

A Critical Appraisal of the Single-Member Company Framework under the Companies and Allied Matters Act 2020: Emerging Legal Challenges and Reform Imperatives

*Dr. Moses Peace Richard*¹

ABSTRACT

The introduction of the single-member company (SMC) under the Companies and Allied Matters Act 2020 (CAMA 2020) constitutes a notable corporate law reform designed to promote ease of doing business and stimulate entrepreneurial activity in Nigeria. It offers administrative simplicity, cost efficiency, and operational flexibility. Notwithstanding these advantages, the SMC structure raises important corporate governance concerns, particularly regarding accountability, transparency, disclosure obligations, and corporate continuity.

This article critically examines the statutory framework governing SMCs under CAMA 2020, with emphasis on exemptions from annual return filings and audit requirements, the increased risk of abuse of corporate personality, and the vulnerability of corporate continuity arising from the absence of mandatory nominee arrangements upon the death or incapacity of the sole member. It argues that the current legal framework inadequately addresses the transparency and disclosure risks inherent in single-member corporate structures and therefore requires enhanced regulatory safeguards. By identifying key statutory gaps and proposing targeted reforms, the article contributes to Nigerian corporate law scholarship and advances practical recommendations for strengthening transparency, monitoring, and accountability within the SMC regime.

The study adopts a doctrinal legal research methodology, relying on statutory interpretation of relevant provisions of CAMA 2020, judicial authorities, and comparative analysis drawn from jurisdictions such as the United Kingdom and India, alongside existing academic literature.

Keywords: Single-Member Company, Corporate Governance, Regulatory Reforms, Accountability, Nigeria.

¹ Associate Fellow of the Higher Education Academy, United Kingdom.

1. INTRODUCTION

The codification of single-member companies (SMCs) under the Companies and Allied Matters Act (CAMA 2020) is a forward-looking legislative concept that eliminates the hurdles posed by the previously repealed Companies and Allied Matters Act 1990 (CAMA 1990), which mandated that companies must be incorporated with at least two natural persons. Currently, and in line with the provisions of section 18(2) of the CAMA 2020, a single individual is permitted to form a private company. This legislative initiative represents a trajectory shift towards global business trends, which acknowledges commercial realities of sole entrepreneurship within a highly digitalised commercial hub and the need to simplify business structures and facilitate the ease of doing business.² This statutory innovation also aligns Nigeria with a growing number of jurisdictions that have embraced the single-member company model globally. Several of these countries have restructured their corporate law frameworks to accommodate this model at different periods, including the United Kingdom in 2006, China in 2005, Singapore in 2004, Turkey in 2012 and India in 2013.³

However, the notion of SMCs is not without shortcomings as far as corporate governance is concerned. In a single-member governance structure, issues are said to arise in relation to transparency, accountability, audit, filing of annual returns and perpetual succession.⁴ In other words, where a company is administered by a single individual, there is no one else to collectively deliberate over decisions, or oversee the actions of the members and management or hold management accountable for breach of fiduciary duties to the company. This raises pertinent questions about whether the idea of fiduciary duty, accountability and corporate veil lifting in cases of fraud applies where, in truth, the company becomes the alter ego of one individual. Against this backdrop, this paper examines the statutory framework governing SMCs, identifies the gaps in their regulation under CAMA 2020, and highlights the risks associated with using SMCs for business activities—particularly in relation to accountability, transparency, disclosure, and the potential misuse of the corporate veil for fraudulent purposes

² Jerome Okoro, Leonard Ugwu and George Ibekwe 'Interrogating the Features and Statutory Compliance of One-Man company Structure Under the CAMA 2020 (2025) 11(5) International Journal of Law 108.

³ Prem Rajani, Rashi Rajani and Miti Kapadia 'The One Man Show: Understanding the Concept of One person Company' (2019) The Economic Times available at <<https://economictimes.indiatimes.com/small-biz/legal/the-one-man-show-understanding-the-concept-of-one-person-company/articleshow/72195134.cms?from=mdr>> accessed December 25 2025.

⁴ M Umenweke 'A Review of the Legal Framework for Single-Member Companies in Nigeria: Progress and Pitfalls (2025) 7 Chukwuemeka Odumegwu Ojukwu University Journal of Private and Public Law 32.

Due to the distinct features of the UK and India's sole-member company regime and its notable points of divergence from the Nigerian framework, the Indian and UK models are adopted as a comparative reference in this study. For a coherent and seamless discussion, the paper is structured as follows: Section One offers an introductory overview. Section two explores the conceptual framework of SMCs, emphasising the ease of doing business, limited liability and corporate personality principle as the core foundation and justification for their emergence. Section three examines the legal framework governing SMCs under the Companies and Allied Matters Act 2020 (CAMA 2020). Section four captures the essential attributes of SMCs under the CAMA 2020, distinguishing them from other similar corporate structures, such as small companies. Sections five and six discuss the merits and demerits of SMCs, while highlighting some key challenges associated with their operation. Section seven adopts a comparative perspective, drawing lessons from the UK and India to argue for reforms and regulatory enhancements to the current SMC regime under CAMA 2020. Section eight identifies key areas for policy and legal reform. The final section concludes the paper with a summary of the main findings and recommendations.

2. THEORETICAL AND CONCEPTUAL FRAMEWORK: THE RATIONALE FOR SMCS

The innovation of SMCs originates from their capacity to facilitate formal business activities via sole entrepreneurs, thereby simplifying the process of incorporation and lessening the formal burden and rigours of doing business while easing regulatory compliance.⁵ From a legal perspective, SMCs are corporate bodies incorporated as limited liability companies and possessing a separate personality from their owners, in spite of all their shares vested in a single individual.⁶ The legal recognition of SMCs in CAMA 2020 represents a transformative innovation under the Nigerian company law. Prior to the CAMA 2020, the statutory requirement of having a minimum of two shareholders during incorporation barred sole proprietors from running business activities through formal corporations.⁷ With the advent of SMC, a single individual can now incorporate and run a company legally, organise capital, while enjoying the benefits of limited liability. It is observed that SMCs act as a bridge between

⁵ A Michael, 'Incorporating Informality: The Future of Single-Member Companies in Nigeria' (2021) 9 Nigerian Journal of Commercial Law 48.

⁶ P Davies and S Worthington, *Gower: Principles of Modern Company Law* (London: Sweet & Maxwell, 2016) 112.

⁷ Michael (n 4) 49–50.

legal conception and entrepreneurial realities by promoting easy access to legal protection and mitigating the obstacles to entry to corporate environment.⁸

The theoretical basis of SMCs can be traced to the principle of corporate personality, which was initially developed by English Common law. The corporate personality principle commenced with the landmark case of *Salomon v Salomon*⁹, which provides that once a company is duly incorporated, it possesses a separate identity from its owners, individually or collectively.¹⁰ The effect of this is that the members enjoy limited liability whereby they are shielded from personal liability; the company can also sue and be sued in its own name, and enter into commercial transactions similar to a natural person.¹¹ The case of Salomon is the first to perfectly capture the legal realities of the principle of corporate separate personality and limited liability enjoyed by members of companies. Salomon, who was a boot maker as a sole proprietor, later transferred his business to a company (Salomon Ltd), which consisted of himself and his family.¹² The company later experienced financial difficulties and went into liquidation. The liquidator argued on behalf of the unsecured creditors that the company was merely a sham and an agent of Salomon, that Salomon was personally liable for the debt of the company.¹³ The House of Lords later held on appeal that the company, as a properly registered entity, was a separate legal entity from Salomon and as such Solomon could not be held personally liable.¹⁴ The concept of corporate personality has always been controversial due to its abstract nature, with some scholars referring to the personality as fictional and imaginary.¹⁵ Although Hanigan opined that the corporate personality principle, which guarantees protection of members from personal liability, is the legal bedrock upon which a single-member company is formed.¹⁶ It can be said, therefore, that the benefits of limited liability ensuing from the principles in Salomon serve as a natural justification for modern SMCs.

⁸ Jerome Okoro, Leonard Ugwu and George Ibekwe 'Interrogating the Features and Statutory Compliance of One-Man company Structure Under the CAMA 2020 (2025) 11(5) International Journal of Law 108.

⁹ [1897] AC 22.

¹⁰ Max Radin 'The Endless Problem of Corporate Personality' (1932) 32(4) Columbia Law Review 643.

¹¹ Ahmad Swaiss 'Beyond Salomon: Time to Rethink the Limited Liability Shield' (2024) 12(3) Global Scientific Journal 530.

¹² Swaiss (n 10) 532.

¹³ *ibid*, 532

¹⁴ *Salomon v Salomon* (Supra).

¹⁵ Maurice Wormser, 'Piercing the Veil of Corporate Entity' (1912) 12(6) Columbia Law Review 496-518.

¹⁶ Brenda Hannigan, *Company Law* (Oxford: Oxford University Press, 2021) 45.

It flows from the above that liability limitation is one of the foundations of SMCs, as the desire for sole proprietors to limit risk and liability is central to promoting modern business innovation. In reality, owners of small enterprises and sole proprietors are innately exposed to financial risks, having insufficient assets with which to spread their risks. The introduction of SMCs offers a legal platform to limit business risk, allowing individuals to comfortably engage in business activities without fear of exposing their personal assets to risks.¹⁷ As Armour and Hansmaann rightly argued, the purpose of laws is to facilitate risk-taking within regulated bounds by offering a protective legal safeguard.¹⁸

Another corporate theory that supports the notion of SMCs is the agency theory, which aims to align the interests of management with those of the shareholders.¹⁹ In large corporations where ownership and control are separate, management do not always act in the best interest of the shareholders, thereby promoting a conflict of interest between the owners and managers.²⁰ This conflict of interest, which is usually termed the agency problem in corporate governance, is said to be averted under the SMCs platform. In SMCs, the owners double as the managers, the distinction between ownership and control is consolidated, which further reduces internal conflicts.²¹ Nevertheless, there is the concern that such internal synergy of interests may give rise to external risk, and opportunity for internal corporate abuses, which calls for greater statutory checks and balances.²²

3. LEGAL FRAMEWORK FOR SINGLE-MEMBER COMPANIES UNDER CAMA 2020: OVERVIEW

The rigidity occasioned by the old regime under CAMA 1990, which makes it impossible for a sole entrepreneur to register and run a company, was generally criticised as restrictive of business innovation and detrimental to companies' ability to access corporate legal

¹⁷ Umenweke (n 3) 34.

¹⁸ John Armour and Henry Hansmann, 'The Essential Role of Organizational Law' (2001) 110(3) Yale Law Journal 395.

¹⁹ Andrew Keay, *The Corporate Objective* (Edward Elgar 2011) 43-44.

²⁰ Adam Smith *Inquiry Into the Nature and Causes of the Wealth of Nations* (Adam Black and Willian Tait Edinburgh 1776) 412

²¹ Frank Easterbrook and Daniel Fischel, *The Economic Structure of Corporate Law*(Cambridge, MA: Harvard University Press, 1991) 35.

²²Umenweke (n 3) 34.

protections.²³ This was a total departure from jurisdictions such as the UK, which have adopted a single-member company under the Companies Act 2006. As stated above, by virtue of CAMA 2020, a sole individual is now allowed to incorporate and run a company.²⁴ The statutory innovation by the CAMA 2020 that enabled one member company is encapsulated in section 18 of the CAMA 2020. While section 18(1) maintains a statutory minimum of two members for the incorporation of companies generally, section 18(2) created the exception in the case of private companies, permitting only one person to form a private company as follows: (2) 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.

Certain observations can be deduced from the provision in section 18(2): Firstly, the benefit of having a one-member company only applies to private companies and does not extend to public companies. Furthermore, the presence of a single member does not alter the company's separate legal personality, as the provisions afford SMCs the same status as private companies under the CAMA 2020. A careful perusal of the provisions above implies that section 18(2) allows not only a natural person but also a single company to incorporate a single-member company, as the word "*Person*" as referred to in the provisions is not limited to natural persons. In line with section 868 of the CAMA 2020, the terms "*Person*" for all purposes of the Act includes an individual, company or other entity which has legal rights and is subject to obligations.

By literal interpretation of the provisions of section 18(2), a single-member company appears to be possible only during the initial incorporation stage. This begs the question, can a single-member company be formed via share transfer? In other words, can a company with multiple shareholders consolidate its shares and transfer them to a single buyer, thereby leaving only one member for the purpose of forming a single-member company? This question was recently considered and deciphered by the Federal High Court in the recent case of *Primetech Design and Engineering Nigeria Limited and Julius Berger Nigeria v Corporate Affairs Commission*.²⁵ In this case, the Corporate Affairs Commission (CAC) had refused to register

²³ O Olatunji, 'Reforming Company Law in Nigeria: The Case for One-Man Company' (2015) 8 Nigerian Journal of Commercial Law 55.

²⁴ This provision is also supported by the Nigerian Business Facilitation (Miscellaneous Provisions) Act 2023 (BFA 2023).

²⁵ Suit No: FHC/ABJ/CS/665/2023

and record the alteration in the shareholding structure of Primetech from two members to a single-member company. The Court held that the benefits accruing from section 18(2) are not exclusive to only private companies incorporated after the commencement date of the CAMA 2020. The Court further held that to decide otherwise would defeat the intention of the provisions in section 18(2) to facilitate ease of doing business. The obvious implication of this decision in Primetech is that companies incorporated under the CAMA 1990, and after with multiple shareholders, can now convert to a single-member company, thereby promoting corporate flexibility. The decision also reverberated Nigeria's government's commitment to enhancing the business environment, with the aim of attracting foreign and local investors.

4. FEATURES OF SINGLE-MEMBER COMPANIES UNDER THE CAMA 2020: LEGAL ISSUES

4.1. Qualification and Eligibility for SMCs

The only apparent conditions of a single-member company, as stipulated by the CAMA 2020 is that it must be a private company and comprise a single shareholder. The Act does not expressly provide other criteria and conditions of SMCs that make them easily distinguishable from other similar corporate vehicles, such as a small company. The reality is that SMCs can be mistaken for a small company under the provisions of the CAMA 2020, even though the criteria regarding small companies differ. The qualification of a small company according to section 394(1) of the CAMA is provided as follows: “(1) A company qualifies as small in relation to its first financial year if the qualifying conditions are met in that year. (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.”

Subsection 3 went further to provide the qualifying conditions of a small company as follows: “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.”²⁶

²⁶ CAMA 2020, s 394(3).

From the above, can it be resolved that a single-member company can be referred to as a small company? Since the conditions of a small company do not expressly include the membership numbers, it is apposite to assume that an SMC does not automatically qualify as a small company. A company with one member must further meet the conditions stipulated in section 394(3) to qualify as a small company. For instance, a single-member company will fail to meet the qualification as a small company, where, for instance, its turnover and assets exceed N120,000,000 and N60,000,000, respectively, even if it has only one shareholder. Furthermore, in line with the provisions of section 394(3)(d), which exclude alien companies (foreign-owned) from being adjudged as small companies, it appears that only Nigerian citizens are afforded the privilege to incorporate a single-member company that can also enjoy the legal status of a small company. In other words, a company incorporated solely by Nigerians and meeting the conditions of a small company would lose its status as such where the shares are later sold or transferred to a foreigner.

4.2. Exemption of SMCs from Annual General Meeting

A single-member company is exempted from the requirement of holding annual general meetings under the CAMA 2020. Section 237(1) of the CAMA provides that “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 rationale for this provision stems from a practical perception: a single-member company has no other member to meet or deliberate with, and pass a vote or make decisions with. It follows, therefore, that it is impracticable to mandate a formal annual meeting for such companies. For the same reason as stated above, the Act also exempts one member company from the provision of forming a quorum for meetings.²⁷ However, unlike conventional multi-member companies, where meetings are necessary to vote and reach decisions via the passing of resolutions, the CAMA 2020 does not expressly provide a legal platform that governs how decisions are made in a single-member company. The CAMA only provides that where a member of a single-member company takes a decision that may be taken by the company in general meetings, and has effect as if it were agreed by the company in general meetings, he shall provide the board with details of the decision.²⁸

²⁷ CAMA 2020, s 256

²⁸ CAMA 2020, s266(4)

The above provisions only mandate the shareholder of an SMC to present his decision to the board, but do not provide for their resolution process or the manner and form in which such a decision is to be presented to the board. Arguably, the mandatory requirement to present details of decisions to the board in an SMC is unnecessary and impracticable as the member and the director of such companies are usually one and the same person. Rather, this will only lead to unnecessary administrative costs. Such a requirement should only be mandatory where the board is constituted by individuals who are different from the members.

With regards to the form of the decision, it is argued that the CAMA 2020 impliedly provides a solution by enabling private companies to make decisions via written resolutions which are valid as though passed at meetings.²⁹ In this regard, section 259 provides, “in the case of a private company, a written resolution signed by all the members entitled to attend and vote is as valid and effective as if passed in a general meeting”. A strict application of this shows that it only applies to private companies. It is unclear if it extends to a one-member company, even though it is a private company. Furthermore, the term ‘*all members entitled to attend and vote*’ as used in section 259 implies that it applies to private companies with multiple shareholders and not a one-member company.

4.3. Exemption from Annual Returns and Audit Requirement

Under the CAMA 2020, all companies except a single-member company are required to file annual returns. This exemption is captured in sections 417 and 421 of the CAMA 2020, respectively. According to section 417 of the CAMA 2020:

“Every company shall, once at least in every year, make and deliver to the Commission an annual return in the form, and containing the matters specified in sections 418, 419 or 420 as may be applicable: Provided that a company need not make a return under this section either in the year of its incorporation or, if it is not required by section 237 to hold an annual general meeting during the following year, in that year.”

A single-member company is designated in section 237 as one of the companies that are exempted from holding an annual general meeting; by the provisions stated above, they are not

²⁹ Tayewo Adewunmi, Adewole Adewoyin and Kola Amierekolade ‘Legal Framework for the Administration of single shareholder company in Nigeria: Lesson from the United Kingdom’ (2023) *Journal of the Department of Jurisprudence and International law* 334.

required to comply with section 417 on the filing of an annual return to the Commission. Furthermore, exemptions are also contained in Section 421 (1) which provides: “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. (2) *This section does not apply to companies with only one member.*”

Additionally, SMCs which meet the threshold of a small company are further exempted from audit requirements in section 402 of the CAMA 2020. This section provides as follows: “A company is exempt from the requirements of this Act relating to the audit of accounts in respect of a financial year if— (b) it is a small company within the meaning of section 394”.³⁰

Exemption from filing annual returns and audit requirements by single-member companies raises a significant corporate governance issue regarding transparency and financial disclosure.

This statutory exemption undermines regulatory oversight on the activities of single-member companies, thereby limiting checks and balances. Annual returns and audited accounts contain essential information such as the company’s total annual turnover and assets. Therefore, where a single-member company is not required to file annual returns and audit their accounts, the Commission and tax authorities are not adequately informed of the company’s assets and turnover for assessment of appropriate filing fees and taxes. Furthermore, as highlighted above, a single-member company may operate as a small company if it meets the conditions stipulated in section 394 of the CAMA. Although if it does not meet the financial threshold that qualifies it as a small company (i.e. where assets exceed N60,000,000 and turnover exceeds 120,000,000 annually), the commission may not be afforded such information if the annual returns are not filed. It is argued that this lack of oversight, occasioned by the exemption to file annual returns by single-member companies, can lead to bad decisions, misuse, or violations of corporate rules and structure.³¹

4.4. The Composition of Directors in SMCs

³⁰ 402(1)(b) of the CAMA 2020

³¹Umenweke (n 3) 39.

The board of directors are considered a key organ in any company, bestowed with the discretionary powers to manage the company in the best interest of its shareholders and the company as a whole.³² It stands to reason, therefore, that the board of directors must be well-equipped with the required knowledge, expertise, and number and size to effectively discharge their roles.³³ In view of this, section 271(1) of the CAMA 2020 mandates that every company except a small company must have at least two directors. Subsection (2) went further to provide 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.³⁴ According to the provisions in section 271, it appears that only small companies are exempted from the compulsory minimum of two directors. Given the apparent distinction between a small company and a single-member company, the question, however, is whether a single-member company that does not qualify as a small company can operate with fewer than two directors. The CAMA does not expressly provide a statutory basis for the number of directors for SMCs that are not small companies. This statutory lacuna under the CAMA creates confusion in the minds of entrepreneurs planning to incorporate a single-member company that does not qualify as a small company. It is unclear in this circumstance if the business should be incorporated with at least two directors to meet the requirement in section 271(1) above. Furthermore, the benefit of single membership status in SMCs is only applicable to the number of shareholders and does not extend to the number of directors. This means that the one membership structure in SMCs does not automatically permit a single director. As such, two directors shall be duly appointed during incorporation, where it is adjudged that the SMC does not qualify as a small company.

4.5. Winding Up of SMCs: Legal Inconsistency

Another area of controversy relating to SMCs is dissolution or winding up, where the number of members falls below the required minimum. According to section 571(c) of the CAMA 2020, 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. As analysed earlier, the court in

³²Moses Peace Richard 'Legal Perspective on the Use of Artificial Intelligence in Corporate Governance in Nigeria: Potentials and Challenges' (2024) 34(48) *Journal of Legal Studies* 97.

³³ Michael Afolayan and Olaide Awwal-Bolanta 'Duties of Directors Under the Companies and Allied Matters Act 2020 and Analysis of the Principles of Corporate Governance (2024) 10 *International Journal of Social Sciences and Management Research* 56.

³⁴ CAMA 2020, s 271(2)

the case of *Primetech v Corporate Affairs Commission*³⁵ has already declared that a private company with multiple members can collapse its shares and transition into a single-member company. In the same case, the court also stated in respect of section 571(c) that 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 2020.³⁶ This judicial pronouncement by interpretation has invariably rendered the provisions of s 571(c) toothless and unenforceable when viewed in respect of private companies. By implication, the decision in *Primetech* expressly excludes private companies from being wound up by the court based on failure to meet the minimum required members. Strangely, this means that any private company, irrespective of the number of members, can collapse its shareholding structure into a single-member company without fear of being wound up under section 571(c).

5. ADVANTAGES OF SINGLE-MEMBER COMPANIES

Single-member companies are widely regarded as offering several advantages, including enhanced ease of doing business, limited liability protection, and operational simplicity. As stated above, a single-member company is spared the legal burden of holding annual meetings, filing of annual returns or having a company secretary. This is thought to be cost-effective and streamlines decision-making processes, thereby leading to quick business strategy implementation and reduced administrative and operational delays.³⁷ Additionally, a shareholder of an SMC also enjoys the legal protections offered by limited liability by separating the owner's personal assets from the company's liability. Thus, where debts are incurred by the company, the owners' personal assets are protected against creditors.

Another significant advantage of single-member companies, when compared with sole proprietorships, lies in their enhanced access to credit facilities and contractual opportunities. By virtue of incorporation, a single-member company acquires a distinct legal personality, which strengthens its credibility in the eyes of financial institutions and contracting parties. This separate legal status enables SMCs to obtain loans, enter into binding contracts, and participate more effectively in commercial transactions. In Nigeria, it has increasingly become the standard practice for government agencies and corporate entities to require bidding

³⁵ *Supra*

³⁶ *Primetech v Corporate Affairs Commission* (*supra*)

³⁷ Umenweke (n 3) 38.

participants to be incorporated companies, thereby placing sole proprietorships at a structural disadvantage.³⁸ Consequently, the incorporation of single-member companies provides entrepreneurs with a more viable and competitive vehicle for conducting business.

6. KEY CHALLENGES ASSOCIATED WITH SINGLE-MEMBER COMPANIES IN NIGERIA

6.1. Transparency and Oversight Concerns

From the above analysis, several legal challenges are presented by SMCs, making it a less desirable corporate structure for conducting business in Nigeria. Some of the issues associated with this type of company include a lack of oversight. It is usually opined that the corporate governance structure of a single-member company is usually devoid of oversight, given that the functions of the director and shareholders are discharged by one person.³⁹ The absence of oversight can lead to serious abuse of company regulations, poor decisions due to a lack of scrutiny, and adversely impact the company's business.⁴⁰ By their very nature, single-member companies are characterised by concentrated ownership, control, and management functions in the hands of one individual, who simultaneously occupies the positions of shareholder and director. This convergence of roles eliminates the traditional internal checks and balances that ordinarily characterise multi-member corporate entities.

The absence of meaningful oversight significantly heightens the risk of internal abuse and weak corporate governance practices. Decisions are taken without independent scrutiny or dissenting perspectives, thereby increasing the likelihood of self-dealing, misapplication of company assets, and non-compliance with statutory obligations.⁴¹ Furthermore, the lack of supervisory mechanisms may result in imprudent business decisions, as there is no internal accountability framework to challenge or review managerial actions. Over time, this governance deficit can undermine operational efficiency, erode stakeholder confidence, and negatively affect the overall performance and sustainability of the company. Without robust disclosure and monitoring requirements, SMCs may operate with minimal transparency, thereby increasing the risk of corporate abuse and financial impropriety. Consequently, unless adequately

³⁸ Wole Adetunji, 'Governance of One-Person Companies: Nigerian Challenges' (2020) 4(3) African Journal of Business Law 38

³⁹ Umenweke (n 3) 39

⁴⁰ *ibid.*, 39.

⁴¹ *ibid.*, 39.

addressed through legislative or regulatory reforms, the governance deficiencies associated with single-member companies threaten to undermine the objectives of CAMA 2020 in promoting responsible entrepreneurship and corporate integrity.

6.2. Risk of Abuse of Corporate Personality

Other essential challenges plaguing SMCs include potential abuse of the corporate veil due to limited oversight and flexibility. It is believed that the flexibility of SMCs can lead to arbitrary decisions being made without scrutiny, allowing for tax evasion or perpetuating fraud under the guise of limited liability.⁴² While courts have the power to pierce the corporate veil in situations of fraud,⁴³ Nigerian corporate law, as regards veil piercing, is thought to be marred by inconsistent judicial precedents, thereby rendering its application unpredictable.⁴⁴

6.3. Practical Constraints in Decisions-Making

The statutory requirement for members of SMCs to provide details of their decisions to the board of directors in section 266(4) of the CAMA 2020 presents a practical constraint that may result in unnecessary costs and an avoidable bottleneck. In single-member companies, the ownership and management of the company usually rest on a sole member and shareholder of the company. In situations where the board of directors is comprised of the same individual, it is practically unnecessary for the same person to present the decision to a properly constituted board of directors. In practical application, and in order to meet the statutory requirement, these provisions would compel sole members to appoint additional directors, in which his decisions can be presented to a properly constituted board meeting. This requirement creates additional cost and statutory burden on SMCs, thereby defeating the initial purpose, which is to promote ease of doing business. It is worthy to note that the requirement in section 266(4) is compulsory and cannot be dispensed with, since noncompliance is an offence and would lead to statutory penalties.⁴⁵ A more practical approach would be to make this requirement compulsory only in situations where the company's members and board of directors comprise different individuals. Thus, this requirement should be waived in situations where ownership and management functions are discharged by one person.

⁴² Ibid 39.

⁴³ Instances of veil piercing in Nigeria are encapsulated in the following cases: *Union Bank of Nigeria Plc v. Orharhuge* (2000) 2 NWLR (Pt. 645) 495; *Securities Solution Ltd & Ors v Adamu- Oladiran & Ors* (2016) LPELR 40068 (CA); *Oboh & Anor v Nigeria Football League Ltd & Ors* (2022) LPELR-56867 (SC)

⁴⁴ T Adeola, *Nigerian Company Law: Issues as to CAMA 2020* (Ibadan: Spectrum Books 2023) 133

⁴⁵ CAMA 2020, s 266(4)(b).

7. COMPARATIVE PERSPECTIVES: LESSONS FROM OTHER JURISDICTIONS

7.1. The United Kingdom

The concept of a single-member company is also codified in the UK's Companies Act 2006 (CA 2006), which permits a single individual to incorporate and operate a company. According to section 7 of the CA 2006, A company is formed under this Act by one or more persons, subscribing their names to a memorandum of association. The import of this provision is that a single person can incorporate both a private and a public company limited by shares. This differs from the situation in Nigeria, which is limited to only private companies. In contrast, public companies in Nigeria are barred from having a single member, as the minimum number is pegged at two members.⁴⁶ In terms of ease of doing business, it can be argued that the UK is more desirable as it affords a sole entrepreneur greater options and a platform to raise capital, build credit and attract investors. In other words, a sole member of a public company in the UK can list their shares on the stock exchange and offer their shares to the public.

In the UK, the CA 2006 also went further to specify the minimum number of directors for single-member companies for both private and public companies as follows: according to section 154(1) of the CA 2006, A private company must have at least one director, and a public company must have at least two directors. Although, irrespective of the type of company, the section provides that the company must have at least one director who is a natural person.⁴⁷ A strict interpretation of the wording of section 155(1) implies that companies in the UK may appoint a mix of both natural and corporate directors (non-natural directors) in a single-member company, provided at least one director is a natural person. In Nigeria, this option is not available as section 269 of the CAMA 2020 only provides that directors shall be individuals appointed by the company to direct and manage the business of the company.

Another innovation about the UK CA 2006 is that it recognises the fact that a single-member company may be formed either through incorporation by a single person or if the shares of the company become vested in one person. In this regard, section 123 of the CA 2006 provides:

⁴⁶ CAMA 2020, s 18(1).

⁴⁷ CA 2006, s 155(1).

“(1) If a limited company is formed under this Act with only one member, there shall be entered in the company's register of members with the name and address of the sole member, a statement that the company has only one member. (2) If the number of members of a limited company falls to one, or if an unlimited company with only one member becomes a limited company on re-registration, there shall upon the occurrence of that event be entered in the company's register of members with the name and address of the sole member: (a) a statement that the company has only one member, and (b) the date on which the company became a company having only one member”

The above provisions clearly set out the circumstance where a single-member company may exist in the UK or a company may be treated as a one-member company. The key requirement is that once a company is formed with one member or where the members fall to one in the case of a multi-member company, the company must ensure that the date of occurrence and statement that the company has only one member must be entered in the company's register alongside the name and address of the sole member. This allows for seamless transition of companies between the corporate structures of single and multi-member companies, thereby offering greater corporate restructuring flexibility.

In contrast, there are no express provisions under the CAMA 2020 delineating the circumstances in which a single-member company exists. In fact, it is unclear under the CAMA 2020 if a single-member company can be formed from an existing multi-member company through the transfer or consolidation of shares to a single shareholder. Rather, the CAMA 2020, as illustrated earlier, prescribes winding up of a multi-member company if its membership falls to a single member.⁴⁸ However, as stated above in the case of *Primetech v Corporate Affairs Commission*,⁴⁹ the court has interpreted broadly the provisions of section 18(2) of the CAMA 2020, which allows the incorporation of a single-member company to also accommodate situations where a multi-member company falls to one. To ensure congruence between case law and statute, future reforms of the CAMA 2020 need to introduce provisions that are similar to section 123 of the CA 2006, which allows the conversion to a single-member company where the shares of a multi-member company become vested in a single individual.

⁴⁸ CAMA 2020, s 571(c).

⁴⁹ *Supra*

7.2. India

In India, a single-member company is defined by section 2(62) of the Indian Companies Act 2013 (CA 2013) as “a company which has only one person as a member”. This is identical to Nigeria and the UK, where the common condition of a sole member company is the limitation of the membership to one. However, similar to the UK, section 18(1) of the CA 2013 also affords legal recognition for situations where the members of a multi-member company fall to one. Although a single-member company in India, similar to Nigeria, is restricted to private companies⁵⁰, unlike the UK, which is available to both private and public companies.

An area of apparent contrast between Indian and Nigerian systems lies in the individuals who are eligible to form a single-member company. In India, only a natural-born Indian, whether resident in India or otherwise, shall be eligible to incorporate a single-member company.⁵¹ In Nigeria, no such restriction exists, which means that foreigners are also eligible to form a single-member company. With regards to this, Okoro, Ugwu and Ibekwe argue that the indigenisation restriction of the Indian single-member company may adversely limit foreign participation, thereby minimising the number of foreign direct investments in the country.⁵² This may be true; however, it could also be argued that this affords indigenous owners of small businesses a favourable environment to thrive with less competition in certain sectors.⁵³

Another corporate innovation adopted by the Indian framework is the requirement to appoint a nominee who must also be a natural person and an Indian citizen in a one-person company.⁵⁴ In this regard, section 4 of the Indian Companies (Incorporation) Rules 2014, provides the process of nominating a nominee as follows: “for the purposes of first proviso to sub-section (1) of section 3– (1) The subscriber to the memorandum of a one person company shall nominate a person, after obtaining prior written consent of such person, who shall, in the event of the subscriber’s death or his incapacity to contract, become the member of that one person company.” The rationale for this provision is to ensure perpetual succession and representation in situations where the membership of the company falls below one as a result of death or by operation of law.⁵⁵ Nigeria lacks similar provisions under the CAMA 2020. The implication of

⁵⁰Indian CA 2013 s 3(c).

⁵¹ The Companies (Incorporation) Rules 2014, s 3(1).

⁵² Okoro, Ugwu and Ibekwe (n 7) 111.

⁵³ *ibid.* 111

⁵⁴ The Companies (Incorporation) Rules 2014, s (3)(1)(b).

⁵⁵ Okoro, Ugwu and Ibekwe (n 7) 111.

this statutory lacuna on the Nigerian system is that the death of a member in a single-member company could well mean the commencement of a winding-up process or liquidation, as the case may be. In other words, corporate continuity and perpetual succession are not guaranteed in a single-member company in Nigeria.

8. RECOMMENDATIONS FOR REFORM

8.1. Clarifying the Scope and Conditions for a Single Member Company

The exact parameter, scope and definition of a single-man company in Nigeria is not expressly provided by the CAMA 2020. As stated above, the Indian system offers a clear definition of SMCs. Furthermore, it also stipulates certain conditions for SMCs, such as limiting incorporation to only natural-born persons. In Nigeria, the scope of SMC is mostly implicit and not expressed; the fact that foreigners are permitted from incorporating single member companies is presumed on the premise of the absence of provisions to the contrary. Failure to provide the conditions and eligibility of SMCs leaves room for confusion and litigious conflicts. Similar to the UK's CA 2006, future reforms under the CAMA 2020 must therefore provide a clear definition of the SMCs, setting out the conditions for their eligibility, and the minimum number of directors. This will also ensure that SMCs are clearly distinguished from small companies.

8.2. Conversion from Multi-Member to Single-Member Company

As noted above, CAMA 2020 contains no express provisions permitting private multi-member companies to consolidate their shareholding into a single-member company. This oversight considerably limits entrepreneurial flexibility and limits corporate restructuring options in Nigeria. In this regard, and consistent with the approach adopted under the UK CA 2006, there is a compelling need for CAMA to be amended to expressly provide for circumstances in which private multi-member companies may seamlessly convert into single-member companies. Such reform is necessary to align Nigeria's corporate regulatory framework with contemporary commercial realities and the overarching objective of promoting ease of doing business.

8.3. Requirement to File Annual Returns and Audit

Limited oversight and monitoring have been identified in previous sections of this paper as some of the issues plaguing SMCs in Nigeria. It is argued, and as stated above, that SMCs may be used as a vehicle for tax evasion and statutory filing, thereby undermining transparency.

Excluding SMCs from filing annual returns and audit requirements under the CAMA 2020 is a statutory lacuna that further undermines oversight by regulatory agencies such as the CAC and relevant tax authorities. As stated above, not filing annual returns deprives the CAC of key information pertaining to the annual turnover and assets of the company, which is essential for assessing post-incorporation filing and default fees. Against this background, filing of annual returns is imperative as this will strengthen oversight and monitoring mechanisms for SMCs under the CAMA 2020.

8.4. Appointment of Nominee:

As argued above, the lack of an option to appoint a nominee for SMCs under the CAMA 2020 does not guarantee perpetual succession upon the death of a single member. It is recommended, therefore, that for corporate succession, provisions similar to the Indian system on nominee appointment should also be adopted in Nigeria. This will surely promote corporate continuity in SMCs and improve their lifespan.

8.5. Presentation of Details of Decisions at Annual General Meeting

Another area of concern for SMCs is the requirement to prepare and present a detailed report on the decision taken by a member to the board of directors. As highlighted above, the requirement is unnecessary and impractical as the member and the director of such companies are usually one and the same person. It is recommended here that the CAMA 2020 should be amended to make such a requirement compulsory only when the board is constituted by individuals who are different from the members.

9. CONCLUSION

Undoubtedly, the introduction of SMCs in Nigeria signals an important step towards promoting ease of doing business by bestowing administrative and financial advantages to entrepreneurs and reducing the regulatory burdens traditionally associated with corporate entities. However, despite their statutory recognition under the CAMA 2020, the current legal framework governing SMCs is fraught with substantive statutory deficiencies that undermine their operational effectiveness and regulatory oversight.

Particularly, CAMA 2020 provides limited mechanisms for the supervision and monitoring of SMCs, particularly by exempting qualifying companies from the obligation to file annual

returns and conduct statutory audits. These exemptions, while intended to encourage entrepreneurship, inadvertently weaken corporate accountability and transparency. Furthermore, the absence of a mandatory nominee appointment mechanism exposes SMCs to the risk of corporate discontinuity upon the death or incapacity of the sole member, thereby calling into question the assurance of perpetual succession. In addition, persistent ambiguities surrounding the conversion of multi-member private companies into single-member entities create uncertainty and impede seamless corporate restructuring. Collectively, these deficiencies diminish the attractiveness of SMCs as viable business vehicles, especially for potential investors who may be discouraged from engaging with entities whose continuity and governance structures remain uncertain.

Comparatively, the company law regimes of the United Kingdom and India, although not without limitations, provide pragmatic regulatory solutions that enhance perpetual succession and facilitate flexible restructuring between multi-member and single-member corporate forms. In light of these comparative insights, it is imperative that future reforms to CAMA 2020 address the identified shortcomings by strengthening oversight mechanisms, introducing mandatory nominee appointments, clarifying conversion procedures, and reforming exemptions relating to annual returns and audit requirements. Such reforms would not only enhance regulatory certainty and investor confidence but also ensure that SMCs fulfil their intended role as efficient, sustainable, and credible vehicles for business development in Nigeria.