

June 16, 2020

Legal Alert: Key Decisions on Company Law in Uganda

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High Court grants leave for publicly listed companies to convene AGMs by electronic means or virtual platforms in wake of impracticality, owing to COVID-19 restrictions, of in-person meetings, subject to prior no-objection from the Securities Exchange and compliance with applicable notices.

Company Meetings by Electronic Means or Virtual Platforms in wake of COVID-19 restrictions

Background

The COVID-19 pandemic has fundamentally disrupted “business as usual” as we had come to know it. With social distancing measures that have been put in place by very many countries, it is becoming impossible to engage in forms of physical interaction—assemblies, meetings, etc.—a thing that was hitherto not envisaged.

The question that arises is: what happens when physical interaction is required to do a certain thing? Especially, when that is required by constituent documents of a body or by law. With regards to company meetings, this question was addressed by His Lordship Judge Musa Ssekaana in two landmark decisions delivered on June 11, 2020. This alert focuses on the decisions of *In the Matter of British American Tobacco (Uganda) Limited & in the Matter of an Application by Fred Tumwesigye Bisamunyu*, Misc. Cause No 107/2020 [2020] UGHCCD 133 and *In the Matter of Stanbic Uganda Holdings Limited & in the Matter of an Application by Oscar Kambona*, Misc. Cause No 108/2020 [2020] UGHCCD 134.

Summary of the decisions

Both company matters were brought under section 142 of the *Companies Act* 2012, which provides:

“Where for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called or conduct the meeting of the company in the manner prescribed by the articles or this Act, the court may of its own motion or on the application of any director of the company or of any member of the company who would be entitled to vote at the meeting order a

meeting of the company to be called, held and conducted in the manner the court thinks fit.”

Both British American Tobacco (Uganda) Limited and Stanbic Uganda Holdings Limited (hereinafter “the companies”) are public companies listed under the Main Investment Market Segment of the Uganda Securities Exchange. The need for public companies to hold a general meeting is provided under section 138(1) of the *Companies Act* 2012. Such general meeting is held once a year and the law requires that not more than 15 months elapse between the date of one general meeting and that of the next. A monetary default fine of twenty-five currency points (UGX 500,000/=) is imposed on the company and every officer of the company who defaults in complying with the requirement under section 138(1) of the Act.

The dilemma faced by the two companies in complying with section 138(1) of the Act was that their respective Articles of Association required *physical attendance* for the general meetings. The companies require annual general meetings to be physically convened with quorum of at least 7 members entitled to attend the meeting present physically in person. The membership of the companies stands at 1,230 for British American Tobacco (Uganda) Limited and approximately 22,500 for Stanbic Uganda Holdings Limited. The applications underlie the impracticability of in-person meetings given that, in the wake of the COVID-19 pandemic, there is a ban on physical meetings. This was particularly the case since the *Public Health (Control of COVID-19) Rules* 2020 (gazetted on March 24, 2020) banned *all* public gatherings and meetings (the Rules were

amended at various stages to extend the period of the ban, including, the *Public Health (Control of COVID-19) (Amendment) Rules, 2020* (that extended the ban until May 5, 2020); the *Public Health (Control of COVID-19) (Amendment No 2) Rules, 2020* (that extended the ban until May 19, 2020)); and the *Public Health (Control of COVID-19) (Amendment No 3) Rules, 2020* (that extended the ban until June 9, 2020)). Within that context, the two companies brought the applications seeking for court orders to hold the meetings by electronic means or virtual platforms, since it was impracticable to hold them in the “usual” way involving in-person attendance.

The High Court granted the applications and ordered the companies to hold their respective annual general meetings by electronic means or virtual platforms, subject to obtaining a prior no-objection from the Uganda Securities Exchange and complying with all applicable notices issued under the *Uganda Securities Exchange Listing Rules 2003* and the law.

Implications of decisions for private companies

It is to be noted that it is not legally mandatory for private companies to hold annual general meetings. However, if a member requests that an annual general meeting be held, then a private company is required to oblige. In circumstances where the private company refuses to oblige to member's request, an aggrieved member may apply to the registrar of companies who may call or direct the calling of a meeting. Where there is non-compliance with the decision of the registrar, the company, together with every officer of the company who is in default, is liable to a fine of five currency points (UGX 100,000/=) (as per section 138(2), (4) and (8) of the *Companies Act 2012*).

In the event it is not practicable to hold a meeting in the way stipulated under a private company's articles of association, the company can apply to court under section 142 of the *Companies Act 2012* for an order to hold the annual general meeting in the most practical way.

Therefore, it follows that in these COVID-19 pandemic times, a private company which has been moved by a member to have an annual general meeting can schedule and hold that meeting electronically on the strength of the two decisions reviewed.

Comparative common law practices

The decisions delivered by the High Court reflect a trend in company law practice in other countries in these COVID-19 pandemic times. This has been the case in Australia where, in

light of similar COVID-19 limits on gatherings in public places, the Supreme Court of New South Wales granted an order for the convening of a virtual members' meeting to consider a proposed scheme of arrangement (*In the Matter of Windlab Limited* [2020] NSWSC 571 (Australia (NSW (SC))). In multifarious decisions, courts in Australia, Hong Kong, New Zealand and United Kingdom have addressed use of electronic means and virtual platforms for handling company matters, including notice of meetings (e.g. by email); notice of electronic facilities for meetings (e.g. audio-visual links (AVLs) or teleconferences); lodging of proxy forms; ensuring effective participation at the meetings and voting, etc. The courts have particularly urged companies to embrace the use of AVL and teleconference technologies to effect matters requiring legal and regulatory compliance.

Impact of decisions on annual general meetings

These decisions are a welcome addition to the “new normal”. They will save on costs for hiring meeting venues and all other incidental expenses.

More significantly, Company Secretaries are placed in a position of being required to appraise themselves with procedures of holding e-meetings; ensuring each members receives the board meeting packages within times stipulated in the articles of association; adopt innovative ways to, among other things, carry out deliberations, provide for decorum of the members at electronic meetings, and casting of votes by members. Additionally, it is imperative the proceedings are electronically recorded and minutes extracted and documented. *Finally, and of great significance, most of these changes will require companies to amend their articles of association and all related documents to provide for holding meetings by electronic means.*

In a nutshell, both the members and company secretary will be required to comply with all that is required of them during electronic meetings.

Concluding remarks

The COVID-19 pandemic has made the world realise the importance of electronic modes of doing business. Companies and other business models have now embraced this, which may become the norm, even long after the pandemic. We therefore encourage companies to embrace electronic meetings and ensure that the necessary legal documentary requirements are in place for the holding of such electronic meetings in compliance with the law.

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