



Implications of the One Person Companies (OPCs) in Nigeria

Saidu Mohammed Also^{1*}

¹Department of General and Remedial Studies, The Federal Polytechnic Damaturu, 620001 Damaturu, Yobe State, Nigeria.

Abstract

The advent of One-Person Companies (OPCs) in Nigeria, ushered in by legislative reforms via the Companies and Allied Matters Act 2020, marks a significant development in the country's corporate legal framework. This paper explores the implications of OPCs in the Nigerian business scene. It traces the historical evolution of business legislation in Nigeria, right from its pre-colonial origins to the ground-breaking legal reforms instated by the *Companies and Allied Matters Act 2020* (CAMA 2020). Also, the study highlights the unique and transformative features of OPCs, foremost among them being the principle of limited liability protection and the streamlined adherence to regulatory requirements. In addition, the paper engages with potential challenges for OPCs heralded by the CAMA 2020, especially in the domains of governance and accountability. Moreover, the paper spotlights on the far-reaching implications of the OPC structure for the growth and sustenance of Small and Medium Enterprises (SMEs), recognising the potential catalytic role they play in Nigeria's economic development. The emergence of OPCs stands as a testament to Nigeria's drive to fostering entrepreneurial pursuits, safeguarding business owners' interests, stimulating economic growth and shaping the nation's corporate structure.

Keywords: *One Person Companies (OPCs), Companies and Allied Matters Act 2020, Nigeria, SMEs, Limited Liability.*

Introduction

The introduction of the *Companies and Allied Matters Act 2020* (CAMA 2020)[1] marked a significant milestone in the development of company law in Nigeria. CAMA 2020, which came into force on the 7th Day of August, 2020, brought about substantial changes and innovations in the formation and regulation of companies and business entities within the country. These changes collectively introduced greater flexibility in corporate structures, facilitated electronic processes, and raised standards of corporate governance to international levels, aiming to combat malpractice, protect shareholders' rights, and boost Nigeria's attractiveness to both domestic and foreign investors [2]. Among the most notable specific changes was the introduction and formal recognition of a new business entity known as the One Person Company (OPC).²

Prior to the enactment of CAMA 2020, the Nigerian business community primarily operated under the provisions of the Companies and Allied Matters Act of 1990. While this legislation had served as the foundation for regulating corporate affairs for decades, it became evident that certain aspects of the Act needed reform [3]. *Companies and Allied Matters Act 1990*³ (CAMA 1990) [4] predominantly focused on multi-member companies and did not adequately address the evolving needs and aspirations of the burgeoning entrepreneurial ecosystem in Nigeria [5]. Then, entrepreneurs who preferred to do business as sole owners faced personal risk in the event of business debts or legal issues, as they lack the crucial safeguards available to limited liability entities like LLCs or corporations. That heightened the personal risk of the

entrepreneur, thereby deterring investment, limiting access to capital, and making it difficult to attract partners or investors.

However, the introduction of OPCs under CAMA 2020 [6] represents a significant departure from the structures of CAMA 1990. While the creation of OPCs has been lauded, scholars have not yet detailed the implications of this business form in the Nigerian entrepreneurial ecosystem. The OPC form of business organisation allows an individual entrepreneur to establish a limited liability company with sole ownership, redefining the possibilities and dynamics of business ownership in the country. The significance of this lies in its ability to combine the advantages of limited liability with the convenience of single ownership. By affording limited liability, an OPC shields the personal assets of the entrepreneur from the company's liabilities, thus reducing the risks associated with business ownership. This feature is particularly attractive to small business owners and start-ups as it safeguards their personal finances. Moreover, the OPC structure provides legal recognition to solo entrepreneurs, encouraging more individuals to venture into entrepreneurship without the need for external partners. It simplifies the process of establishing and managing a company, reducing administrative burdens [7].

This paper reviewed the historical context that led to the introduction of OPCs, examined the legal framework governing them, the advantages they offer to entrepreneurs, the concerns and challenges associated with this business structure, and their impact on the development of small and medium enterprises (SMEs) in Nigeria. Also, it examined the international practices related to OPCs and assessed the potential for future legal reforms in this area. Overall, the paper sheds light on the implications and ramifi-

¹ No. 3, CAP C20, LFN 2004.

² Sec: Section 18(2), CAMA 2020, No. 3, CAP C20, LFN 2004.

³ No. 32, LFN 2004.

cations of this new business entity, offering insights that can inform entrepreneurs, policymakers, and stakeholders about the changing dynamics of business ownership and operation in Nigeria.

Evolution of Corporate Legislations in Nigeria

In Nigeria, the development of business structures and models can be traced back to the pre-colonial era. In that period, businesses activities were organised in guilds [8]. These are historical organizations or associations of skilled artisans, craftsmen, and merchants established to regulate and protect the interests of their members, ensuring the quality of their products or services and controlling prices [9, 10]. Guilds often had a hierarchical structure, with apprentices, journeymen, and masters, and they set specific standards for apprenticeships and training. In addition to their economic functions, guilds also had social and political roles within their communities. They helped maintain order, provided support to members and their families, and had a say in local governance. While they have largely faded in modern times, the legacy of trade guilds can still be seen in some professional associations and unions today.

The colonial era, from 1876 to 1960, witnessed the extension of English common law, equity, and statutes to govern Nigeria, with the Supreme Court Ordinances of 1900 and 1902 applying these principles to the Southern and Northern protectorates [11]. The early legislation in the 1910s to 1950s saw the introduction of the Companies Ordinance, which borrowed from English company law and provided a foundational framework for company regulation [12]. Following independence in 1960, Nigeria continued to draw from English company law, with the enactment of the Companies Decree in 1968, introducing mandatory accounting requirements and other key provisions [11]. However, it was in the 1990s that a comprehensive legal reform took place, with the Companies and Allied Matters Decree of 1990⁴ creating the Corporate Affairs Commission (CAC) and establishing a more structured legal framework. Under the CAMA 1990, companies can operate in three basic forms: as a statutory body, through registration or incorporation, or by exemption [13]. Nevertheless, CAMA 1990 faced the strain of change and was repealed by the CAMA 2020 [5, 14].

In the 30 years since CAMA 1990 [15], the most significant reform occurred with the CAMA 2020, which supplanted the 1990 Act. CAMA 2020 introduced ground-breaking provisions, including the legal framework for One-Person Companies (OPCs), aimed at aligning with modern business practices, promoting ease of doing business, and enhancing corporate governance standards. Before the emergence of OPCs, there were several forms of business organisations in Nigeria including the sole proprietorship, the partnership, and the company as the most common ones [16]. The most unregulated business form is the sole proprietorship. A sole proprietor is an individual controlling and running a business under his name. The company name does not have a separate legal identity from the owner. The debts of the firm are the exclusive responsibility of the sole proprietor [16]. The partnership form is a business organisation consisting of a minimum of two and a maximum of twenty people working together as a partnership

under a company name.⁵ All partners are jointly liable for the business's debts, just as they are in a sole proprietorship [16]. Lastly, a company is a legally distinct and independent entity created by individuals or groups to engage in commercial activities [16]. This distinct legal entity allows a company to enter contracts, own assets, and engage in various business transactions in its own name, thus restricting the personal liability of its owner to the amount unpaid on the shares they have subscribed.

It has been estimated about 60 million Nigerians operate solo proprietorships as their sole sources of livelihood Odeyinde [2]⁶. However, the vast majority of these enterprising businesses people who could not benefit from the corporate status accorded to companies [13]; only 14% registered with the CAC [12]. Hence, the need was keenly felt to create a legal business form for this class of businesses. Therefore, the emergence of OPCs in Nigeria can be attributed to shifting entrepreneurial environments and several factors, including the rise in entrepreneurship, alignment with global trends, enhanced investor confidence, reduced compliance burdens, and improved access to financing [17]. In recognition of these dynamics and the need to foster entrepreneurship while formalising small businesses, the Nigerian government introduced OPC provisions through the CAMA 2020,⁷ aiming to balance a supportive legal framework for OPCs with governance and accountability considerations. The historical backdrop underscores the significance of OPCs as a progressive step in meeting the diverse needs of Nigeria's entrepreneurial community [11]. The subsequent sections of this paper will delve into the legal framework, advantages, challenges, and implications of OPCs in Nigeria, providing a comprehensive understanding of this innovative business structure.

Meaning of One-Person Company (OPC)

The CAMA 2020 uses various qualifiers such as “one person,”⁸ “single member,”⁹ and “one member”¹⁰ in referring to limited liability companies formed by only an individual and no other. Therefore, one can refer to this business form as a “One Person Company (OPC),” or “One Member Company (OMC)” or “Single Member Company (SMC).” The choice of which term to employ has no material implications on the legal status of the business. This paper applied the OPC variant for consistency. The Act¹¹ defines an OPC merely as a private company, with a raft of characteristics that are incongruous with the OPC. Apparently, there are now two types of private companies when viewed in terms of membership strength: the familiar multi-member private company and the novel one member company. While the CAMA 2020 is copious in characterising the former, it is largely silent on the latter, and more troublingly, making no thorough distinction between the two save for membership strength and the associated exemptions to the OPC. What, then, is the take of legal scholars on these?

Bukar [18] describe an OPC as a business organisation with the “soul of a sole proprietor and a spirit of a limited liability company.”¹² An OPC is a legal form of business organisation that allows a single individual to establish a private limited liability company. This structure is designed to provide the advantages of limited liability while enabling sole ownership. In OPCs, the single

⁴ Later known as an Act, i.e., CAMA 1990 (as variously amended).

⁵ See: Section 19(1), CAMA 2020, Op. Cit.

⁶ Odeyinde. Pg. 116.

⁷ See: Section 18, CAMA 2020, Op. Cit.

⁸ E.g., Section 18(2), CAMA 2020, Ibid.

⁹ E.g., Section 266(1).

¹⁰ E.g., Section 256 (1,2)

¹¹ Section 22(1), CAMA 2020, Op. Cit.

¹² Bukar, pg. 16.

individual holds both the positions of the shareholder¹³ and the director,¹⁴ effectively controlling and managing the company's operations. The primary objective of an OPC is to offer entrepreneurs a means to run their businesses with limited liability protection, reducing the personal financial risk associated with business ownership [17]. OPCs are typically subject to specific legal regulations and compliance requirements, and they are often chosen by solo entrepreneurs and small business owners who want the legal protection and formality of a company structure while maintaining full control over their business [19, 20].

Features of One Person Companies (OPCs)

The OPC is a globally recognised form of business organisation [21-23]. In Nigeria, this business form is sanctioned under the provisions of the CAMA 2020 [6, 7, 12, 24]. The Act 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."¹⁵ This innovative piece of legislation recognises the changing dynamics of business ownership and aims to provide a conducive environment for entrepreneurs who prefer to operate their businesses as sole proprietors while enjoying the benefits of limited liability [25]. The following features can be gleaned from the CAMA 2020 characterising OPCs as a special class of private companies.

1. **Private Company:** OPCs, being categorised as private companies, offer confidentiality and privacy [18]. Indeed, the majority of companies in Nigeria private companies with limited shares, which is a suitable option for a wide range of commercial activities. It serves as an excellent choice for individuals like entrepreneurs looking to initiate a business, as well as for established enterprises seeking to broaden their operations. This can be advantageous for SME owners who may not want to disclose their financial information or business strategies to the public. It also simplifies decision-making and corporate governance processes, as there are no external shareholders to contend with.
2. **Single-Member:** The primary benefit of a single-member structure is the complete control it affords to the owner. SME owners can make business decisions autonomously, without the need for consensus from multiple shareholders, which can expedite decision-making and execution of strategies [26].
3. **No Perpetual Succession:** While OPCs do not adhere to the concept of perpetual succession due to their single-member nature, this feature ensures that in the event of the member's demise, the business can continue if any one of the owners' inheritors decide to continue with the business [27]. For SME owners, this provides a degree of assurance that their business can carry on even if unforeseen circumstances affect them.
4. **Minimum One Director:** OPCs offer flexibility with a minimum requirement of just one director. This is especially beneficial for SMEs where the owner can serve as the director, simplifying the management structure and reducing administrative overhead. The sole director's remuneration and entitlements are deductible expenses and thus can serve to reduce the tax burden on the OPC [25].
5. **Limited Liability:** Limited liability is a crucial benefit for SME owners. It protects their personal assets in case of business debt or legal disputes [27]. This feature allows entrepreneurs to take reasonable risks without risking their personal finances .
6. **Property Ownership:** OPCs have the ability to own property in their name. This simplifies real estate transactions for SME owners and ensures that property assets are protected under the company's legal structure. The sole OPC owner can rent his property to the business which rent can serve as deductible expenses for tax purposes [25].
7. **Share Capital Requirement:** The relatively modest minimum capital requirement of 100,000 naira makes OPCs accessible to SME owners with limited capital [28]. This lowers the financial barrier for entry into the corporate world, making it easier for small businesses to formalize their operations.
8. **Age Requirements:** Requiring members and directors to be above 18 years of age ensures that responsible individuals are at the helm of the company [28]. This age requirement helps maintain the integrity and credibility of the business, which can be crucial for SMEs building their reputation in the market.
9. **Ease of Management:** OPCs offer a simplified and efficient management structure. Consequent upon its very nature, having a single owner, there is no need for complex board structures or meetings a quorum in making all key decisions.¹⁶ Thus, CAMA 2020 exempt OPCs from all the intricacies involved in convening and adjourning meetings.¹⁷ Consequently, all statutorily required secretarial duties including maintaining a register of minutes of meetings of whatsoever type have been waived for OPCs.¹⁸ Another critical exemption CAMA 2020 affords OPCs relate to filing of annual return with the CAC.¹⁹ Filing annual return is a mechanism employed by the CAC to monitor companies' compliance with extant corporate governance rules [29]. By this exemption, the CAC thus follows a hands-off approach to the monitoring of OPC activities. This streamlined management approach allows for greater agility and responsiveness, enabling the owner to adapt quickly to market changes, seize opportunities, and implement strategic decisions without the bureaucratic processes often associated with multi-member companies. The ease of management is particularly appealing to small business owners and solo entrepreneurs.

The foregoing features of OPCs provide SME owners with a favourable legal framework that offers control, flexibility, reduced administrative burden, legal protection, and financial accessibility. These benefits are particularly valuable for SMEs, allowing them to operate and grow with confidence in the Nigerian business landscape.

Implications of the OPC Structure to Business Communities

In Nigeria, OPCs have emerged as an exciting choice for entrepreneurs and SME owners. OPCs offer a range of features and advantages that not only facilitate business operation but also provide legal protection, financial flexibility, and strategic opportunities. One of the fundamental features of OPCs is the concept of a separate legal entity. According to Trivedi [30], this separation

¹³ Section 18 (2), CAMA 2020, Op. Cit.

¹⁴ Section 266(4)(a)(ii), CAMA 2020, Ibid.

¹⁵ Section 18(2), CAMA 2020, Ibid.

¹⁶ See: Section 256(1,2), CAMA 2020, Ibid.

¹⁷ See: Section 264(5), CAMA 2020, Ibid.

¹⁸ See: Section 266, CAMA 2020, Ibid.

¹⁹ See: Section 421(2), CAMA 2020, Ibid.

ensures that the OPC is distinct from its owner in the eyes of the law. This distinction becomes particularly valuable when, for example, an OPC enters into a contract with a supplier. If the company defaults on payment, the supplier can sue the company, but not the owner personally. This safeguards the owner's personal assets, providing a crucial layer of financial security [20]. A coterminous feature to the concept of separation is limited liability. This concept shields the personal assets of the owner from business debts and legal issues. Entrepreneurs, especially those launching their ventures, often operate with a degree of risk. Limited liability ensures that if the business faces financial difficulties, creditors cannot access the owner's personal savings or assets, allowing the entrepreneur to take calculated risks without jeopardising personal financial security [27].

The OPC also affords SME owners the much needed legal recognition and social credibility which are valuable assets for any business [31]. This recognition not only instils trust in customers and partners but can also facilitate access to credit or investment opportunities [32]. Customers and investors are often more inclined to engage with a registered OPC over an unincorporated business. The trust generated by OPC status can significantly boost an entrepreneur's ability to attract business and investment, furthering business growth. And with recognition and social standing comes trustworthiness. According to Jung [33], the trustworthiness associated with OPCs is vividly exemplified when customers and partners perceive a registered OPC as a more reliable choice than an unincorporated business. Trivedi [30] emphasises the notion that a well-structured OPC, with its limited liability protection, offers assurance to stakeholders. This can manifest in an increase in the number of customers willing to transact with the company and suppliers more willing to extend credit, thereby bolstering the business's growth prospects.

For the SME owner, the feature of having the director and shareholder as the same individual simplifies management [34]. Such a setup allows the owner to make strategic and operational decisions without the need for extensive board discussions. This streamlined approach to management can significantly enhance efficiency and decision-making, particularly in small businesses where agility is crucial. Also, in the event of the owner's death or disability, OPCs provide an efficient mechanism for business continuity through a nominated successor [35]. For instance, a sole trader's business may cease upon their death, whereas an OPC can continue with the inheritors taking over. This succession planning feature ensures that the business remains viable even in unforeseen circumstances, providing stability and confidence to stakeholders.

A raft of exemption boons were also enshrined in the CAMA 2020 for OPCs. They benefit from exemptions and reduced regulatory requirements, reducing the bureaucratic burden on entrepreneurs [36]. These exemptions can range from simplified reporting requirements to reduced compliance obligations. For SMEs, this translates to cost savings and less administrative overhead, allowing business owners to focus on core operations. Overall, OPCs in Nigeria offer a wealth of advantages for entrepreneurs and small business owners. The legal structure and exemptions provided by OPC status create a conducive environment for business growth, financial security, and operational efficiency. These benefits, as substantiated by authoritative texts, highlight the practical utility of OPCs in the Nigerian business landscape. OPCs, with their limited liability, legal recognition, and

streamlined management, are indeed a formidable choice for those seeking to establish and grow their businesses in Nigeria.

Challenges and Concerns

While OPCs offer numerous advantages, including simplified management and limited liability protection, they also face challenges and concerns related to regulatory compliance, limited access to capital, and perceptions of stability and investor confidence. Addressing these challenges requires careful planning, creative approaches to capital raising, and proactive efforts to enhance the company's image and credibility in the eyes of investors and partners.

One of the key challenges associated with OPCs in Nigeria revolves around regulatory requirement that a sole director (and owner) of an OPC must report to the "board" (of which he is the sole member) in detail all the decisions he took on matters traditionally addressed in the board and/or management meetings of limited liability companies. Specifically, while the Act allows the sole member of the OPC to make, without recourse to any person whatsoever, all decisions ordinarily done at board or management meetings of other corporate bodies and also exempts the sole-owner-member of the OPC from keeping minutes of meeting,²⁰ yet the Act curiously made it mandatory for the sole-owner-member to "the board with details of that decision."²¹ Indeed, the Act made defaulting on this requirement an offence attracting penalty.²² This requirement may somehow serve as a regulatory compliance measure to ensure adherence to corporate governance standards. However, the author is apprehensive that the vast majority of sole proprietors in Nigeria may find it challenging to see themselves acting as employees (directors) of their solely-owned businesses, notwithstanding the fact that the Privy Council in *Lee v. Lee Air Farming Ltd.*²³ found "no great difficulty in holding that a man acting in one capacity can make a contract with himself in another capacity." It is interesting to note that this case law is apparently codified in the CAMA 2020.²⁴ The practicality of this self-oversight may be hard to fathom.

The foregoing circular requirement may have arisen due to silence of the CAMA 2020 on the distinction between an OPC and the regular limited liability companies. These two business forms are private companies as stated in their memoranda but the Act made provision that compels the OPC in particular to notify the public that it is an OPC. Furthermore, as pointed out by Bukar [18], what becomes of the company after the sole owner is deceased has not been addressed specifically with regards to the OPC. The default guide in this regard also remains the provisions with regards to the disposal of a deceased shareholdings in a regular private limited liability company. These issues are best addressed with amendments to CAMA 2020 to cater for the peculiarities of the OPC as a time-tested business form and the mainstay of the largest segment of Nigeria's population [24].

Conclusion

By enabling single individuals to establish limited liability companies, OPCs have redefined the very essence of business ownership, offering a flexible and pragmatic solution for entrepreneurs. They signify a departure from traditional business struct-

²⁰ Section 266(4)(a)(ii), CAMA 2020, Ibid.

²¹ Section 266(4)(a)(ii), CAMA 2020, Ibid.

²² Section 266(4)(b), CAMA 2020, Ibid.

²³ (1960) 3 All ER 420, (1960) 3 WLR 758, (1961) AC 12, (1960) UKPC 33.

²⁴ Section 22(3) suggests that a member of a private company (and an OPC is a private company) can be in its employ.

ures, where multiple stakeholders are involved, to a model that empowers single entrepreneurs with greater control and legal protection. The unique features of OPCs, ranging from their separate legal entity, limited liability, and legal recognition, to their simplified management structures, have profound implications for business operations and development in Nigeria. These features enhance credibility, reduce personal financial risk, and streamline administrative processes, making OPCs an appealing choice for a diverse range of entrepreneurs and SME owners. They help instil trust, stimulate entrepreneurial activities, and provide a legal framework that promotes innovation, risk-taking, and investment. The flexibility and adaptability of OPCs align with the changing dynamics of business in the digital age, fostering an environment that encourages economic growth and job creation. However, while OPCs offer numerous advantages, they are not without challenges and concerns. Issues such as the oversight requirement and limited ability to raise capital have been raised. Also, ensuring effective corporate governance in OPCs poses certain challenges, which need to be addressed to maintain the integrity of the business environment.

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