



Interrogating the features and statutory compliance of the one-man company structure under CAMA 2020

Jerome Okoro¹, Leonard Ugwu², George R C Ibekwe²

¹ Lecturer, Department of Law, Nigerian Law School, Lagos Campus, Nigeria

² Department of Law, Nigerian Law School, Lagos Campus, Nigeria

Abstract

Among the numerous radical changes introduced in the Nigerian corporate law ecosystem by the Companies and Allied Matters Act, 2020 is the possibility of a company taking off and proceeding with only one member. The merits of this innovation would be easily appreciated, considering that the requirement of multiple shareholders and the complexity of ownership and control structure imposed the option of sole proprietorship and partnerships on businesses which would otherwise have chosen the limited liability company form. With CAMA 2020 bringing a huge relief to entrepreneurs who desired stand-alone membership under the company structure, the next big question is: what are the requisite compliance duties for this new corporate form where ownership and control reside in one person as sole shareholder? Are company meetings for instance, still requisite for the one-member company, with the strangeness it would pose? The law provides ample guides to the sole-owner company in the solitary journey and through migration to the multiple-member structure. This article presents an exposition of those guides.

Keywords: Companies, allied matters act 2020 (CAMA)

Introduction

CAMA 2020 created the one-man company structure in Nigeria, whereby a company can be formed and operated with a single member, being both the sole shareholder and director. This statutory development places Nigeria in the league of countries that have adopted the structure across the world. Such countries revolutionized corporate structure in their company laws of various years as indicated below: UK (2006), China (2005), Singapore (2004), Turkey (2012), UAE, Pakistan (2003), and India by its Companies Act, 2013^[1]. For the many contrasting features of the Indian system of the sole-member company with the Nigerian, India is chosen for a comparative analysis in this work.

The one-man company structure under CAMA 2020 is characterized by peculiar features that sharply deviate from the regular company structure. These peculiarities create a conflict of compliance of the one-member company with corporate obligatory provisions of CAMA and other relevant laws. The silence of CAMA on most of such odd circumstances is bound to worsen the crisis. This work identifies the peculiar features of the one-man company form in Nigeria; exemptions for the structure in statutory compliance, and the legislative loopholes to be ameliorated.

Meaning and Attributes of the One-Man Company Structure

The statutory innovation in CAMA that enables one-man company is in Section 18(2) of CAMA 2020. While Section 18(1) maintains the statutory minimum of two members for a company, subsection (2) created the exception in the case of private companies, permitting only one person to form a private company, in the following words,

“Notwithstanding subsection (1), one person may form and incorporate a private company by complying with the requirements of this Act in respect of private companies.”

By its phrasing, Section 18(2) of CAMA enables not only natural persons, but also companies to form a single-

member company, as the “person” referred to in that section is not restricted to human beings. According to Section 868 of CAMA, the word, “*person*” for all purposes of the act, “*includes an individual, company, or other entity, which has legal rights and is subject to obligations*”. Also by virtue of Section 18 of the Interpretation Act^[2], “*person*” when used in an enactment, “*includes any body of persons corporate or unincorporated*”

By Section 18(2) of CAMA, a one-man company must be a private company, as the section specifically mentions private companies in the provision for formation of a single-member company. Impliedly, this corporate form is not available to public companies. Also by literal construction of the plain wording of Section 18(2)^[3], the formation of this new company form shares a common procedure with the formation of any private company limited by shares.

It is however not clear whether a one-man company can arise by transfer of shares. A question thus arises on whether the multiple members of an existing company can transfer their shares to a single buyer, thus leaving behind, a one-man company by virtue of the acquisition of the shares by that single person. Section 18(2) of CAMA envisages a company comprising a single member from its incorporation stage, and not sole membership later in the life of the company. At the same time, that section is a permissive authority for a minimum of one member for a company, which thereby legalizes the reduction of the company’s membership to one by circumstances subsequent to incorporation.

A one-member company may be mistaken for a small company under the provisions of CAMA or under the Finance Act, 2019 for tax purposes. However, the criteria as specified in these laws differ. CAMA also provides for small company.

According to Section 394(1)^[4], “*A company qualifies as small in relation to its first financial year if the qualifying conditions are met in that year.*” The import of these

opening words is that the assessment of a company as small or otherwise is on a current and preceding year basis. Thus a company is adjudged small under CAMA in a financial year if: it meets the conditions of a small company in the current financial year, and in the preceding financial year; or (2) A company qualifies as small in relation to a subsequent financial year if the qualifying conditions

- a. are met in that year and the preceding financial year;
- b. are met in that year and the company qualified as small in relation to the preceding financial year ; or
- c. Were met in the preceding financial year and the company qualified as small in relation to that year.

The qualifying conditions are met by a company in a year in which it satisfies the following requirements

- a. it is a private company ;
- b. its turnover is not more than N120,000,000 or such amount as may be fixed by the Commission from time to time ;
- c. its net assets value is not more than N60,000,000 or such amount as may be fixed by the Commission from time to time;
- d. none of its members is an alien ;
- e. none of its members is a government, government corporation or agency or its nominee ; and
- f. In the case of a company having share capital, the directors between themselves hold at least 51% of its equity share capital.

CAMA 2020 exempts small companies from the requirement of audited financial statements. By Section 402(1), a company is exempt from the requirements of the Act relating to the audit of accounts in respect of a financial year if

- a. It has not carried on any business since its incorporation; or
- b. It is a small company within the meaning of section 394.”

In the context of taxation, Finance Act, 2019 categorizes companies as small, medium and big, based on their annual turnover ranges ^[5]. A small company is one with gross annual turnover of N25 Million or less. Such a company has zero income tax liability. The gross annual turnovers range of the medium company is: above N25 Million but below N100 Million, while its income tax rate is 20%. Big companies are ones with gross annual turnover range of N100 Million and above, while their income tax rate is 30%. It is noteworthy that, by virtue of Section 55 of the CITA, the filing of tax returns is mandatory for all companies, including small companies.

Since the criteria of small company, either in the context of CAMA or in the tax perspective do not include membership, it is then a safe assumption that a one-member company does not *ipso facto*, become a small company in those contexts. A company with a single member must further meet the attributes in CAMA or the Finance Act, 2019, as highlighted above to be adjudged small in those senses.

Statutory Compliance of a One-Man Company

CAMA created a plenitude of exceptions in statutory processes and compliance points in consideration of the limitations of the one-man company structure. These provisions either exclude the statutory rule or modify it to

accommodate single-member companies. The focal points of such exceptional rules are discussed below.

1. Company Meetings

By virtue of Section 237(1) of CAMA, a company with one member is exempted from the requirement of holding annual general meeting. The section provides in part, as follows:

“Except in the case of a small company or any company having a single shareholder, every company shall in each year hold a general meeting as its annual general meeting in addition to any other meeting in that year,…”

The above provision would have sufficed as a ground to conclude that CAMA has closed the door of annual general meetings and other statutory meetings against single-member companies. Clearly, in practical terms, the single member has no one to meet, pass votes or reach decisions with. CAMA however proceeded to create further exemptions for one-man companies from some procedural requirements of the meetings, thereby indicating a choice for such companies in respect of meetings. On the venue of annual general meetings, Section 240(1) exempts single-member companies from the requirement of holding the meeting in Nigeria. The act further exempts one-man companies from the provisions on formation of quorum for the meetings^[6].

Since the essence of the company meetings is to vote to reach decisions of the company by resolution. How then would the single-member companies make their decisions? Section 266(4) provides that where the single member of a company that has only one member takes any decision that—

- a. “(i) may be taken by the company in general meetings, and
- b. (ii) has effect as if agreed by the company in general meeting, he shall provide the board with details of that decision”

2. Annual Returns

CAMA indicates outright exemption for single-member companies from the filing of annual returns. Section 421(1) of the act provides as follows:

The annual return shall be completed, signed by a director and the secretary, and delivered to the Commission not later than 42 days after the annual general meeting for the year, whether or not that meeting is the first or only general meeting of the company in that year, but the company may apply to the Commission for extension of time within which to file its annual return for any given calendar year.

But, subsection (2) of the section states that the above provision does not apply to companies with only one member.

3. Number of Directors

Section 271(1) of CAMA mandates every company, not being a small company to have at least two directors. Subsection (2) of that section proceeds to state that any company whose number of directors falls below two shall, within one month of the shortfall, appoint new directors and shall not carry on business after the expiration of one month, unless such new directors are appointed.

By the clear wording of Section 271(1), only a company qualified as a small company under the meaning of CAMA is exempted from the mandatory minimum of two directors.

Every other company is bound to have at least two directors. But with the clear distinction drawn between a small company and a single-member company, the question then arises as to whether a single-member company, lacking the attributes of a small company is also forbidden to operate with less than two directors. The answer to this is that all the directors need not be members of the company. A director simply means a person duly appointed by the company to direct and manage the business of the company^[7]. From this clear definition, the essential requirement for a company director is due appointment for the purpose of directing and managing the business of the company. It is not required that the person to be so appointed must hold shares of the company, as lack of shareholding is not one of the disqualifications for a director^[8].

Section 277 (1) of CAMA provides that the shareholding qualification for directors may be fixed by the articles of association of the company and unless so fixed no shareholding qualification shall be required. The intentment of CAMA therefore is that only a company's articles of association can determine whether shareholding is required, and the amount of the shares so required for qualification of a director. When therefore, the article of a single-member company does not provide for share qualification of a director, the sole shareholder, being himself a director of the company, can appoint an external director to make up the requisite two directors if the company lacks the attributes of a small company.

4. Company contracts

By Section 43(1) of CAMA, "Except to the extent that the company's memorandum or any enactment otherwise provides, every company shall, for the furtherance of its business or objects, have all the powers of a natural person of full capacity.

In terms of form, a company's contract just like individual's contracts, may be made by deed, or simply in writing, or orally^[9]. Section 95(1) (c) of CAMA provides:

"Any contract which if made between individuals would be valid although made orally only and not reduced into writing or which could be varied or discharged orally, may be made, varied or discharged, as the case may be, orally on behalf of the company."

The validity of an oral agreement entered into by the sole member of a company on behalf of that company poses no problem. With the presence of all the elements of a valid contract, Section 95(1) © of CAMA relieves the contract of any requirement of form to be valid.

For a company's contract by deed, Section 102(2) of CAMA dispenses with the need to affix the common seal of the company on the document, and enables the company to sign such a contract through:

- a. A director and the secretary of the company;
- b. At least two directors of the company; or
- c. A director of the company in the presence of at least one witness who shall attest the signature.

The third option of signatory stated above accommodates the case of a one-member company. Thus, the single member, being also the sole director of the company may sign the contract, provided he so signs in the presence of at least one witness who shall attest the signature.

A one-man company, just like any other company can also execute a deed by any third party appointed as its attorney. Thus Section 100 of CAMA provides:

1. A company may, by deed, empower any person, either generally or in respect of any specified matter, as its attorney, to execute deeds on its behalf in any place within or outside Nigeria.
2. A deed signed by a person empowered as provided in subsection (1) shall bind the company and have the same effect as it would have if it were a deed signed by the company.

Advantages

It dispenses with certain compliance rigours: the single-member company structure is spared the burden of some requirements like statutory meetings, annual returns, and company secretary, as highlighted earlier. This, in turn, makes for fluidity of the corporate decisions, and the huge monetary and time cost committed to organizing and holding the meetings are thus saved.

Access to Loans and contracts: loans from financial institutions and contracts, especially from government, are more accessible to limited liability companies than enterprises registered as business names, even where such business names can provide the required collateral. These has become a business limitation for which entities hitherto operating as non-company enterprises, rather incorporate private companies and operate as sole members.

Ease of Investigation and Lifting the Veil: The corporate investigative role of the CAC is eased up by the one-man structure, as the bucks stop on the table of the sole member. Also, in lifting the veil of incorporation, where the company is formed for illicit motives, the sole member is much easily exposed, unlike the case of a company with multiple members.

Disadvantages

1. **Liability of Shareholder:** The liability at winding up is solely borne by the single member.
2. **Complete Control of the Company with the Single Owner:** With this feature, arbitrary decisions can easily be made without scrutiny, with adverse consequences on the company's business.

Comparison with the Indian Model

The Indian Companies Act, 2013 introduced the one-person company into the corporate sphere of that country. By Section 2 (62) of the Companies Act of India, 2013, One Person Company means a company which has only one person as a member. This is materially similar to the meaning of the sole member company in Nigeria, as the common criterion is the limitation of membership to one.

The form of the one-man company structure in both systems is also restricted to private companies^[10]. Similar to the case of CAMA, 2020, the provisions of the Indian Companies Act, 2013 related to

But there exist areas of sharp contrast between the two systems. Unlike Nigeria's case, only a "naturally born" Indian who is also resident in India is qualified to register and form a single-member company^[11]. As stated earlier here, the term, "person" as used in Section 18(1) of CAMA, to whom the single-member company avails, extends beyond natural persons to juristic persons – companies, to the effect that a company can solely incorporate a single-

member company in Nigeria, and be that single member. By the confinement of the one-man company structure to natural persons, the Indian company Act ideally pursues the key essence of this corporate innovation, namely: to accommodate small and medium-scale enterprises (SMEs) in the sphere of limited liability companies, and aid their growth with corporate incentives^[12]. A company, already in existence, is less likely to need the corporate helpline of a separate sole-member company. It is therefore apparent that CAMA, in its liberal scope, does not realize this essence of the novel one-man structure.

The indigenization and residency rules of the Indian one-man company model are also inexistent in the Nigerian system. Neither Section 18(2) nor any other provision of CAMA bars foreigners from incorporation of a sole-member company in Nigeria. This barrier of origin and geography in the Indian system may, by limiting participation, minimize investment volume in the economy via one-man companies, but it engenders a favourable atmosphere for indigenous small players to thrive with less competition in specific sectors.

Another significant contrast between the Nigerian and the Indian sole member structures is that for the latter, at the time of the incorporation, the single member of the company is required to appoint a nominee who must also be a natural person and an Indian citizen, resident in India. The nominee's appointment is for the motives of succession and perfect representation, as the appointed nominee shall become a member of the company on the eventuality of the sole member's death; or the sole member's loss of capacity to contract. The absence of a similar provision for a nominee in the Nigerian system poses a lacuna under such circumstances as contemplated in the Indian system.

Recommendations

Explicit Provisions: The scope of the single-member company structure is mostly implicit and not express in CAMA. For instance, that such a structure avails foreigners is only assumed on the basis of the absence of provisions to the contrary. This may create rooms for litigious conflicts. It is therefore recommended that the exact legislative intendments should be captured with express provisions.

Clarity of Provision on Company Meetings: The provisions of CAMA on annual general meeting and other statutory meetings in respect of one-man companies are not only ambiguous, but also misleading outright. Section 237(1) of CAMA exempted one-man companies from meetings, but the subsequent provisions on quorums and other procedural requirements of the meetings further created specific exemptions for the one-man companies. This creates the confusion of whether the exemption in Section 237(1) is not absolute, but is rather only to the extent of the specific exemptions. It is recommended that a general provisions should be added to Section 271 to totally exclude one-man companies from the meetings and all procedures of the meetings, if it is so intended by the legislature.

Focus on Growth of SMEs: A significant lesson from the Indian Companies Act of 2013 in respect of one-person company is its clear motive of creating and boosting the growth of SMEs through the structure. It thus, unequivocally excludes existing companies from the

structure and confines it to natural persons. Nigeria should be guided by this.

Appointment of a Nominee: For corporate succession, CAMA should adopt the provision of the Indian law on appointment of nominees of companies' sole members.

Conclusion

The introduction of the one-member company structure in Nigeria through CAMA 2020 is a laudable initiative. However, some statutory shortfalls of CAMA leave this new corporate form in lack of the attributes necessary to realize the goal of bringing SMEs under the company form and thereby enhancing their operational scope and their efficient regulation. The Indian law with the same innovation created a conducive platform for this primary goal, with provisions friendly to maximum participation of SME entities, indigenization, succession plan and adequate representation. It is hoped that future amendments to CAMA would consider similar provisions, and the ambiguities on the single-member company provisions.

References

1. Prem Rajani, Rashi Rajani & Miti Kapadia. The one man show: Understanding the concept of One Person Company. Available from: <https://economictimes.indiatimes.com/small-biz/legal/the-one-man-show-understanding-the-concept-of-one-person-company/articleshow/72195134.cms> [accessed 2022 Dec 24].
2. Cap I23, Laws of the Federation of Nigeria, 2004.
3. Ankar & Ors. V. Lokoja & Ors. 4 NWLR (Pt. 702) 178 at 194; M. F. Kent (W.A.) Ltd. V. Martchem Ind. Ltd (2000) 8 NWLR (Pt. 669) 459 at 473, 2001.
4. CAMA, 2020.
5. Section 105 of the Finance Act.
6. Section 256, CAMA.
7. Section 269(1) of CAMA. See also: Longe v First Bank of Nigeria Plc (2006) 3 NWLR (Pt. 967) 228, 270; First Guarantee Pension Ltd. V. NPC 10 NWLR (Pt. 1519) 39; and Nwankwo v. Kay-Kay Construction Ltd (2014) LPELR-24336 (CA), 2016.
8. Section 283 of CAMA.
9. Section 95(1) (a)(b) and (c) of CAMA. See also: Ifeanyi E Okonkwo. Forms and Validity of a Company's Contract in Nigeria: A critical reevaluation. 2013. Available from: <https://dx.doi.org/10.2139/ssrn.3483610> [accessed 2022 Dec 24].
10. Section 3 of the Companies Act of India, 2013.
11. Rule 3(1) of the Companies (Incorporation) Rules 2014 (India).
12. Dr J.J Irani Committee report of May 31, 2005.