



SINGLE-SHAREHOLDER STRUCTURE IN NIGERIA: RESTRICTIONS AND DELIMITATIONS

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INTRODUCTION

Nigeria's corporate landscape witnessed a significant milestone with the Federal High Court's (FHC) landmark ruling on July 30, 2024. This judgment has far-reaching implications for businesses seeking to adopt a single-shareholder structure under the Companies and Allied Matters Act 2020 (CAMA 2020).

BACKGROUND

Nigeria was ranked 146 out of 190 countries on the 2019 World Bank global index for the Ease of Doing Business, this reflected the stifling regulations and various bottlenecks for both local and foreign businesses in Nigeria as represented by the Companies and Allied Matters Act, 1990 (CAMA 1990) which regulated the corporate ecosystem of the country at the time.

In the wake of prolonged regulatory debates and law reform deliberations, the Companies and Allied Matters Act 2020 (CAMA 2020) was enacted, and this has completely revolutionized corporate law in Nigeria by the introduction of several new concepts that promotes ease of doing business and reduce regulatory obstacles. The 2022 World Bank global index for the Ease of Doing Business ranked Nigeria 131 out of 190 countries and this is an improvement from the 2019 rankings.

The CAMA 2020 which was passed into law on the 7th of August 2020 now allows Companies registered in Nigeria to have a single shareholder and single director. See **Section 18 of CAMA 2020** as opposed to the principle of at least two persons to own a Company as was the case in the now **repealed 1990 CAMA**. The single shareholder structure is suitable for individuals and corporate entities who want to establish wholly owned entities in Nigeria.

While this is commendable, a further study of CAMA 2020 suggests that a Company incorporated before the commencement of CAMA 2020 with more than one member cannot change to a single-member Company structure. See **Section 571(c) of CAMA 2020** which provides that one of the circumstances whereby a Company may be wound up by the court is where “the number of members is reduced below two in the case of Companies with more than one shareholder.

This provision had resulted in restrictions to the landmark improvement of the CAMA 2020 which was a single member Company as is obtainable in other jurisdictions, including the UK, South Africa, Malaysia and the European Union. This meant entities that had a major shareholder and a nominee shareholder with one share in order to fulfil the previous mandatory requirement to have a minimum of two (2) shareholders are unable to convert to a single share structure Company by transferring the share(s) held by the nominee shareholder to the majority shareholder. This caused a major bottleneck, stifling the ease of doing business in Nigeria.

In the iconic decision delivered on July 30, 2024, the Federal High Court (“FHC”) held that section 18(2) of the CAMA 2020, which permits private Companies to have a single shareholder, is not limited to private Companies incorporated after the commencement date of CAMA 2020 but applies to all private Companies incorporated under the now repealed CAMA 1990.

The FHC made the historic pronouncement in Suit No: FHC/ABJ/CS/665/2023 instituted by **Primetech Design and Engineering Nigeria Limited (Primetech) and Julius Berger Nigeria**

Plc (JBN) v. The Corporate Affairs Commission (CAC) following the CAC's refusal to register and record the changes in the shareholding structure of Primetech from two shareholders to a single share structure entity.

The FHC agreed with the submissions of the Plaintiffs' Counsel held that the application of section 18(2) of CAMA 2020 is not limited to only private Companies incorporated after the commencement date of CAMA 2020. The FHC indicated that to hold otherwise, will defeat a literal interpretation of section 18(2) of CAMA 2020 and the ease-of-doing-business intentions of the legislature which is manifest in section 18(2) of CAMA 2020.

In relation to section 571(c) of CAMA 2020, which states that a Company may be wound up by the court if "...the number of members is reduced below two in the case of Companies with more than one shareholder...", the FHC held that the CAC's reliance on the section was incorrect and the provision allowing a Company to be wound up if its members are reduced below two does not apply to private Companies that are permitted to have a single shareholder under section 18(2) of CAMA 2020..

The FHC's ruling has several critical implications of which we have highlighted a few below:

- **Transition Flexibility:** Companies incorporated under CAMA 1990 can now convert to a single-shareholder structure, enhancing operational flexibility.
- **Ease of Doing Business:** This judgment reinforces Nigeria's commitment to improving its business environment, potentially attracting more foreign and local investments.
- **Legal Precedent:** The decision sets a precedent for interpreting CAMA 2020, ensuring that legislative reforms achieve their intended purpose without unnecessary restrictions.

While the CAC may appeal the decision, the FHC's judgment remains effective until overturned by a higher court. This provides immediate relief and clarity for Companies seeking to restructure their shareholding to single shareholder structure.

In conclusion, the Federal High Court's judgment marks a significant victory for corporate entities in Nigeria, aligning the country's corporate regulations with global practices and promoting a more conducive business environment. Companies can now confidently transition to a single-shareholder structure, fostering growth and investment in Nigeria's economy.

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