



## Courts now allow companies to hold virtual general meetings

By Judith Kanyoko



The Companies Act requires a private company to hold an annual general meeting (AGM). The AGMs are often held under one roof, with members convening in one geographic location for the meeting. However, in the face of the Covid-19 pandemic, companies may face the challenge of convening a meeting under one roof while at the same time observing measures put in place to stop the spread of the virus.

This was the subject of Miscellaneous Civil Application No. E721 of 2020 filed by the Kenya Private Sector Alliance (KEPSA), on the 15th of June 2020. The High Court ruled that any company which finds it impracticable to conduct its general meeting in the manner required under its Articles of Association and the Companies Act 2015 due to the ongoing Covid-19 pandemic and subsequent public health restrictions instituted by the Government may convene the general meeting by use of virtual/electronic technology or any other hybrid means necessary to facilitate the running of general meetings. The court further ruled that such a general meeting held virtually is subject to the compliance with the provisions of the Companies Act 2015 and the regulations and the Guidelines on the Conduct of Hybrid and Virtual General Meetings by Companies issued by the Registrar of Companies (the "Virtual Meetings Guidelines").

The virtual meetings guidelines set out the manner in which companies should conduct general meetings electronically. First, the company should use

appropriate and reliable technology to ensure that all members have a chance to participate, cast their votes on time and proper record keeping is done.

Secondly, members with no access to the internet can cast their votes via proxy forms appointing the chairperson or any other member to vote on their behalf. The company should also provide guidance on the means of access, method and other voting requirements and circulate the rules of procedure to the members.

Lastly, the Company should implement secure authentication measures to identify the attendees and ensure that a quorum is met and maintained.

For companies wishing to employ the use of technology in conducting AGMs, there are two options available to them. The first option is to have an entirely virtual general meeting. This means that members communicate electronically with each other without any members being physically together in the same location. In the extreme sense, this may mean that no two members are in one physical location and that the meeting is held on the internet, using SMS, a bulletin board, blog, social networking site or chat room facility that allows members to post their comments to a web page in real time. All members attending would therefore be able to see each other's postings and exchange views, debate and make decisions online.

The second option is to have a hybrid virtual meeting where some members attend the meeting physically while others attend virtually. For those members attending virtually, the same electronic means of communication are applicable.

The High Court's ruling and the Virtual Meeting Guidelines give these virtual meetings the same validity as conventional meetings held in one physical location as long as the meetings are convened in accordance with the Articles of Association of the Company. This will ensure continuity and ensure that companies remain compliant with the law even in the face of the Covid-19 pandemic.