# CRITICAL ASSESMENT OF ONE MAN COPANY LIMITED BY SHARES IN NIGERIA

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**Abstract**

*A one man company limited by shares is a company that was set up or registered by an individual. That individual is the sole shareholder and director while maintaining limited liability. This type of company has a structure that shields personal assets from business risks, giving room for entrepreneurial growth and innovation. This article relied on doctrinal research method basing on legal analysis of company and allied matters Act, 2020. It is the finding of this article that one man company provides effective protection for personal assets, simplifies decision making and regulatory compliance is generally low, the article concludes that one man company balances corporate structure with flexibility, legal protection and business leadership. This business is ideal for small and medium sized enterprises (SMEs). It is recommended that the registration process should a simplified and its existence will communicated to the populace by corporate affair commission.*

## Introduction

The Companies and Allied Matters Act 2020, made a novel provision in the Nigerian corporate space by making provision for a one man company limited by shares[1].

By that provision, a platform has been offered to business and entrepreneurs to set up a unique corporate structure that combines flexibility and protection. A one man company is a private company with one shareholder, who may also double as the sole director. The one man company enjoys various benefits such as limited liability, simple decision making processes and limited regulatory requirements. The one man company is ideal for small and medium sized enterprises (SMEs) who are the dominant business units in Nigeria[2]. The one company offers the SMEs the advantage of protection of personal assets through limited liability doctrine, improves business credibility simplifies decision making processes and reduces regulatory compliance requirement. This article will address these questions what are the key features and benefits of one man company limited by shares on Nigeria? And what are the implications of one man company limited by shares on business growth and motivation? What are the challenges of one man company limited by shares and what are those registration processes of one man company limited by shares in Nigeria.

## Conceptual Clarifications

The following concepts will be briefly explained in this article for easier understanding of the topic under consideration. They are company types of companies, shareholders and directors.

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[1] *Section 18*(2) CAMA, 2020

[2] World Trade Center, Abiya *Small and Medium sized Enterprises SMEs: An Assessment to its inclusion in Nigeria Trade.*,Wtcabuja.com/latest. Accessed on 18/7/24

**Company**

A company is an artificial legal entity created to engage in business, make profits and provide goods and services. It is basically separate from owners, shareholders and directors. A company is a corporate entity that is legally separate from its directors and shareholders. It can stand alone as a legal entity; it can enter contracts as a company and hold assets in its name[3]. There are different types of company, company one man company limited by shares, company by guarantee, company unlimited, private company and public company. For the purpose of this article the focus is on company limited by shares. This is a small company, this is a private company limited by shares.

**Company Limited by Shares**

This is a company where shareholders liability is restricted to the amount of unpaid shares they hold, and protecting their personal assets from business risks. This type of company is characterized by a separate legal existence, perpetual succession and transference of shares. The company's assets and liabilities are district from those of its shareholders ensuring limited risk for investors. Profits are distributed to shareholders in form of dividends and decisions making authority rests on the directors, who are elected by shareholders.

The structure provides flexibility in ownership enhances credibility and facilitates access to capital, making it a good choice for business seeking to raise funds and expand operations[4]. A company limited by shares is a corporate entity that is legally separate from any directors and shareholders. It can stand alone as a legal entity; it can enter contracts as a company and hold assets in its name. The word limited refers to the shareholders limited liability. They are only responsible for any company debt, up to the value of their shares within the company. Therefore no personal assets are at risk[5]

**Shareholders**

A shareholder is an individual, organization or institution that owns one or more shares of a company's capital stock, representing a proportionate claim on its assets and profits. Shareholders invest in the company by purchasing shares, thereby becoming part owners and entitled to a portion of its dividends, if distributed. They have voting rights, allowing them to participate in decision making processes such as electing directors or approving major business transactions Shareholders may also receive, capital appreciation in form of bonus shares or market appreciation as stock value increases, the liability of a shareholder in limited to the assets from business risks. Shareholders can be classified into various categories such as individual investors, institutional investors and insider investors, such as company executive and employees[6]

A shareholder is a person, company or institution that owns at least one share of a company's stock or a share of a mutual fund. Shareholders essentially own the company which comes with right to share the profits of a company is successful. Shareholders benefits from increased stock valuation or profits distributed as dividends. Shareholders have the right to participate in company elections[7]

3 Quick information, company, Quickinformaton.com accessed on 18/9/24
4 Meta.AI on 20/7/24
5 Quick information company limited by shares, Quickinformation.com accessed on 20/9/24
6 Meta (*Supra)*
7 Investopedia, Shareholders (stockholders): Definition, Rights and types; investopedia.com. accessed 20/9/24

**Directors**

A director is an elected or appointed individual responsible for managing and overseeing a company's operations, strategy and financial performances. They are entrusted with making key decisions, settling the company's vision and mission and ensuring compliance with laws and regulations. Directors are expected to act in the best interest of the company, exercising care, skill and diligence[8]. While maintaining confidentiality[9]and avoiding conflicts of interest.[10] They provide leadership guidance, and expertise and are accountable to shareholders, stakeholders and board of directors. Directors may be executive, non-executive, independent, shadow[11] and managing directors[12]

**One Man Company Limited by Shares**

One of the novel provisions of the companies and Allied matters Act, 2020 is the provision on one Man company[13] before now, the only business capable of being owned by an individual is the sole proprietorship which is provided under part E, of CAMA, 2020. The major problem of sole proprietorship is the issue of unlimited liability, that is to say under registration of business name, an operator's liability goes beyond whatever he invested in that business, but extends into his personal assets, which the new provision on one man company came to cure. There have been legal authorities to the fact that a proprietor has a personal liability.

In *AG Leventis Co Ltd v. Akinyerui*[14], it was held that a sole proprietor is personally liable for his business debts. Also in *UBA v. Okonji*[15] where it was held that a sole proprietors business assets can be used to satisfy his personal debts. This is because; there is no difference between the two. Again in *First bank of Nigeria Plc. v Ogubanjo*[16]it was held that a sole proprietor personal assets can be seized to satisfy business debts in other words his liability is not limited to his business assets. In *Eco Bank Nigeria Ltd v A.C Oshundua*[17] it was held that a sole proprietors business and personal accounts are individual. Finally in *Union Bank of Nigeria Plc. V. Babatunde Kassim*[18]

It was held that a sole proprietor is personally liable for business debts incurred by the business. The plethora of cases have shown that the major disadvantage of sole proprietorship is the problem of unlimited liability and lack of separation of his business liabilities from his personal liabilities.

**Formation of One Man Company in Nigeria**

Generally in Nigeria, two or more people are required to form a company[19] However, that CAMA made a novel provision for the formation of a company by one man[20]. These provisions are here by reproduced for better appreciation. *Section 18 (1*), as from the

8 *Section 308* companies and Allied matter Act, 2020.
9 *Section 306(5)* CAMA
10 *Section 306(1)* CAMA
11 *Section 270* CAMA
12 *Section 269CAMA, Ogbechie v. UBN plc*. (2017) LPELR, 42358) CA
13 *Section 18(2*);
14 (1967) NWLR (Vol3) 119
15 (1996) 10 NWLR (Pt. 477) 1
16 (2001) II NWLR (Pt. 722) 366
17 (2011) LPELR – 2106 (CA)
18 (2020) LPELR 49355 (CA)
19 *Section 18*(1) CAMA 2020
20 *Section 18*(2) CAMA 2020

commencement of this Act, only two or more person may form and incorporate a company by complying with the requirement s of this Act in respect of registration of the company.

*Section 18*(2), notwithstanding sub *Section* (1), one person may form an incorporate a private company by complying with the requirements of this Act in respect of private companies.

The above clearly explained that one man company can be incorporated as a private company. Generally, the procedure for formation of a private company applies to one Man Company. The following applies[21]

In terms of capacity, the person who set out to form a one Man company must be an adult, that is not less than 18 years. He must be of sound mind, not an undischarged bankrupt, nor disqualified under *Section 281* and *283* of CAMA, 2020.

A one man company is subject to all the limitations of a private company it includes, but not limited to the following;

It cannot invite the public to subscribe to its shares[22]. It cannot have its membership beyond 50 persons[23]. It cannot sell its shares to 3rd parties[24]. The minimum authorized share capital is N100, 000.00[25]. A private company is not required to hold statutory meeting or deliver statutory meeting within 6 months. This is applicable only to public companies[26]. A general meeting is not required to pass a resolution; a written resolution signed by all the members of a private company is as valid and effective as it was passed in a general meeting[27]

Once, it obtains certificate of incorporation it can start business activities. In addition, unlike public companies, one can still be a director beyond 70 years of age[28]. When it comes to one Man Company, it must end with limited. The sole shareholder may also be the sole director. It offers the benefits of limited liability by separating the owner's personal assets from the business risks.

Generally, the one man company must be registered by corporate Affairs Commission, based on the provisions of CAMA 2020[29]. Some of the advantage of a one man company includes full control over decision making and management, flexibility in the share allocation and distribution of provision. However, the one man company is expected to comply with regulatory requirements.

After the name has been approved and reserved, it is expected that the promoter will go ahead to commerce the registration process. This is done by filing the Memorandum and Articles of Association. The memorandum contains such information as Name of the company, ending with the word limited, registered office of the company in Nigeria, object clause of the company containing the their objectives and purposes of setting up the company, restriction of powers, that is provisions in the memorandum, restricting the

21 *Section 20* (1), CAMA
22 *Section* 22 (2) CAMA
23 *Section 22*(3) CAMA
24 *Section 22* (5) CAMA
25 *Section 27* CAMA
26 *Section* 235 CAMA
27 UDU E.A *Principles of Company Law, and Practices in Nigeria*, Enugu, Meradom Prints, 2021, 25
28 *ibid*
29 *Section 41-43* CAMA 2020

company from carrying out certain powers and authorities conferred on it in its object clause, that the status of the company is a private company a one man company limited by shares. It will also contain liability clause, In other words that the liability of member is limited by shares. This means that in the event of a company going into liquidation, the shareholder is liable only to the amount unpaid on the shares taken by him[30]. The Memorandum of Association will also contain the capital clause, stating the minimum share capital of the company, different categories of shares and the normal value of each for a private company limited by shares, it is N100, 000[31]. Again the memorandum of Association has a subscription clause, which will state the amount of shares which the one man shareholder has subscribed deals written opposite his theme, the number of shares he has taken[32].

Also the Articles of Association shall be filled along with the Memorandum of Association. The Articles of Association clearly with internal governance system of the company. It includes issues like meetings, for example Annual General meeting, Extraordinary General meeting, directors meeting, clam meeting *etcetera*. Also rights of shareholders to attend and vote in meeting, proxy vote, declaration of dividend, appointment of directors, secretaries, auditor and rights of shareholders generally. Memorandum and Article of Association is contract between members' interse, company and members interse and company and creditors interse. It was held in *National Palm Produce Association (Nig.) Ltd v Udom*[33]. Also in *NIB investment (West Africa v. Omisore*[34], where it was held that the memorandum and Articles of Association constitute a contract not merely between the shareholders and the company, but between each individual shareholder and every other shareholder of the company.

However, considering that we are dealing with a one man company this memorandum and Articles of Association binds the sole shareholder and company intense, and company creditors. The next stage is the issuance of the Certificate of Incorporation, after payment of necessary fees, stipulated registration fees, and filing the approved forms, that is form CAC forms, which is application for registration form CAC 2.2, which is statement of share capital. All this will culminate to issuances of Certificate of Incorporation. The Certificate of Incorporation is *prima facie* evidence that a company has been registered and it is a legal personality separate from the owners (Shareholders)[35].

The registration throws up legal incidences like separate legal personality, limited liability[36], legal Action, that is the company can sue and be sued in its registered name and not in the name of the shareholder, in *Passo Int'l Ltd v. Unity Bank Plc.*[37], it was held that a limited liability company is a juristic person can sue and be sued in its name. It can own its own property in its own name and not the name of director or shareholder. In the case of *Macaura v. Northern Assurance Ltd*[38], It was held that members of a company have no insurable interest in its property as the property belongs to the company. In addition, a registered company can enjoy perpetual succession that is it can exist in perpetual while the members comes and goes.

30 *Section 27* (1) (f) CAMA
31 *Section 27* (2) (b)
32 *ibid*
33 (2014) 8NWLR (Pt. 1410) 479 @ 180
34 (2006) 4NWLR (Pt. 969) 172 @180
35 *Solomon v. Salomon Sons Ltd*. 1897 (AC) 22
36 *Section 42* CAMA
37 (2021) 7 NWLR (Pt. 1975) 224
38 (1935) AC 615

Hence even when all the shareholder and directors have died, any of the personal representatives can apply to the court for an order to convene a meeting of all the personal representation of the shareholders entitled to attend and vote in a general meeting to appoint new directors to manage the company and where they fail to convene a meeting the creditors (if any) they can do so[39]

But being a one man company all that is needed in these circumstance is for the personnel representative of the former sole director to apply to the court to appoint a new director when they fail, and then the creditors can do for.

**Advantages and Disadvantages of One Man Company**

**Advantages of One Man Company Limited by Shares**
One man company offers several advantages including;

**Simplified decision making process**:
The fact that one man company is incorporated by a single individual, who is both the sole director and shareholder, makes it very easy for decisions to be taken without any delays or protocols. A decision can be taken without consulting anyone or seeking the opinion or approval of any person. This makes way for fast taking of decisions and possible implementation of same.

**Reduced administrative costs**:
In continuation with the above stated reasoning a one man company is managed by one man and few administrative steps. This facilitates few administrative costs and human capital costs.

**Flexibility in Management**
There is likely to be less rigidity in management and decisions taking. Decisions and actions will be taken based on the situation at hand. The fact that a one man company has no higher authority beyond the sole director/director gives him the latitude to be free in decision and administrative process.

Again the one man company enjoys limited liability protection for the sole shareholder. The concept of limited liability which is the privilege of a limited liability corporate entity is enjoyed and extended to the sole shareholder. In other words, the sole shareholder will not be liable beyond the assets, liabilities and value of the company per time. The asset of the company is separate from the assets of the shareholder[40][41]. Therefore, in the event of liquidation, winding up or debt challenge of the one man company limited by shares, the debts or liability of the company cannot be extended to the personal or private assets of the sole shareholder/director.

**Disadvantage of One Man Company Limited by Shares**
The idea of one Man Company limited by shares may be exposed to the following disadvantages;

39 *Section 273* (2) CAMA 2020
40 *Solomon v Solomon (Supra)*
41 *Macaura v. Northern* Assurance Co. Ltd (Supra)

**Lack of Transparency and accountability**

The fact that one man company limited by shares is governed by an individual there may be problem of transparency as there are no checks and balance, this will expose the company to abuse of office, procedures and decisions

**Money Laundering facilitation and other illicit activities;**

Again a one man company not being overseen by a superior third party may lead to the problem of being used as a vehicle for money laundering and other illicit activities as decision are taken by a single individual who may be tempted to delve into illegal activities

**Poor corporate governance**

The fact that level of transparency and accountability will be very low, the sole director will be operating without a non-executive director or independent director[42]. Whose duty will be to ensure that there are high levels of compliance with corporate governance codes and practices.

**Challenges of a One Man Company Limited by Shares**

The one man company limited by shares has the capacity to face significant challenges in accessing credit from financial institutions, there by hindering their growth and expansion. This could be caused by lack of credit history because new companies or those with limited operating history struggle to establish credit history.

In addition, there is insufficient collateral because one man company may not have sufficient asset to pledge as collateral.

Also, one man company may be viewed as high risks business, this is because, lenders view one man company as risker due to limited financial resources.

Another reasons, a one man company may not have capacity to access credit is due to lack of comprehensive financial statements, being a new company.

Finally financial institutions require minimum turnover profitability and other criteria to grant facilities.

Another challenge is regulatory compliance burden; this perception can hinder the growth and survival of a one man company. There are multiple regulatory bodies in Nigeria like Corporate Affairs Commission (CAC), Federal Inland Revenue Service (FIRS), and Securities and Exchange Commission (SEC).In addition the regulations are complex, making corporate compliance difficult. Also, there is reporting requirements which entail regular submission to regulatory agencies[43]. There is also the challenge of obtaining licenses and permits for every specific types of business, which may be time consuming[44]. Finally, tax compliance companies are expected to comply with tax laws and regulations.

Another challenge is perceptions of lack of transparency; this includes inadequate disclosure of information about the activities of the company.

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[42] *Section 275* CAMA, 2020

[43] *Section 419* CAMA, 2020

[44] For example if one is running a hotel business, he must obtain the necessary licenses, *Sections 3-7*, Hotel and Restaurants (Cap H4 LFN 2004

Opaque decision making; the concentration of power in one person who makes most of the decision, Also there is the challenge of limited accountability because there is no separate Board of Directors or independent oversight. There is also insufficient disclosure of financial information and business operations may not be openly disclosed.
Finally, there is potential for conflict of interest, as the line may be blurred between personal and company interest efficiency.

**Conclusion**
In conclusion, the one man company limited by shares presents a paradoxical phenomenon, offering flexibility and control to individual entrepreneurs, while simultaneously raising concerns about transparency, accountability and potential conflicts of interest. While regulatory frameworks and best practices can mitigate these risks, it is essential for sole shareholders to prioritize transparency, ethical decision-making and robust internal controls to ensure that the long term sustainability and credibility of their businesses.

Ultimately, the success of a one man company limited by shares hinges on the owners ability to balance personal interests with corporate responsibilities, leveraging the benefits of this business structure while maintaining the highest standards of governance and accountability.

**Recommendations**
In view of the fore going the following recommendations are hereby given;

**Regulatory recommendation**
There is a need to strengthen the regulatory oversight to ensure compliance with corporate governance standards. In addition, it should be mandatory requirements for one Man Company, and transparency should be enhanced by requiring public disclosure of financial statements.

**Governance Standard**
There should be an advisory board to provide good corporate governance guidance. Also, robust internal controls and risk management should be activated. In addition, a clear succession plan should be developed to ensure business continuity.

**Financial Standards**
The one man company limited by shares should maintain separate personal and business bank accounts to avoid conflict of interest. Also regular financial reviews and it should be carried out, to ensure financial transparency. In addition, it should develop a comprehensive financial plan including tax planning.

**Operational Standards**
The company should develop business continuity plan so that the business will not end with the demise of the sole director/shareholder, it should establish clear policies and procedures. It is advised for it to invest in technology to enhance efficiency.

**Transparency Standard**:
The company should regularly publish its financial statements in order to enhance its transparency. All conflicts of interest should be disclosed.

Best practice standard: the one man company should adopt industrial standard corporate governance codes. The company should engage stakeholders through regular communication. Finally, it should foster a culture of accountability.