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Client Alert

Judicial Intervention-Permissibility of Single Shareholder Structure for Companies Incorporated Pre-Enactment of the Cama 2020

Introduction

On 30 July 2024, the Federal High Court (“**FHC**”) delivered a pivotal judgment which is set to alter the stance of the Corporate Affairs Commission (the “**CAC**”) regarding the shareholding restructuring options available to certain private companies under extant company law.

This client alert addresses the impact of the judgement passed (the “**judgement**”) in the case of PRIMETECH DESIGN AND ENGINEERING NIGERIA LIMITED & JULIUS BERGER NIGERIA PLC V CORPORATE AFFAIRS COMMISSION (the “**case**”) on the ability of private companies which existed prior to the enactment of the Companies and Allied Matters Act 2020 (the “**CAMA 2020**”) to transition to a single shareholder structure.

The Dichotomy Between Extant Law and Practice

In contrast to the two-shareholder minimum prescribed under the now repealed Companies and Allied Matters Act 1990 (the “**CAMA 1990**”), the CAMA 2020 provides that from its commencement, private companies may be incorporated with a single shareholder<sup>1</sup>. This provision suggests that all private companies, including those incorporated under the CAMA 1990 regime (pre-CAMA 2020 companies) could opt to adopt a single shareholder structure. Consequently, it ought to be permissible for pre-CAMA 2020 companies to undertake shareholding restructurings (transfers) that would result in the incidence of a sole shareholder. However, in practice, the attitude of the CAC has been to decline to reflect such share transfers of pre-CAMA 2020 companies in its records, on the basis that:

<sup>1</sup> Section 18 (1) and (2) of the CAMA 2020.

- (i) The CAMA 2020 does not provide for instances of reduction in the number of the shareholders of pre-CAMA 2020 companies to one shareholder, and therefore, the single shareholder structure only applies to companies incorporated after the enactment of the CAMA 2020 (post-CAMA 2020 companies); and
- (ii) a condition upon which a company may be wound up by the court is where the number of members of such a company falls below two<sup>2</sup>.

## The Judgement

The facts of the case relate to a share transfer filing in respect of a pre-CAMA 2020 company, which was not accepted by the CAC, by reason of the transferee becoming the single shareholder of the company following the share transfer. In delivering the judgement, the court posited that further to its repeal by the CAMA 2020, the provisions of the CAMA 1990 no longer apply to the operation of companies in Nigeria, particularly those enacted under the CAMA 1990 regime.

In addition, the court stated that; a) considering the rationale behind the introduction of single shareholder companies under the CAMA 2020, which is fostering the ease of doing business in Nigeria, permitting post-CAMA 2020 companies to have a single shareholder while restricting pre-CAMA 2020 companies from doing so is a discriminatory approach, and b) the provision of the CAMA 2020 regarding winding up by the courts where the number of shareholders is reduced below two, goes further to state that this applies, **in the case of companies with more than one shareholder**. Therefore, the applicability of the provision is limited to companies required to have more than one shareholder, e.g. public companies, and relying on the provision as a ground to prohibit pre-CAMA 2020 companies from having single shareholders negates the ease of doing business objective of the single shareholder structure.

The court buttressed its position, by adding that the section of the CAMA 2020 which imposes liability for a company's debt during any period which the company carried on business with less than two shareholders on the directors and officers at the time, expressly applies to public companies and companies limited by guarantee<sup>3</sup>, thus implying that private companies are not required to have up to two shareholders.

Considering this, amongst other things, it was held by the court that the single shareholder structure introduced by the CAMA 2020 applies to all private companies (including pre-CAMA 2020 companies), and that it was unlawful for the CAC to reject the share transfer filing. The CAC was therefore directed to update its records to reflect the transferee as the sole shareholder of the company.

<sup>2</sup> Section 571(c) of the CAMA 2020.

<sup>3</sup> Section 118 of the CAMA 2020.

## Going Forward

There are two likely outcomes following this landmark judgement, viz:

- a. The CAC would accept the judgement of the FHC and take steps to attend to any backlog of pending share transfer filings for pre-CAMA 2020 companies, which it had queried on the basis of the transition of such companies to single shareholders, and approve subsequent share transfer filings by such companies; or
- b. The CAC would appeal the judgement of the FHC.

Notwithstanding the possibility of the CAC exercising its right of appeal, the current position as determined by the FHC is that pre-CAMA 2020 companies are entitled to transition to a single shareholder structure. Thus, pending the determination of an appeal (if any by the CAC), the CAC is bound by the decision of the FHC and is therefore required to accept any such share transfer filing by a pre-CAMA 2020 company, which will result in the company having a single shareholder.