

NEW CAC GUIDELINES ON AGMS OF PUBLIC COMPANIES: VALID OR NOT? *

1. Introduction

The Corporate Affairs Commission (the “CAC”), ostensibly in a bid to reduce mass gatherings of persons, recently released its “Guidelines on Holding of Annual General Meetings (AGM) of Public Companies Using Proxies” (the “Guidelines”). Some debatable aspects of the Guidelines are that: (a) the approval of the CAC is required before a public company (“PLC”) can hold its AGM; (b) only Ordinary Business can be conducted at such AGMs; (c) a CAC representative must be present at the AGM; and (d) the PLC must propose a list of proxies and a member must select his proxy exclusively from that list. While the good intentions prompting this proactive intervention by the CAC may be commendable, the CAC may well have exceeded its statutory powers in promulgating the guidelines.

2. Can the CAC unilaterally amend or modify the provisions of the CAMA?

2.1 There is no provision in the CAMA that enables the CAC to make the Guidelines in the way it has done. Section 16 of the CAMA enables only the Minister responsible for trade to make regulations in respect of the CAMA. Where a power is not provided by statute, a statutory body cannot exercise such a power. *Psychiatric Hospital Management Board v. Ejitagha* (2000) LPELR – 2930 (SC). The CAC cannot unilaterally modify the provisions of the CAMA. The provisions of an Act of the National Assembly can only be amended by another Act of the National Assembly, not by any other means. There is no obvious legal basis for the CAC to demand that its approval be obtained before a PLC can hold its AGM. This demand appears to contravene the clear provisions of the CAMA, section 213, which has prescribed the way to call for an AGM.

2.2 Also, the CAC cannot insist that its representative be present at AGMs of PLCs. Where an AGM is held in the absence of a representative of the CAC, can it really be the case that any such AGM will be invalid? The CAMA does not prescribe that a representative of the CAC must be present at AGMs of a PLC. Therefore, to the extent that it seeks to alter or modify the provisions of the CAMA, the Guidelines are void. Moreso, the provisions of a subsidiary legislation cannot supersede the provisions of its principal legislation, it must conform with it. *NNPC v. FAMFA Oil Ltd.* (2012) 17 NWLR (Pt. 1328) 148. Therefore, even assuming (without conceding) that the CAC in principle has the power to make the Guidelines, the exercise of that power here was void for being inconsistent with the provisions of the CAMA.

2.3 Similarly, the CAC cannot unilaterally prescribe that only Ordinary Business can be transacted at the AGM of a PLC. The CAMA section 214 provides that both Ordinary Business and Special Business can be transacted at the AGM¹. There is no provision in the CAMA enabling the CAC to alter or modify the provisions of the CAMA. Therefore, the CAC appears to have exceeded its statutory powers when it issued the Guidelines. Further, the CAMA does not empower a company to command its members to attend meetings only by proxies. Members of a company have broad rights to attend all meetings of the company. Section 230(1) of the CAMA. The CAC cannot restrict those rights in the way that it has tried to do by making the Guidelines.

*Lawal Ijaodola and Doyinsola Kazeem, March 27, 2020.

¹ Ordinary Business are declaration of dividend, presentation of financial statements, directors’ and auditors’ reports, election of directors in place of retiring directors, appointment and fixing of remuneration of auditors and members of the audit committee. Every other business transacted at the AGM are Special Business.

3. Conclusion

To the extent that they are inconsistent with the provisions of the CAMA, the Guidelines would appear to be void. The apparent illegality of the Guidelines may be used by disaffected shareholders of PLCs to challenge the validity of meetings purportedly held pursuant to the Guidelines. The CAC should consider withdrawing the Guidelines. If not, we may have to look forward to seeing what the attitude of the courts will be in future litigation on the aforementioned issues. Until the Guidelines are either withdrawn by the CAC or affirmed by the courts, prudent PLCs who are not truly desperate may prefer to postpone their AGMs to a time after the ongoing “lockdown” or continue to call and conduct the AGMs as they used to before the Guidelines were promulgated, not according to the content of the Guidelines.



Lawal Ijaodola

ASSOCIATE

lawal.ijaodola@gelias.com



Doyinsola Kazeem

ASSOCIATE

doyin.kazeem@gelias.com

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