECO Corporate Practice Newsletter

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In view of the recent movement restrictions and government directives on public gatherings occasioned by the COVID-19 pandemic, public companies in Nigeria have experienced difficulties in convening annual general meetings of shareholders (“AGMs”). Decisions such as declaration of dividends and receipt of audited accounts can only be reached at AGMs, therefore it is imperative that these public companies convene the AGMs as quickly as possible.

To address this challenge, some public companies have resorted to the appointment of proxies as allowed under section 230 of the Companies and Allied Matters Act 1990 (“CAMA”). On March 26, 2020, the Corporate Affairs Commission (“CAC”) released guidelines under which public companies in Nigeria may hold AGMs through proxies (“the Guidelines”). The Guidelines are reproduced below.

- The approval of the Corporate Affairs Commission (CAC) shall be obtained before such a meeting is held. The application can be submitted to the Head Office in Abuja or any of the branch offices in any of the States.
- CAC shall send representative(s) as observer(s) to the meeting.
- The meeting shall only discuss the Ordinary Business for an AGM as provided in S.214 CAMA.
- Notice of meeting and proxy form shall be sent to EVERY member in accordance with the requirements of CAMA. Companies will be required to provide the CAC with the evidence of postage or delivery of such notices after the meeting.
- All the members shall be advised in the notice that in view of the Covid-19 pandemic, attendance shall only be by proxy with names and particulars of the proposed proxies listed for them to select therefrom. The invitation shall be issued at the companies’ expense as well as the stamp duties which shall be prepaid by the company. The proxies need not be members of the company.
- The company shall be guided by the provisions of its Articles or CAMA as regards to a quorum. However, for the purpose of determining quorum, each duly completed proxy form shall be counted as one.

In complying with the Guidelines, there are at least two pertinent issues public companies should bear in mind.

First, the choice of appointed proxies is restricted to “*names and particulars of the proposed proxies listed for them to select therefrom*”. The legality of this restriction is questionable. CAMA s.230 allows shareholders to appoint ANOTHER PERSON (WHETHER A MEMBER OR NOT). The restriction of the appointed proxies under the Guidelines to selected persons contravenes CAMA s.230.

Second, the restriction of the businesses to be conducted at the AGM to ordinary business contravenes CAMA s.214. Other than ordinary business, companies are allowed to conduct special business at AGMs. The CAC has no power to restrict the business to be conducted at an AGM to ordinary business.

In complying with the Guidelines, public companies should ensure that ss. 214 and 230 of CAMA are adhered to. Where these sections are contravened, disgruntled/dissenting shareholders will have legal basis to challenge the validity of the decisions reached at such AGMs.