

2ND ICSAN VIRTUAL MANDATORY CONTINUING PROFESSIONAL EDUCATION(MCPE)



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Ground Rules

This is a 2 hour session. We will have 120 mins presentation and leave the remaining time to take questions and allow discussions.

Your Mics: -Your mics have been muted by default, please do not un-mute your mics until it is time for Q&A

Webinar technical Difficulties: -Send an email to ymustapha@icsan.org; jbassey@icsan.org

Q & A Process(Audio/Chat) –

- We will give opportunity for questions
- Kindly use the  to raise your hands and the moderator would unmute you to ask your question.



Ground Rules

- Also put on your video to ask questions
- If you have further questions, type your question(s) in the Q&A
- We will answer all questions at the end of the session.
- If the speaker drops off at anytime; He/she will be back shortly.
- There will be a group picture at the end of the class, please get ready to have your brightest smiles on.

Presentation and Materials: -To be sent to you after each session.





MANAGING BOARD AFFAIRS IN A FORCE MAJEURE PERIOD: THE ROLE OF THE COMPANY SECRETARY

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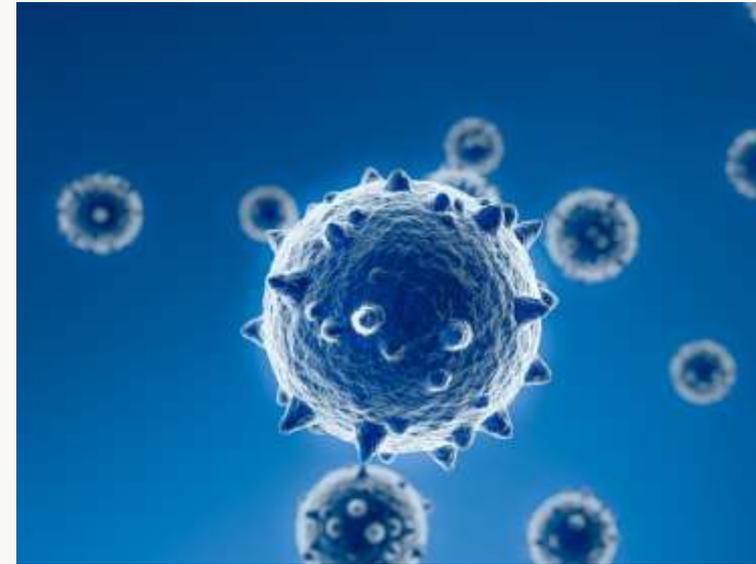
INTRODUCTION

- 2020 started as a normal year, no hint that three months into the year, the world as we knew it would be no more.
- Corona Virus happened.
- It was first discovered in Wuhan China in December 2019 and no one knew that it would have such far reaching impact globally on businesses, on homes and on families. No one knew that the way we do things would change.
- The Federal Government closed the borders and the airports on 23rd March 2020 and imposed a total lock down order on Lagos and Ogun States, and Abuja on 30th March. This was at the end of Q1 2020. For many companies with 31st December financial year end, their Board of Directors were due to hold their Q1 Board meetings in the month of April to review performance for the first three months of the year. Banks were working towards finalising their 2019 audits, approving their financial statements and submitting their financial statements to the Central Bank of Nigeria for approval.



Introduction Cont'd

- With the lock down order in those states, physical offices shut down for a period of two months, no interstate travel was allowed, except for movement of essential goods and services, curfew was imposed from 8.00pm to 6.00am and employees were mandated to work from home.
- The major concern was keeping the business going at whatever cost, IT and cybersecurity occupied center-stage. Against this background, how could companies continue to operate with an efficient and effective governance structure?
- Regulators issued various guidelines and granted extensions for filing of returns, all in a bid to ensure the going concern of businesses as well as uphold good corporate governance in Nigerian companies.



DEFINITION OF KEY TERMS

- Board of Directors : the body appointed by the shareholders to oversee the activities of the company. They determine the strategy direction of the company, establish policies and make decisions on key issues.
- Board Affairs: largely the responsibility for governance of the company, managing the relationship with management and other stakeholders.
- Force Majeure: An event that is a result of the elements of nature, as opposed to one caused by human behavior. An event, such as war, labor strike, pandemic or extreme weather or effect that cannot be reasonably anticipated or controlled. A natural hazard outside human control.
- Company Secretary: an officer of the Company, the Chief Governance Officer of the company.

ROLE OF COMPANY SECRETARY

- Aside the statutory duties of the Company Secretary provided in Section 298 of the Companies and Allied Matters Act Cap C20, LFN 2004 “CAMA”, the various roles stipulated by the different Codes of Corporate Governance, and international standards of best practices, the Company Secretary as the “Chief Governance Officer” of a company, has a huge responsibility to ensure the efficiency of the Board.
- This responsibility is increased in a crisis period as the Company Secretary must be an anchor.



Managing Board Affairs - Meetings

- While companies' management staff are trying to mitigate the impact of the force majeure on their businesses and maintain corporate profitability, the Company Secretary has the responsibility to ensure that the Board continues to meet its legal obligations and duties by overseeing and assessing management activities and responses to the situation. The Company Secretary must ensure that the Board and Board Committees hold their meetings as scheduled and where necessary, working with the chairman, ensure that emergency meetings are scheduled as and when necessary to respond to the force majeure.



Managing Board affairs - Meetings

- Check the company's Articles of Association for provisions to hold Board meetings at short notice and to hold the meetings virtually. If not allowed, take steps to amend the Articles by written resolution of Board and Shareholders; and where written resolutions are not feasible look for alternative ways of obtaining required approvals so that the Board and Committees could validly meet and take quick decisions. This could include having hybrid meetings, email approvals, signing resolutions in counterpart etc.



Managing Board Affairs - Meetings

- Where the articles do not have such provision, first meeting of Board in a force majeure situation could be an informal virtual meeting after which all decisions taken at the meeting are reduced into a written resolution and signed off by all directors.
- Responsible for convening and facilitating virtual meetings of the Board, Committees and Management under the direction of the Chairman, Committee Chairperson or the MD respectively.



Managing Board Affairs - Meetings

- In scheduling board and Committee meetings, take into consideration the different time zones in which the directors are located.
- Encourage the board to constitute a special committee to dimension the risk associated with the force majeure, to monitor the rapidly changing situation and assess risk management measures or assign this responsibility to the Board Risk Management Committee.



Managing Board affairs – Meetings cont'd

- The Company Secretary should work closely with this Committee, liaise with management to ensure that all information that the Committee requires to take decisions expeditiously and to achieve its objectives are provided in a timeous manner.
- Ensure that regular updates from management are provided to the Committee and Board in between scheduled meetings.



Managing Board Affairs – Meetings cont'd

- Prepare an agenda which clearly sets out matters to be discussed, for the chairperson's approval, if possible, allot time for each discussion.
- As the organizer, the Company Secretary should ensure that the required equipment is proactively procured and made available for virtual meetings
- In consultation with IT, set up the virtual meeting on the most secured meeting app/platform.



Managing Board affairs - Meetings

- Confirm attendance ahead of the meeting, ensure that relevant equipment, connection requirements and code/links are available to participants ahead of the meeting.
- Company Secretary should carry out a test run of the meeting with the IT team ahead of the meeting.
- Send reminders of the meeting and code/links at least twice before the meeting date.
- Ensure that Board packs for meetings are circulated on time, at least one week before meetings.



Managing Board affairs - Meetings

- Where external parties would be presenting to the Board, arrange for these presentations to be taken first at the meeting, so that the external parties leave the meeting once they are done.
- The Company Secretary should consider how the technology utilized for virtual meetings can be deployed to ensure that external attendees do not join virtual meetings before their attention is required, as well as for the security of company information, and give appropriate instructions to both the external attendees and internal participants before the meeting.



Managing Board Affairs- Meetings Cont'd

- Be the person to share screen at the meeting. Ensure that Board paper being reviewed is projected on the screen to keep participants focused.
- The Company Secretary should ensure that any discussions and decisions by the board and Committees with respect to force majeure are properly documented in meeting minutes. The Secretary should ensure that the board materials and meeting minutes are consistent with the company's public disclosure.



Managing board affairs – Meetings Cont'd

- During the meeting, have at hand, other means of communicating with directors or participants who lose connection to the meeting.
- Monitor the chat window and alert the Chairperson when a question is raised or a participant wishes to speak.



Managing Board Affairs – Keeping stakeholders informed

- Monitor changes in the legislative and the regulatory environment and keep sharing updates on regulatory releases with the directors to keep them abreast of new developments within the force majeure period.
- Under the direction of the Board, share information with shareholders on how your company is operating under the force majeure situation.



Managing Board Affairs – Keeping stakeholders informed Cont'd

- Share updates on compliance deadlines and requirements with relevant departments within the company
- Under the direction of the Chairman, the Company Secretary should ensure good information flow within the Board and its committees and between senior management and NEDs.
- Ensure that updates on the Company's operations are provided to customers to keep them updated.



Managing Board affairs – Regulatory Disclosures

- For public listed entities, where there is a material effect on the business or operations of the company, whether arising directly or indirectly on account of the force majeure (e.g. closure of an important manufacturing facility due to supply chain disruptions), the Company Secretary, under the supervision of the Board, needs to send the required notification to the Nigerian Stock Exchange.
- The Company Secretary working in coordination with the legal team and under the supervision of the Board should ensure that disclosures and communication about the current and potential impact of the force majeure situation on the business and operation of the company are carefully planned and coordinated to ensure compliance with applicable laws.
- Be in constant touch with your regulators. Check their websites for new guidelines, rules, etc., make your regulatory relationship manager your friend and regularly communicate with him



Managing Board affairs: Compliance

- The Company Secretary should ensure that the Company complies with relevant guidelines or directives issued by regulators or the government in response to the force majeure incident.



Parting Words

- Do not panic, keep calm
- Take it as a challenge and be determined to win the challenge
- Be involved
- Tackle issues one thing at a time, one step at a time
- Keep in touch with colleagues to learn from their experiences and how they are coping
- Learn from this experience so as to be prepared for the next
- Have a positive mindset and believe that your organisation would come through this
- Every challenge always come to an end
- This too will soon end.



ACKNOWLEDGEMENT OF SOURCES

- NSE Guidelines on Companies Virtual Board, Committees and Management Meetings
- Definition of Force Majeure by Merriam-Webstar
- Ten considerations for Board of directors during COVID-19 by Jessica Zhang
- COVID-19: Officially a pandemic by Bharat Vasani, Molla Hasan, Samiksha Pednekar & Esha Himadri
- Nigerian Code of Corporate Governance 2018



THANK YOU

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