

THE OPTION OF PARTICIPATING ON MEETINGS THROUGH VIDEO CONFERENCING AND OTHER AUDIOVISUAL MEANS: IS IT FIT FOR THE PURPOSE?

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ABSTRACT

The OHADA Uniform Act on Commercial Companies has since 2014 made amendments relating to the good governance of public limited companies. These amendments are aimed at improving the functioning of the board of directors, bolster shareholders rights and transparency. To improve transparency and traceability of the board of directors activities, the OHADA legislator has introduced the option for directors and shareholders to participate in board meetings and general meetings through videoconferencing or any telecommunication technology. The OHADA Legislator has been applauded for this innovation especially given the fact that shareholders and directors now have the opportunity to participate in the activities of the company meetings whenever they are met with unforeseen circumstances such as the covid 19 pandemic that made governments to restrict movements and gatherings. Our analyses of this provision of the Uniform Act on Commercial Companies, allowing directors and shareholders to attend meetings through videoconferencing and other telecommunication technologies is fit for the purpose of improving the functioning of the board of directors. However, this innovation has some drawbacks that have curtailed its effectiveness. This does not only stem from the fact that the OHADA Legislator makes it optional for companies but also by the fact that there are frequent power failures and high internet cost in Africa as well as sudden technical faults and distracted attendees.

Keywords: Option, Participating, Meetings, Video Conferencing, Audiovisual, Fit for the Purpose

INTRODUCTION

The OHADA legislator, in order to ensure brilliant corporate performance, has brought some amendments or innovations to the Uniform Act on Commercial Companies and Economic interest Groups herein refers to as UACCEIG. The amended version of 2014 has brought innovations relating to the good governance of public limited companies, which are aimed among others to improve the functioning of the board of directors and strengthen shareholders rights and transparency.ⁱ To ensure transparency and traceability of the board of directors' activities and the activities of individual directors and managers, the UACCEIG has given corporate directors and managers the option to participate in the work of the board of directors and other corporate meetings through video conference or any other telecommunication technology.ⁱⁱ This option to participate in meetings through video conferences and other telecommunication means is also accorded to shareholders.ⁱⁱⁱ However, this innovation seems to be theoretical than real given our present realities in Africa in general and OHADA member states in particular. This work therefore, seeks to analyze the provisions of the OHADA Uniform Act on commercial companies that allow directors and shareholders to participate in meetings through video conferencing and other telecommunication technologies.

MEANING OF COMPANY MEETINGS

Company meetings are fora where shareholders and directors come together to express their opinion and contribution on the management and functioning of the company.^{iv} These meetings usually involve a shareholder or shareholders, directors and members of the board of directors to assess and plan the current and future activities of the company. These meetings include various kinds such as Shareholder meetings (annual general meetings, extraordinary general meeting and special meetings), meeting of directors (board meetings) etc.

MEANING OF VIDEO CONFERENCING OR OTHER AUDIOVISUAL MEANS

Video conferencing or other Audi visual means refers to any interactive group audiovisual communication involving people in more than one location through a form of electronic

medium.^v Video conferencing or other audiovisual means is that audiovisual electronic communication facility which enables all the persons to not only communicate simultaneously with each other but to effectively and efficiently participate in a meeting without a proxy. In fact, Articles 133-2 and 451-1 of the OHADA Uniform Act on Commercial Companies requires that the telecommunication technologies used must at least transmit the voice of the participants and meet the technological requirements that guarantee a constant, simultaneous retransmission of their voice. These articles therefore lay down the legal provisions with respect to holding general and Board meetings respectively through video conferencing.

THE RATIONALE FOR PARTICIPATING IN CORPORATE MEETINGS THROUGH VIDEOCONFERENCING AND OTHER TELECOMMUNICATIONS MEANS

The OHADA legislator is aware of the fact that meeting (board meeting and general meetings) are important organs of a company. The most common form of meetings is the traditional face-to-face interaction on which most companies base their communication with their directors, shareholders and customers. However, face-to-face meetings maybe costly to the company and at times inefficient especially when participants must travel long distance while video conferences, teleconferences and other telecommunication means have a major advantage in that they have the potentials to reduce cost of group meetings, as companies would save huge sums of money as a result of reduced travel costs. According to W. Sonnevile, teleconferencing can reduce national business travel-associated cost by about 30% annually that is 4.5 billion dollars.^{vi} This save the company money that could have been used to sponsor travel related costs and other allowances. Therefore, the option of directors and shareholders participating in the works of the board of directors and other corporate meetings through video conferences and other telecommunication means, can greatly reduce the company's expenses, hence a positive impact on the financial situation of the company.

Furthermore, video conferencing and other telecommunication technology have the effect of increasing productivity in the company. This is because, since video conferences can be conducted at any time of the day, it eliminate the time and district barriers, making meetings to be held anywhere at any time with all the directors and stakeholders present. In this way, the

meetings are shorter and more effective, and with the rich collaboration tool, decisions can be made faster. Faster decision-making leads to increase productivity, hence a positive influence on the performance of the company.

In the same vein, the OHADA Legislator aims at encouraging and enabling the participation of shareholders in decision making of the company and the effective control and follow-up of directors even in cases where the shareholders are not physically present. Given that the participation of shareholders in meetings is a necessary condition for the functioning, control and supervision of the directors in the company, the OHADA Legislator has done it quite well to include the possibility of shareholders to attend and participate during meetings through video conference or other telecommunication means and correspondence.

Finally, the OHADA Legislator surely had in mind the possibility of the traditional face-to-face corporate meeting being hampered by an unforeseen circumstance such as natural calamities, and highly contagious epidemics or pandemics. This is true with the recent COVID 19 pandemic that has raged the world since 2019, making governments to completely lockdown their economies or reduce the rate at which people interact physically. It is probably for these reasons that the OHADA legislator gives directors and shareholders the option to participate in meetings through video conferences or any other telecommunication means. This has a positive impact on the company activities as it enables directors and shareholders to participate and contribute to the running of the company without being physically present. In fact, directors, shareholders and other stakeholders can now attend corporate meetings whether they are far or near, making the resolutions of the board to be transparent and credible as all stakeholders have the possibility to participate in the decision making process.

MANDATORY REQUIREMENTS FOR A VALID MEETING THROUGH VIDEOCONFERENCING AND OTHER TELECOMMUNICATIONS MEANS

To ensure that any decision taken in a meeting where some directors and other stakeholders attended through video conference or any other telecommunication means is credible, transparent traceable and valid, the UACCEIG requires that the following conditions must be met;^{vii}

The Articles of Association must authorise directors and shareholders to attend corporate meetings through videoconferencing or any other telecommunication means.

The telecommunication technologies used must at least transmit the voice of the participants and meet the technological requirements that guarantee a constant, simultaneous retransmission of their voice. This is to guarantee the directors identification and participation at the meeting, and only under these conditions can directors taking part in board meetings through videoconference or other telecommunication technologies vote orally if provided by the articles of association.

Again, where one or more directors take part in a board meeting by video conference or other telecommunication technology, the board can only deliberate and make valid decisions if at least one third of its members are physically present.

Lastly, the Articles of Association can also place a limit on the type of decisions that can be taken when a board meeting is held by video conference or other telecommunication technology. Any decision taken in breach of these provisions of the article of association is deemed to be null and void.

In the same vein, shareholders or partners can participate in general meetings from a distance either by video conference or by any other means of telecommunication, which permits their identification, and are considered to be present for the calculation of the quorum and the majority vote, provided the Articles of the Association so provides.^{viii} In order to guarantee the identity and effective participation in the meetings of shareholders by shareholders in far or distant places, the means used by the said shareholders must be able to clearly transmit his voice. The UACCEIG does not give any limitation as to the location of the shareholders. It means therefore that, shareholders located out of the region can participate in meetings through video conference and any other telecommunication means.

However, for voting to take place through correspondence, some conditions must be met and respected. These conditions according to article 133-1 and 133-2 of the UACCEIG include;

- The articles of Association expressly provides for the possibility of voting by correspondence;
- The shareholders or partners inform the directors or managers of their absence at least three days before the general meeting is held;

- The company receives the votes at least twenty four (24) hours prior to general meeting;
- The telecommunication means used, must be able to transmit at least the voice of the participant continuously and simultaneously with the session and on-going deliberations.

Though the UACCEIG does not clearly say what video conference and voting by correspondence are, it can be said that the use of the phrase “*any other means of communication*” in Article 133-2 means whatever ways, provided the exact identity of the person is clear through that telecommunication means. Therefore, anywhere the shareholder is, he can exercise control and supervision over corporate directors by exercising his right to vote through any telecommunication means.

THE SHORTCOMINGS OF PARTICIPATING IN CORPORATE MEETINGS THROUGH VIDEO CONFERENCES AND OTHER TELECOMMUNICATION MEANS

In order to ensure better and effective performance of duties by directors, and the effective control and checks on directors’ activities by shareholders, the OHADA UACCEIG has brought in an innovation. It gives directors and shareholders the option to participate in board meetings through video conferences and other telecommunication technology as long as there is guarantee of transparency and traceability vis-à-vis their actual participation.^{ix} This innovation introduced by the UACCEIG seems not to be too practical. It is rather theoretical than real given our present realities in Africa in general and OHADA member states in particular. More so, the UACCEIG limits the usage of video conference or any telecommunication means. This is discussed in the following paragraphs.

LIMITATION PLACED BY THE UACCEIG

The directors and shareholders’ rights to participate in meetings through video conferences and other telecommunication technology are optional and conditional. The UACCEIG clearly

stipulates that for this option to apply, the articles of association must make provision for that. This means that though the UACCEIG provides for directors and shareholders to participate in meetings through video conferences and other telecommunication means, the article of associations can curtail this provision. Therefore, the right to participate through video conferences has or can be reduced in extent by the articles of association. The rationale of the OHADA legislator of ensuring better performance of duties by directors and proper control of directors activities by shareholders who are distant away from the meeting place, may not be achieved where the articles of association does not provide for such options.

In addition, directors and shareholders participation in meetings through video conference and other telecommunication technology is conditional in that it is only possible when the identification of the shareholders is possible. The telecommunication technologies used must at least transmit the voice of the participants and meet the technical requirements that guarantee a constant, simultaneous retransmission of their voice. In the same vein, where one or more directors take part in the board meeting by video conference or any telecommunication technology, the board can only deliberate and make valid decisions if at least one third of its members are physically present. This greatly limits the scope of application of the right to participate through video conference or other telecommunication means. Therefore, though all directors can participate in the board meetings, such deliberations and decisions would not be valid if less than one-third was physically present. This shows that physical presence takes precedence over participation through telecommunication technologies. Also, the articles of association can place a limit on the type of decisions that can be taken when meeting is held under these circumstances. Only under these conditions can directors and shareholders take part in board meetings by video conference or other telecommunication technology especially where they are to vote orally.

In addition, a shareholder can only participate in meetings by video conference or other telecommunication means if they inform the managers of their absence at least three days before the general meeting, and their votes can only be valid if the company received the votes at least 24 hours prior to the general meeting.^xA shareholder or director who had the intention of attending a meeting but is prevented from doing so by an unforeseen circumstance one or two days to the meeting date loses this right automatically as per article 133-1 of the OHADA Uniform Act on Commercial Companies. All these show that the right of shareholders to participate in general meetings by video conference and other telecommunication means, so as

to ensure effective control of directors' activities cannot be actually effective because its application or usage has been conditioned and limited as seen above.

OTHER LIMITATIONS OF PARTICIPATING IN CORPORATE MEETINGS THROUGH VIDEOCONFERENCES AND OTHER TELECOMMUNICATION TECHNOLOGIES

The OHADA Legislator has been praised for introducing this innovation of directors and shareholders to participate in board meetings and general meeting by teleconferences and other telecommunication technologies. This is because it helps to bring people in remote and distant places together, reduce travel costs, enables the discussions during the meeting to be well recorded and the meetings are flexible. However, the drawbacks associated with using this utility within the OHADA zone in particular and Africa in general have made the option less effective. The drawbacks associated with teleconferences, other telecommunication technologies are discussed in the following paragraph, and they include Technical glitches, lack of personal contact, high cost of operating, multitasking and difficulty in officiating.

Sudden technical faults

Technical difficulties are common issues and are major disadvantages associated with holding a teleconference and meetings by other telecommunication means. Problems may arise with video, audio or both. Also, technical difficulties that could result from software hardware or network failure could hinder the smooth transmission of information. Remote connections are sometimes hampered by environmental changes especially the heavy rainfall accompanied by lightening in Africa. Losing connection is frustration to the participants and important points may be lost or misheard as the result of poor sound quality or breaking phone lines. The absence of technical personnel creates difficulties for participants who are unfamiliar with the video conferencing and other telecommunication technological concepts. These technical problems therefore make meetings through teleconferences and other telecommunication means ineffective and impracticable. In fact, article 133-2 of the OHADA Uniform Act on Commercial Companies requires that, the telecommunication means must be able to clearly transmitting at least the voice of the participants, and satisfies the technical characteristics that permits the continuous and simultaneous retransmission of the deliberations of the meeting.^{xi}

This is to guarantee the identity and effective participation of a shareholder in the general meetings through teleconferences.

In addition, frequent electricity cuts and power failure in Africa in general and the OHADA Zone in particular is another serious drawback to the option of directors and shareholders to participate in meetings by teleconferences and other telecommunication means. Because of these technical glitches, the effectiveness of board meetings and general meetings through any telecommunication means is curtailed.

Lack of personal contact

When directors perform their duty of attending board meetings so as to participate in the decision making process of the company through video conference or any other telecommunication means, there is the possibility that there would be no effective participation of directors during these meetings. This is because most meetings including board meetings require a personal touch for them to be successful. Video conferencing are less personal than face-to-face meetings and it is possible to miss vital body language when the director is struggling with a fuzzy image or faltering video.

In the same vein, directors who are intuitive learners, rather than visual or auditory ones are particularly affected by the technical means of meeting. This kind of directors would obviously find it difficult to relate without the benefit of personal interaction, as they rely on signs such as hand motions and body language often not quite visible in the teleconference or any other telecommunication technology. In addition, it is sometimes difficult to tell who is speaking and too often, people are talking over one another so that everything is mixed-up. This makes telecommunication technology ineffective for director's activity and shareholders as well cannot effectively use this means to control directors.

Furthermore, when directors or shareholders attend meetings by any telecommunication means, the lack of personal contact could lead to uncomfortable conversations, particularly when the director or shareholder is attending or participating in the meeting for the first time and does not know the other colleagues well. It is also very difficult for directors or shareholders to engage in heavy conversations such as negotiating contracts terms when participants are not in the same room. The impersonal feel can also cause participants to hold back their ideas and suggestions because of uncertainty of how they will be received and this

could hinder fast decision making during board meetings or general meetings, hence rendering shareholder control of director activity through meetings carried out through telecommunication technology ineffective.

Expensive to set up

When corporate directors and shareholders attend company meetings by any-telecommunication means, it reduces the expenses the company would have spent on directors travelling to attend the meetings. However, the cost of setting up the devices and maintenance could be too high or expensive for the company especially small and new companies. This is because, the company would need to buy and install the devices, hire or recruit technicians who would always control or check the technology to ensure that the function properly. All these could go a long way to increase the total cost of production in that company. This can have a negative impact on the company's finances.

Distracted Attendees

One of the unfortunate consequence of teleconferences and other telecommunication technologies is that participants tend to lose focus. When directors attend board meetings through telecommunication technology, their attention decreases, may be distracted by other tasks and key stakeholders may miss important information because they were multitasking when that part of the conversation took place. Greeting everyone on the call does not guarantee that they will be paying attention and it is not easy to guide and make a director or shareholder attending meeting by telecommunication technology to be engaged in the discussion. This multitasking drains attention, hence telecommunication means is not an effective means through which directors can perform some of their duties such as presenting a summary financial statement.

Besides, when directors and shareholders attend meetings by any telecommunication means, they may be distracted by certain interruptions. This could include, driving while attending the teleconference, talking on cell phones that can create static or other noise as the user moves in and out of the dead zones.^{xiii} Some directors and shareholders can even attend teleconferences while at home. This could lead to distractions from crying babies, barking dogs or people at the door disrupting the call. All these interruptions can make directors not to be attentive during the board meetings, so would not effectively perform their duties during these meetings. Also,

if directors attend meetings by any telecommunication technology, it will be very difficult for them to present reports and other visual messages that are important in the decision making process of the company.

Hard to preside meetings through telecommunication means

The OHADA Uniform Act on Commercial Companies requires the chairperson of the board of directors to chair or preside over the board meetings and the general meetings of shareholders. This means that the chairperson of the board of directors must be neutral and prevent the discussions in the meeting from going off-topic, and mediates arguments. When the meeting is organized through any telecommunication technology such as telephone, people are less likely to respect and acknowledge the board chairperson. As a result, it would be difficult for the chairperson of the board of directors to chair, manage and officiate a board meeting or shareholder meeting where some of the company members and directors attended through any telecommunication means. This difficulty greatly limits the ability of the chairperson of the board of directors to effectively performing his duty of chairing all boards meetings and shareholders meetings.

CONCLUSION

Our analyses of this provisions of the Uniform Act on Commercial Companies allowing directors and shareholders to attend meetings through videoconferencing and other telecommunication technologies is fit for the purpose of improving transparency and traceability in the functioning of the board of directors. However, this innovation has some drawbacks that have curtailed its effectiveness. This does not only stem from the fact that the OHADA Legislator makes it optional for companies but also by the fact that there are frequent power failures and high internet cost in Africa as well as sudden technical faults and distracted attendees. This innovation introduced by the UACCEIG seems not to be too practical. It is rather theoretical than real given our present realities in Africa in general and OHADA member states in particular. We are therefore of the opinion that the option of participating in company meetings through teleconferencing and other audio-visual technologies can only be guaranteed if OHADA member states improve on power supply and reduce internet cost.

ENDNOTES

ⁱ OHADA Key Innovations of the revised Uniform Act of 30 January 2014. (2014) Pricewatercoopers France and Francophone Africa, Pg 12. Available at [www.ohada.com>content-bronchure-en](http://www.ohada.com/content-bronchure-en)

ⁱⁱ Art 454-1 UACCEIG

ⁱⁱⁱArticles 133-1 & 133-2 UACCEIG

^{iv} Anang Elvis Mua, *Measures to Ensure better Performance of Duties by Directors under the OHADA Uniform Act on Commercial Companies: Prospects and Challenges*, *Journal of Legal Studies and Research*, Volume8 Issue2-ISSN 2455 2437, March 2022

^v Donovan A. McFarlane: *The Value and Importance of Teleconferencing in Modern Organizations. View of Space: International Multidisciplinary journal of Applied Research*, Volume 1, Issue:3, June 2013, ISSN 2320-7620

^{vi} W. Sonnevile, "Teleconferencing Enters its Growth Stage," *Telecommunications*, XIV (No 6,1980), 29-32,34

^{vii} Articles 133-2 and 454-1 UACCEIG

^{viii}Art. 133-2 UACCEIG

^{ix} Articles 518 & 532 UACCEIG

^x Art 133-1 UACCEIG

^{xi} Also see Art 454-1 UACCEIG

^{xii} Ashe-Edmund, Sam. "DisadvantagesofTeleconference" [workchron.com](http://work.chron.com), <http://work.chron.com/disadvantages-teleconference-15938.html>. Last visited on 14 January 2019