

COVID-19 *and* CORPORATE GOVERNANCE: THE PLACE OF TECHNOLOGY



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INTRODUCTION

When the collapse of Enron happened, corporate governance became a trendy topic as companies, investors and regulators sought to prevent fraudulent practices by managements. With the Covid-19 pandemic and its impact on businesses and corporations, the need for sound corporate governance practices has never been more dire. In the new world order, the boards of companies and regulatory agencies need to be proactive, ingenious and decisive not only in assessing the exposure of the company but also in developing solutions to enhance the ability of companies to navigate supervening and unplanned events such as this outbreak.

While the need for corporate governance has never been in doubt, the concept of corporate governance has always been frustrated by different factors. Today, the biggest challenge is the COVID-19 pandemic. With board meetings and General Meetings no longer possible by the conventional means, boards now making major decisions affecting the future of the company and shareholders are more than ever anxious about the state of their investments. In the midst of the corporate governance and related challenges, technology has become the much needed mitigant to business interruption, with products like Zoom, email, and work-focused applications which enabled some organizations to virtually carry on business. In the same way, technology can assist companies and their boards to ensure that there are no serious corporate governance lapses and the effects of the economic recession are mitigated.

VIRTUAL BOARD GOVERNANCE AND OVERSIGHT: REASSESSING THE BOARD'S ROLE

The Board of Directors of a company is the body primarily responsible for the corporate governance practices of the company. It is required to exercise oversight over the management of the company and manage a company's risks. In a crisis situation, much like the current one, the role of the board naturally becomes more important and is substantially altered. During the normal course of business, boards are required to be relatively uninvolved in management activities and to employ a hands-off approach. However, during a crisis, the balance between interference and oversight must be reassessed. The board's response during a crisis must be quick and timely, and therefore the board cannot afford to wait to be briefed through the usual modes of communication. "In a crisis, sins of omission become equally or more important than sins of commission¹."

The question then is how does the board effectively carry out its increased obligations in spite of the business disruptions caused by the lockdown. Moreover, how can a board assess promptly and effectively the financial impact of the pandemic on the company, debate on the appropriate line of action and adequately implement its resolutions before significant damage is done to the company's resources and fortune? It would seem that the most satisfactory answer to all these questions is BOARD PORTALS.

While not dismissing the applicability of conventional means of corporate communication such as Zoom and emails, the sensitive nature of information that is exchanged among board members and the necessity of immediate action demands that a platform specifically designed to facilitate board activities is used, hence, the Board Portal.



A board portal is a software that enables members of Boards of Directors to communicate and collaborate electronically with other members and to access company information and documents all under a secure process. A board portal can be an in-house application custom built for a company or a commercial application subscribed to by a company.

The features of a board portal which contribute greatly to execution of the board's mandate include online communication at any point in time and from any location, the ability to create, share and modify board documents and strict cyber security to ensure protection of confidential information

SHAREHOLDER ENGAGEMENT

The Covid-19 pandemic has affected shareholder engagement in two principal ways. Firstly, companies have an increased duty to communicate to shareholders their assessment of the company's liquidity, the company's response to the pandemic and where necessary, obtain the approval of

¹[The Role of Boards in Crisis. Davia Temin, Forbes Magazine, October 8, 2014.]

shareholders through voting held at meetings. On the other hand, in spite of the easing of lockdown in many countries, persistent restrictions on gatherings of multiple people make it near impossible to hold conventional General Meetings. Companies such as United Bank of Africa and Transcorp Plc have had to postpone their Annual General Meetings, while others like MTN Nigeria Communications PLC and Wema Bank PLC published Notices of Annual General Meeting on April 24, 2020, but due to the lockdown, attendance is mainly by designated Proxies. The use of designated proxies has in fact been criticized by some stakeholders as an infringement on membership rights².

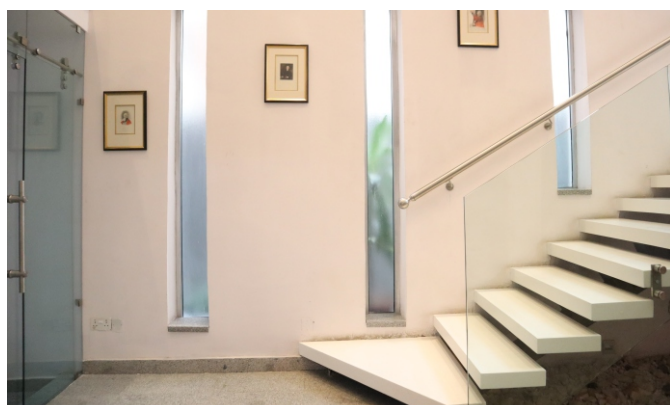
In addition, Extra-ordinary General Meetings in effect cannot also be held physically, which means that it will be difficult for the company to hold important meetings on emergencies and make resolutions necessary to navigate the economic hardship occasioned by the pandemic. (This applies more specifically to public companies as private companies are statutorily allowed to make written

resolutions.)

With the absence of conventional General Meetings, shareholder participation and engagement will be greatly diminished and this might lead to failures of corporate governance as shareholders are unable to make timely and informed decisions. Therefore, it is pertinent to identify how technology can mitigate or resolve this conundrum and what role technology can play in all this.

Prior to the onset of the Covid-19 pandemic and its attendant consequences, a good number of forward-looking companies have employed with great success, technology as a tool for shareholder engagement. Hewlett-Packard, the producers of HP laptops, desktops, printers and other computer hardware have embraced technology in their shareholder engagement process. Some Nigerian Companies have also embraced the use of technology in these times. United Bank for Africa streamed its Annual General Meeting live on YouTube allowing its members send their comments and contributions to a previously-forwarded email address.

It is important to note that the Companies and Allied Matters Act although silent on the subject of Virtual General Meetings, it does not expressly prohibit same. Consequently, the Nigerian Stock Exchange, recognizing the importance of continued shareholder engagement at this time has issued a guidance on virtual general meetings prescribing guidelines for same. The guidance specifically requires that companies include in their Articles of Association, Management Charters or similar documents, provisions relating to the holding and running of virtual meetings. Virtual Shareholder Meetings enable the members to follow the meeting by audio or video, submit questions or contributions and cast their votes online.



"We are known for our ability to provide support from project initiation to execution and throughout the lifespan of a project, anticipating pitfalls and regional nuances to ensure a project's success."

²Covid- 19: Critical Review of CAC Guidelines on Holding Annual General Meetings of Public Companies by Peter Ifeoma, April 6, 2020

Besides virtual general meetings, technology enables members have easy access to statutory records and company information. The company can also communicate board and management decisions to shareholders with relative ease. With technology, shareholder engagement becomes easier and substantially more effective.

DATA ANALYSIS AND GOVERNANCE:

Data governance refers to all the policies and processes by which an organization defines, collates, analyses and manages all its data and information. The management of data is very important to the running of any business organization and serves as the basis for virtually all business decisions including decisions on corporate governance. Because of the importance of data, most boards are preoccupied with the analysis of past data.

In a study carried out by Mckinsey and Company in February 2014³, it was discovered that company boards typically spend the bulk of their time- about 70% on reviewing past data- including quarterly reports, audit reviews, budgets and compliance, rather than on issues most crucial to the future growth and direction of the business. While it is important for the board to concentrate on past data, the ongoing pandemic necessitates that boards adopt a more forward-thinking approach to corporate governance and its oversight functions. To that end, how best does a board balance the need to analyze large amounts of data along with the increased necessity for forward thinking?

With technology, large amounts of data can be analyzed in a short period of time allowing boards to concentrate on strategizing for future direction. A common strategy is to create a corporate governance index which predicts firm value or performance and all of the data is analyzed along those indices. Most data governance technologies employ work-flow related capabilities to maintain and route data based on predefined business roles.

This largely automated process helps the board make quicker decisions and facilitates competent crisis management.

CONCLUSION

Eighteen years after the Enron collapse, there persists a significant danger to corporations of all forms and sizes. While the risks of bad business decisions and false accounting reports still remain, the Covid-19 pandemic and its after-effect poses an additional and possibly greater risk to businesses than ever. Companies must as a matter of urgency embrace technology not only as a means of sustaining business operations but as a solution to the corporate governance challenges and enhancing the corporate governance practices of the company in the long run.

“With decades of experience and expansive global network, we are predominantly focussed on providing top notch legal and business services to our multinational and international clients

³“Building a forward-looking board” Mckinsey Quarterly, February 2014 | Article



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We are a team of experienced professionals, knowledgeable in regulatory matters, corporate governance, innovative company secretarial solutions that enable our clients achieve their business objectives.





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