Regulatory Alert

Resolving the single-shareholding conundrum for legacy companies

Background

The Companies and Allied Matters Act **("CAMA")** 2020 marked a bold leap forward in Nigeria's quest to modernise its corporate law. Among its most transformative innovations is section 18(2). On its face, this provision appears simple, by formally recognising single member companies in Nigeria. Despite its clarity, section 18(2) has sparked legal debates. At the heart of the controversy lies one critical question: Did the legislature intend for only private companies incorporated after the effective date to operate with a sole shareholder, or can preexisting companies also adopt a single shareholder structure?

This article analyses the scope of the Corporate Affairs Commission **("CAC")**'s powers to refuse the registration of share transfers and concludes that the Federal High Court's decision in Primetech Design & Engineering Nigeria Ltd & Anor v. CAC represents the prevailing legal position.

CAC's practice on registration of share transfer

CAC currently refuses to register transfer of shares that will result in sole shareholding of legacy companies (i.e. companies incorporated before CAMA 2020). CAC's reason is premised on section 571 (c) CAMA 2020, which provides 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".

In Primetech Design & Engineering Nigeria Ltd & Anor v CAC, the primary issue for determination by the Federal High Court **("FHC")** was whether CAC (despite the provisions of sections 18(2), 22(1), 118 and 869 (1) could rely on section 571 (c) of CAMA 2020 to refuse the registration of the instrument of share transfer (which made the Plaintiff the sole shareholder of the Company).

CAC, relying on section 18 CAMA 2020 argued that single shareholding was only applicable for companies incorporated pursuant to CAMA 2020; thus, companies formed before the enactment of CAMA 2020 could not take benefit of section 18 (2) to transition into sole shareholding.
Section 18 (1) provides that "As from the commencement of this Act, any two or more persons may form and incorporate a company by complying with the requirements of this Act in respect of registration of the company".

Section 18 (2) provides that "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".

The FHC held that "the 1st Plaintiff is an existing company deemed by section 868 of CAMA 2020 as having been incorporated pursuant to CAMA 2020. The section defined a 'company' as 'a company formed and registered under this Act or, as the case may be, formed and registered in Nigeria before and in existence on the commencement of this Act.' An existing company like the 1st Plaintiff can take benefit of the provisions of CAMA 2020 without any restrictions(s), including section 18(2) of CAMA 2020 more so when section 869 (1) preserved actions taken under CAMA 1990 including companies incorporated thereunder."

Despite the judgment of the FHC, CAC continues to refuse the registration of share transfers for pre-CAMA 2020 companies that wish to transition into single shareholder company.

In Babatunde & Ors v Olatunji & Anor [2000] LPELR-697 (SC), the Supreme Court held that "a judgment of a Court of competent jurisdiction remains valid and binding, even where the person affected by it believes that it is void, until it is set aside by a Court of competent jurisdiction.

In Chuk v. Cremer (1846) 1 Coop. temp. Cott. 342; 47 E. R. 884 Lord Cottenham, L. C. said: "A party, who knows of an order, whether null or valid, regular or irregular, cannot be permitted to disobey it... It would be most dangerous to hold that the suitors, or their solicitors, could themselves judge whether an order was null or valid - whether it was regular or irregular. That they should come to the Court and not take upon themselves to determine such a question. That the course of a party knowing of an order, which was null or irregular, and who might be affected by it, was plain. He should apply to the Court that it might be discharged. As long as it existed it must not be disobeyed."

Is CAC's refusal to register share transfer ultra vires?

Shares in a company are proprietary and transferable subject to the Articles of Association ("**AoA**") of the Company.

In line with the procedure indicated in sections 175-176 of CAMA 2020, a share transfer is complete when the Board of Directors register the instrument of transfer and enter the name of the new shareholder **(the "Transferee")** in the Register of Members. Paragraph 40 of the Companies Regulations 2021 also supports the position that share transfer is an internal matter that is concluded based on the Board of Directors' decision to register or not register the transfer.

CAMA 2020, being the principal legislation governing company administration in Nigeria, has no statutory requirement for share transfers to be registered with CAC. This position is distinct from the treatment of allotment of shares, as provided under section 154 of CAMA 2020, which expressly mandates companies to file a return of allotment with CAC within one month of such allotment.

In Okoya & Ors v Santilli & Ors [1990] 2 NWLR (Pt 131) P. 172, the Supreme Court distinguished between allotment and transfer as "the words "allotment" and "transfer" in respect of shares of a company cannot have any other meaning except the ones ascribed to them in companies practice and legislation: they can never mean the same thing or be used interchangeably. "Allotment" is done when a new Company is being incorporated and the money paid for the allotment of shares goes to the Company only to form part of its share capital. Once the share capital is paid for by allotees that is the end of allotment. Any person desirous of participating in such a company will not therefore ask for allotment but for sale and transfer to him by a shareholder. Companies Decree (Act) 1968 has provisions for allotment in Sections 48 to 55. The exception is when share capital is increased. As for transfer, this is a matter between the shareholder who wants to part with his shares and the purchaser or transferee. The money on transfer goes to the shareholder, not to the Company; the Company will only ratify by adjusting its books to reflect the new shareholding. The transfer of shares is in the provisions of the Companies Act (supra) at sections 75-86. Thus, there cannot in law be a recognition of interchangeable use of allotment and transfer in company's dealings, the words have acquired definite meanings that it is too late to ascribe to them any other meaning."

Honourable Justice Sylvester Umaru further held that "...the law is that shares in a company are in the nature of personal estate and are transferable in the manner provided by the articles.

See Section 75 of the Companies Act, 1968 and Orojo on Nigerian Company Law and Practice, page 209. With a transfer, the only way in which the company is concerned is to give effect to a private arrangement between the transferor (existing member) and the transferee (who may be an existing member or a new member altogether). Usually the transaction is concluded between the parties before it is brought to the knowledge of the Company and for whatever the consideration that may have passed does not concern the company. The transferee's name eventually replaces that of the transferor on the records."

Takeaway/ Insights

Section 571(c) of CAMA 2020, although similar to section 408(c) of the repealed CAMA 1990, is not identical in its wording or scope. Section 571(c) provides that a company may be wound up by the court where "the number of members is reduced below two in the case of companies with more than one shareholder." In contrast, section 408(c) of CAMA 1990 simply stated that a company may be wound up by the court where "the number of members is reduced below two," without qualification.
A comparison of both provisions indicates that the legislature intentionally modified the language in the 2020 Act. In our view, however, this amendment should not be interpreted as creating a distinction in the application of section 18(2) between companies incorporated before and after the commencement of CAMA 2020. Rather, section 571(c) should be invoked in situations where a company's articles of association expressly prescribe a minimum number of shareholders, such as in joint venture structures; or in relation to public companies, which are expressly excluded from the single-shareholder rule under section 18(2) Rather than leaving affected companies in a state of limbo and thereby depriving the Government of legitimate revenue (by refusing to register the affected transfers) it would be far more pragmatic to give a purposeful interpretation to section 571(c). This would ensure coherence, clarity and continued investor confidence in Nigeria's corporate legal regime.

Furthermore, the longstanding practice of filing share transfers with CAC exists solely to ensure that the Commission's records accurately mirrors a company's maintained share register. It is a clerical and evidentiary process, not a constitutive one. Accordingly, CAC's refusal to register a properly executed transfer of shares is ultra vires, as ownership of shares is perfected by the act of transfer and entry in the company's Register of Members, not by CAC's approval. Where a company's share register has been duly updated and authenticated by the Company Secretary, such internal records are sufficient and legally valid evidence of a completed transfer. Any administrative nonregistration by the CAC cannot invalidate what has already been lawfully effected under corporate law principles.

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