# THE EFFICACY OF ONE PERSON COMPANY UNDER THE COMPANIES AND ALLIED MATTERS ACT 2020: LESSONS FROM SINGAPORE AND INDIA

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## Abstract

A Company is a person or a body of persons who pool their resources together in other to form a business for profit maximization or social responsibility. The business association under this heading has one feature in common;they have legal personality that is they are legal entities distinct and separate from the persons of which they consist. In the same stead, a company is the greatest asset of the Gross Domestic Product of several countries and by extension, the per capital income. It is therefore submitted that a company is a veritable medium for carrying out business and non business activities in a society. It is not in doubt that section 18 (2) of the Companies and Allied Matters Act 2020 (CAMA 2020) provided for the novel practice of One Person Company (OPC) in Nigeria. Essentially, this paper which adopted the doctrinal research methodology interrogated the history of companies in Nigeria; merits/demerits of OPC in the economic sphere of a society; provision of OPC under the CAMA 2020 and the lessons derivable from the practice and procedure of OPC in the jurisdictions of Singapore and India with the aim of rejigging the practice and procedure of OPC in Nigeria. It was observed by this paper that the CAMA 2020 which provides the current legal framework for the practice of OPC in Nigeria merely provided for OPC but never contemplated the possible continuity of OPCs upon the death of the subscriber. Thus, therecommendations of this paper included that the provisions of the CAMA 2020 should be amended to provide for a nominee who shall in the event of the subscriber‘s death or his incapacity to contract become the member of the company and interventions should be provided in circumstances of withdrawal of consent, death and incapacity of the contracted nominee to an OPC in Nigeria as practiced in India and Singapore.

***Key Words: CAMA 2020; Company; One Person Company (OPC);Indian Companies Act 2013; Singapore Companies (amendment) Act; Nominee.***

## (1) Introduction

Prior to the enactment of the Companies and Allied Matters Act 2020,[824] the Nigerian company law practice had been hinged on the principle that only two or more persons can form a company.[825] Furthermore, in order to consolidate the above procedure, the repealed CAMA provided that every company shall have a minimum of two directors and whenever there is a shortfall in this required minimum of directors, the company in question should cease to carry

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[824]. CAMA 2020.

[825]. Companies and Allied Matters Act, Cap C.20, Laws of the Federation of Nigeria 2004 (repealed), s.18 (1).

on business after one month of such shortfall in directorship until new directors are appointed.[826] Nonetheless, in spite of the rationale behind these requirements, economic and modern day realism posed the necessity for a One Person Company (OPC) in Nigeria. Hence, in order to meet modern day commercial reality and international best practices on the regulation of companies, the CAMA 2020 provided a pathway for the practice of One Person Company in Nigeria.[827]

Accordingly, this paper examined the historical trajectory of companies in Nigeria, the pros and cons of OPC, practice of OPC in Nigeria and the lessons available under the Singapore Companies (amendment) Act and the India Companies Act of 2013.

## (11) **The Historical Trajectory of Companies in Nigeria**

The idea of pooling resources together to do business and to thereafter share profits and losses is a very old one. In Greece, Rome and later Italian city states, rich people contributed money towards ventures undertaken by ship owners and other traders in return for a share in the eventual profit of the ventures. The development of trading associations soon spread to England from where the development of modern companies and Company Law in Nigeria took their roots due to the historical/colonial connections between England and Nigeria. The first type was the medieval guilds. A guild was a company formed by charter from the British Crown for the regulation of trading activities in a selected town or towns to which it was restricted. Later in time, the charters were issued for the regulation of specific trades and skills. The charters provided for the appointment of masters, governors and councillors with power to make rules for the trades concerned. In turn, the guilds/charters got some kind of monopoly either locally or internationally.

The earliest forms of what we today know as Companies were the *Commenda*which was found in Babylonian and Arabic as well as Western Law. It involves a person or the merchant who stayed at home (Commendator) advancing money to a trader (Commendatarus) to employ in trade on terms that he should have a return which varied with the profits. Originally this was a temporary association for a particular transaction and an arrangement under which the liability of investors was limited to the amounts they contributed. They had no other interest or control over the venture. Expectedly, it was not a long lasting or permanent form of trading association. With time, a new form of association called *Societas* was developed by traders in Rome. In it, legal rights and duties were conferred on individual members but was a more permanent form of association. The main elements of unlimited liability prevailed at this period.

The group nature of a guild notwithstanding, the actual trading was done by individual members on their individual accounts though they also operated the “Right of Lot Method” by which members of a guild would still share from the profit made by a member though he actually traded on his own individual account. The guilds/companies/corporations finances were raised mainly by levies and subscriptions. Such early charters were more concerned with the regulation and control of a branch of trade rather than creating any form of corporation.

[826]. *Ibid*., s. 246(1).
[827]. (n 1), s.18 (2).

Charters were also given by the Crown to churches and other organisation not engaged in commerce but in the propagation of social or common good.

Furthermore, it has been observed *inter alia* that:

> During the sixteenth century of the growth of the commercial spirit, fostered by the recent discovery of the New World, the more thorough exploration of the Southern Atlantic and Indian Oceans and the search for a North-West passage, led to the establishment and incorporation of companies of foreign adventures, similar in all respects to the earlier guilds except that their members were foreign instead of domestic traders.[828]

Amongst the earliest of these were the African Company, the Russian Company and the Turkey Company. The last two were called "regulated companies" because the members had a monopoly of the trade to Russia and to Turkey, but each member traded on his own account. With the development of international trade, it became convenient for several persons to pool resources together for a single venture organized by the company. Profits were shared at the end of each international trade journey according to each member's contribution. These came to be known as *joint stock companies* as there was no individual trading again but the pooling of resources into a common venture. This led to the concept of regulated companies.

A company's power to make calls on shares to meet its ordinary trading obligations was finally established in *Salmond v. Handborough Co*.[829] However, the problem of non-transferability of shares cropped up. In the $17^{th}$ century, the assignment of shares got included in company charters. For instance, a charter granted to the Royal African Company in 1660 gave it the power to grant or assign any shares to any other person. By the middle of the century, ownership of shares began to be regarded as a matter of financial rather than personal participation. This created a market for shares in all leading companies, which in turn led to the establishment of stock exchanges. The establishment of the exchanges was important to fill the need of protecting the companies from the withdrawal of capital by persons desirous of withdrawing their money. This led to dealing in shares and stock brokering, which in turn led to some abuses and efforts by the legislature to deal with the abuses as from 1696. There were illegal sale and transfer of charters, bogus shares and acquisition of obsolete charters.

The excesses and abuses in dealings in shares led to the near collapse of the South Sea Company, which was chartered by the crown and bought up the National debt of about £31,000,000.00 with the plans to further extend its trade from the accruing interest expected (the company only survived because it had friends in high places) and the actual collapse of some other companies. This led to the enactment of the Bubble Act,[830] which prohibited a company from acting as a body corporate and from raising transferable stocks and shares without the legal authority of a Royal Charter or Act of Parliament. Accordingly, *section 18* of the Bubble Act made illegal certain kinds of companies considered to be injurious to the common good. It was a bad piece of legislation as it failed, for instance, to address the problem

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[828]. S. Williston, 'History of the Law of Business Associations before 1800' [1888] 2[3],*Harvard Law Review,* 149-166.

[829]. [1671] 1 Ch 204.

[830]. 1720.

or need of making incorporation easier. In the avowed bid to protect investors, it sought to ensure that a company with transferable shares should be established only by a grant of incorporation and therefore prohibited all joint stock companies that were not products of incorporation, either by way of Charter or Act of Parliament.

To deal with the challenges posed by the Act, would be company owners or incorporators resorted to Deed of Settlement companies. Funds subscribed by shareholders were vested in trustees, who held the funds on the terms of a Deed of Settlement. The Deed contained a series of mutual promises between the shareholders and the trustees. The management was in the hands a Committee of directors while the company's property was reposed in the trustees. Some of the trustees were also directors. The Bubble Act got repealed in 1825. Future charters provided that members of a corporation should be individually liable for debts of the corporation/company to the extent as the Crown deemed fit and proper. That was effectively the beginning of limited liability. In 1837, the Chartered Companies Act was passed. It was in the main a re-enactment of an earlier 1834 Act (Trading Companies Act). The Chartered Companies Act empowered the crown by letters patent to confer all or any of the privileges of incorporation without granting a Charter. While under the Trading Companies Act, 1834, the liability of members was unlimited and the companies can sue or be sued but only in the name of the officers" the Chartered Companies Act 1837 prescribed that the personal liability of the members may be limited by the letters patent to a specified amount per share. The Joint Stock Companies Act, 1844 ("Gladstone Act") was enacted later, which made a distinction between partnerships and companies by requiring associations of 20 or more persons formed for the purpose of carrying on a business for gain to be registered as companies. It also introduced incorporation by mere registration.

The Limited Liability Act, 1855 was thereafter enacted, which provided that companies with limited liability must have at least 25 members. Following was the Joint Stock Companies Act of 1856, which was the first modern Company Act and which by its provision, reduced the minimum number to (nine) 9 members for a limited liability company, and introduced memorandum and articles of association (Memart). This was followed by the Joint Stock Banking Act of 1857 and 1858 and the 1862 Companies Act. After that came the Companies (consolidation) Act of 1908, which introduced the companies limited by guarantee. In 1948, a comprehensive Companies Act was passed. The landmark legislation in United Kingdom was the Companies Act 1985, followed by that of 1989 but the extant companies' legislation is the Companies Act 2006, which came into force in 2009.

### (III) NIGERIA: The 1900's up to the Present Period

The first Nigeria legislation was the Companies Ordinance of 1912. Before then, only foreign companies did business in Nigeria, mainly in raw materials. Even by 1912, only 29 foreign companies were registered as doing business in Nigeria. The earliest of those foreign concerns were trade explorers such as Macgregor, the Lardner Brothers and Mungo Park. Later, such companies as the West African Company and Elder Dempster joined. In 1879, some of the companies merged to form the United African Company, which later reorganised itself into the National African Company Ltd and three years after that became the Royal Niger Company

(Chartered and Limited). It was chartered so as to be able to exercise administrative functions over the colonial territory for the British Crown and was limited to enable it also engage in trading activities. Upon the later revocation of the Charter, it became an ordinary trading company. It was later acquired by Lever Brothers Ltd. There is now a United Africa Company (UAC) as a Nigerian Company. The doing of business by way of more or less informal partnership (in groups and associations including nuclear and extended families and in some cases even age grade groups) was not alien to pre-colonial Nigerian, and other African societies. The customary laws of those societies that now make up post-colonial Nigeria definitely had rules and principles by which such relationships and businesses were conducted or regulated in the manner of the time. There is no reason to think that such rules have become extinct in the really traditional Nigerian societies of today. However, even now the Nigerian or African legal scholars are yet to identify and recognize those customary law rules and principles for purposes of corporate operation and governance in the community. Thus, imperial England and its operatives did not only assume at the commencement of colonial rule and law making that there was no Company Law of any kind in pre-colonial Nigeria, it is still the popular assumption. Some commentators take the view that because the economy was mostly agrarian, the people were not engaged in any equivalent of company or partnership relationships. It can only be hoped that sometime in the future, the customary law principles on companies and partnerships (or at least the latter) will be identified and interrogated for further development just as the Western style Company and partnership laws are being interrogated for the same purpose.

Even before the 1912 Ordinance, the English Companies Act, 1862 was applicable in Nigeria as a statute of general application along with relevant common law principles and principles or doctrine of equity. This was first (with respect to Lagos alone) under the Supreme Court Ordinance of 1876, which made the common law, the doctrines of equity and statutes of general application in England as at 24th July 1874 applicable. Upon the amalgamation of Nigeria in 1914, a Supreme Court Ordinance of the year was enacted, section 14 of which made the common law, doctrines of equity and statutes of general application in England as at 1st January 1900 applicable to the entire country. Though the statute has been replaced by other statutes, particularly CAMA), the principles of common law and equity as enunciated in such cases as *Salomon v Salomon & Co. Ltd*[831] and *Ashbury Railway Carriage & Iron Co. v. Riche*[832]remain part of the Nigerian law.

The 1912 Ordinance was applicable to only Lagos and its environs (that is the Colony of Lagos). It was amended in 1917 and extended to the whole country before another Ordinance was enacted in 1922. The 1922 Ordinance, in its severally amended forms, was in operation until the enactment of the 1968 Companies Decree. It was amended by the Company (Amendment) Ordinance of 1929 and another one of a similar title in 1941, in which state it was published in 1948 as Cap 398, Laws of Nigeria, 1948. It was amended again by the Company (Amendment) Ordinance, 1954 and published in that state as Cap 37, Laws of Nigeria 1958 and restyled as the Companies Act in 1963 when the country assumed a republican status.

Then the Companies Decree, 1968 was enacted, based on the English Companies Act, 1948. Upon the return of civilian rule in 1979, it was in 1980 re-designated the Companies Act, 1968.

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831. [1897] AC 22.
832. [1875] LR HL 653.

As one of its commendable features, under Part X, it required all foreign companies operating in Nigerian to register as Nigerian companies. This was so as to enhance government control and obedience to the Nigerian law by those companies. It was also fairly comprehensive in its provisions requiring the publicizing of a company's affairs in the interest of the shareholders and the general public. Nigeria thus joined other countries that chose publicity of companies' affairs as part of the structures for corporate regulation and accountability/integrity. Its major shortcoming was that it was not sufficiently comprehensive. The registration and administration of companies were not sufficiently provided for. By the time it was enacted in 1968 as a re-enactment of an English Act made 20 years earlier, it was already behind time in several respects. It failed to take into consideration developments in corporate practice and governance across even the common law world much less so anywhere else.

The Companies and Allied Matters Act (CAMA) was made in January 1990 as the Companies and Allied Matters Decree of that year with the reflection of open market approach as one of its various innovations. It became operative on 31st December 1990. It was constituted in four major parts. The four parts are Part A dealing with traditional/conventional companies,[833] part B dealing with Business Names,[834] Part C dealing with Incorporated Trustees[835] and Part D dealing with the short title or citation of the Act.[836] In its recent form in the Laws of the Federation of Nigeria 2004. Each of these parts was further broken into smaller parts and chapters. In the course of the revision of the Nigerian federal statutes for the Laws of the Federation, 2004, what used to be Part XVII of Part A (i.e. the then sections 541-623 on prospectus etc) was transferred to (and repealed by) the Investments and Securities Act Cap 124, LFN 2004, now repealed by section 314(1) of the Investments and Securities Act 2007. Thus, the CAMA had only 613 sections. In consequence, there was no longer a single definition section but the later was found in the parts of the CAMA where they were related to.[837]

In a bid to transform the business environment and re-energize the private sector as an engine for growth of the economy on August 7, 2020, President Muhammadu Buhari assented to the Companies and Allied Maters Act, 2020 (CAMA 2020), which repeals and replaces the Companies and Allied Matters Act, 1990.[838] Essentially, the CAMA 2020 provides a robust framework for reforming identified onerous legal, regulatory and administrative bottlenecks which, for three decades, have made doing business in Nigeria substantially difficult (particularly for Micro, Small and Medium Enterprises (MSMEs), and impeded investments into Nigeria. Most importantly, the CAMA 2020 has 870 sections which are classified into chapters under Parts A to G. Part A deals with the composition and administration of the registry which functions as a regulator - the Corporate Affairs Commission ('CAC').[839] Part B

[833]. (n 2), ss.1-568.
[834]. (n 2), ss. 569-589.
[835]. *Ibid.,* ss.590-612.
[836]. *Ibid.,* s.613.
[837].*Ibid.,*ss.567 (1); 588 (1).
[838]. Banwo&Ighodalo, 'Companies and Allied Matters Act 2020: Reforming Provisions That Impact The Nigerian Business Community' <https://www.banwo-ighodalo.com/grey-matter/companies-and-allied-matters-act-2020-reforming-provisions-that-impact-the-nigerian-business-community-1> accessed 20 September, 2021.
[839]. (n 1), ss. 1-17.

has 29 Chapters which stipulates the lifecycle of companies from their incorporation through to liquidation.[840] Parts C & D have 11 and 2 chapters, respectively, and set out provisions that govern limited liability partnerships and limited partnerships.[841] Parts E & F reprised sections on the registration and regulation of Business Names and Incorporated Trustees, with a few changes outlined in chapters 3 and 7, respectively.[842] Part G introduces the quasi-judicial body - the Administrative Proceedings Committee - in its first chapter and covers general miscellaneous matters in its other chapter.[843]

### (IV) Emergence of One Person Company (OPC) in Nigerian Company Law Practice

Owing to the difficulties associated with the requirement in *section* 18 (1) of the repealed CAMA which provided for the incorporation of companies in Nigeria by 'two or more person', the National Assembly (i.e. the National law making body in Nigeria) while enacting the CAMA 2020 introduced the OPC as a type of private company in Nigeria.[844] Thus, making it statutorily feasible for one person to incorporate and own private companies in Nigeria.[845]

It is worthy of note to state that although *section* 18 (1) of the CAMA 2020 retained the provisions of *section* 18 (1) in the repealed CAMA, thus it provides *inter alia*:

'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'. However, section 18 (2) of the CAMA 2020 which provides that: '…one person may form and incorporate a private company by complying with the requirements of this Act in respect of private companies' introduces a veritable pathway for the practice of OPC in Nigeria.

Accordingly, the natural consequences of the OPC initiative under the CAMA 2020 is that individuals who had earlier been unable to navigate the former statutory requirement of two or more persons coming together to float a company are currently empowered to incorporate legal entities.

### (l) Merits and Demerits of OPC in a Society

Using Nigeria as a case study, it is abundantly evident that the introduction of OPC as an ilk of private company in Nigeria is undoubtedly part of the idea of promoting ease of doing business in Nigeria. Nonetheless, it is imperative to state that just as in every noble idea; there exist some merits and demerits of OPC in a society. Hence, this standpoint seeks to examine the merits and demerits of OPC.

Fundamentally, the **merits** of establishing OPC in a society are as follows:

(V) Limited Liability Protection to Directors and Shareholder

The most significant reason for shareholders to incorporate the OPC is the desire for limited liability. Essentially, while doing business as a proprietorship firm, the personal assets of the

[840]. *Ibid.,* ss. 18-745.
[841]. *Ibid.,*ss. 745-810.
[842]. *Ibid.,* ss. 811-850.
[843]. (n 1), ss. 851-870.
[844] . *Ibid.,* s. 18 (2).
[845]. *Ibid.*

proprietor can be at risk in the event of failure, but this is not the case in an OPC.[846]All unfortunate events in business are not always under an entrepreneur's control; hence it is important to secure the personal assets of the owner, if the business lands up in crisis. Thus, OPC gives the person a security from any kind of mishap by restricting his liability.

### (VI) Complete Control of the Company with the Single Owner

This leads to fast decision making and execution. Yet the entrepreneur can appoint as many directors as he desires in the OPC for administrative functions, without giving any share to them.

### (VII) Easy to Get Loan from Banks

Banking and financial institutions prefer to lend money to the company rather than proprietary firms. In most of the situations Banks insist the entrepreneurs to convert their firm into a Private Limited company before sanctioning funds; hence, it is better to register the start up as a One Person private limited rather than proprietary firm.

### (VIII) Tax Flexibility and Savings

In an OPC, it is possible for a company to make a valid contract with its shareholder or directors. This means as a director one can receive remuneration, as a lessor one can receive rent, as a creditor one can lend money and earn interest. Directors' remuneration, rent and interest are a deductible expense which reduces the profitability of the Company and ultimately brings down taxable income of the business.

### (IX) Adequate Safeguards

In case of death/disability of the sole person, the practice of OPC usually provides for the appointment of another individual as a nominee director, who will manage the affairs of the company till the date of transmission of shares to the legal heirs of the demised member.[847]

### (X) Managerial Ease

In an OPC there abound the ease of management owing to the fact that there is usually no requirement to hold annual or extraordinary general meetings[848] rather only the resolution is required to be communicated by the member of the company and same entered in the minutes book, signed and dated by the member and such date will be deemed to be the date of meeting.[849] Also, the hassles associated with forming a quorum does not apply to an OPC as there is only one director on its Board of Directors.[850]

In the same vein, the provision for compulsory rotation of auditors in section 139(2) of the Indian Companies Act 2013 are not applicable to OPC as they apply to listed companies and

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[846]. C. S. D. Goyal, 'Advantages and Disadvantages of One Person Company' <https:taxguru.in/company-law/advantages-disadvantages-person-company.html>accessed 20 September, 2021.
[847]. India Companies Act 2013, (No. 18 of 2013), s. 3(c).
[848].India Companies Act 2013, (No. 18 of 2013)., s. 96 (1).
[849]. *Ibid*, ss. 114; 118; 122 (3).
[850]. Companies Incorporation Rules 2014, r. 3(2); (n 24).

companies belong to such class or classes as may be prescribed (unless central government applies it to OPCs through notification).

Accordingly, on the flip side, the **demerits** of establishing an OPC in a society are as follows:

11 OPC being a type of private company cannot carry out carry out non-banking financial activities including investing in shares of another body corporate;
12 Also, there appear to be a blurred separation between ownership and control under a One Person Company,[851] thus this has opened the practice of OPC to certain criticisms;
13 Furthermore, a person is not allowed to incorporate more than one OPC or become nominee in more than one of such companies[852] unlike the position in other types of companies wherein multiple directorships may be allowed.[853]
14 Similarly, under the Indian Companies Act 2013 an OPC is mandated to inform the registrar of companies about every contract entered into by the company and recorded in the minutes of the meeting of its board of directors within 15 days from the date of approval by the board.[854]

Flowing from the above, it is self evident that the merits of an OPC far outweigh the demerits.Accordingly, Sachin Pilot a onetime Minister of Indian Corporate Affairs summed the advantages of OPC as follows:

> Small entrepreneurs can now set up ‘one person companies’ to directly access target markets rather than being forced to share their profits with middlemen… This would provide tremendous opportunities for millions of people, including those working in areas like handloom, handicrafts and pottery. They are working as artisans and weavers on their own, so they don’t have the legal entity as a company. But the OPC would help them do business as an enterprise and give them an opportunity to start their own ventures with a formal business structure.[855]

Hence, it is safe to submit that the establishment of One Person Companies in a society is a veritable medium of organizing the unorganized sector of proprietorship firms.

### (XI) Practice and Procedure of OPC under the Singapore Companies (amendment) Act 2004 and India Companies Act 2013

Historically, the concept of OPC does not owe anything to Indian legal system rather it was already in existence from time immemorial in developed climes such as the United States, United Kingdom and several European countries.[856] However, it is a trite position that the Indian Companies Act 2013 introduced the concept of OPC into the corporate hemisphere of

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[851]. *Salomon v Salomon* [1896] UKHL 1; [1897] AC 22; *Olamolu* v *The State* [2013] NWLR (Pt. 1339) 580, 601.
[852]. (n 24).
[853]. (n 1), s. 307.
[854]. (n 24), ss. 102(3); 122(2).
[855]. Jain, Aashna, ‘An Expository Analysis of One Person Company Concept: Is it an Arrow Shot in the Dark or is it Serving its Purpose?’ <http://lexquest.in/expository-analysis-one-person-company-concept-arrowshot-dark-serving-purpose> accessed 20 September, 2021.
[856]. Pakistan Single Member Companies Rules, 2003; Singapore Companies Amendment Act of 2004; China Companies of 2005.

India.[857] Pursuant to section 2 (62) of the Indian Companies Act 2013, an OPC is statutory defined as a company which has only one person as its member, although, an OPC comes under the meaning of Private company.[858]Similarly, by section 17 (1) of the Singapore Companies (amendment) Act, permits formation of OPC, it thus provides that: 'subject to the provisions of this Act, any person may whether alone or together with another person…comply with the requirements as to registration, form an incorporated company'. It suffices to state that the law permits sole member of OPC to be a natural or artificial person.[859]Similar to the provisions of the India Companies Incorporation Rules,[860] the Singapore Companies Act provides that director of an OPC must be one who is ordinarily resident in Singapore, and a natural person who has attained the age of 18 years.[861]

Unlike the position in Nigeria,[862] the Indian Companies Act 2013 provides a well structured statutorily framework for the practice and procedure of OPC. Essentially, by section 3 of the Indian Companies Act 2013 provides for the mode of incorporating an OPC. For an OPC to be incorporated, the memorandum of the OPC must include the name of the other person (apart from the sole promoter) who, in the event of few happenings, shall become the member of the company.[863]The other person whose name is given in the memorandum shall give his prior written consent in prescribed form and the same shall be filed with Registrar of companies at the time of incorporation.[864]Such other person may be given the right to withdraw his consent.[865] The member of OPC may at any time change the name of such other person by giving notice to the company and the company shall intimate the same to the Registrar.[866]Any such change in the name of the person shall not be deemed to be an alteration of the memorandum.[867]

Furthermore, only a natural person who is an Indian citizen and resident in India (person who has stayed in India for a period of not less than 182 days during the immediately preceding one calendar year) shall be eligible to incorporate an OPC; shall be a nominee for the sole member of a OPC.[868] No person shall be eligible to incorporate more than one OPC or become nominee in more than one such company. No minor shall become member or nominee of the OPC or can hold share with beneficial interest.[869]Such Company cannot be incorporated or converted into a company under section 8 of the Act; although it may be converted to private or public

[857]. Ranjan Kumar and Aqa Raza 'One Person Company under the Companies Act, 2013-Journey from Minimum Two Person to Only One Person: A Critical Reappraisal' [2018] 5[4] *Global Journal of Multidisciplinary Studies*, 1.
[858]. (n 24), s. 2(68).
[859]. Singapore Companies (amendment) Act 2004, s. 17 (1).
[860]. Companies Incorporation Rules 2014, r. 3(1).
[861]. (n 36), s. 175 (1)(2)(7).
[862]. (n 1), s. 18(1)-(2).
[863]. (n 24), s. 3(c).
[864]. *Ibid.*
[865]. *Ibid.*
[866]. *Ibid.*
[867]. *Ibid.*
[868]. Dash and Madhu Sudan, 'One Person Company: A Critical Analysis' [2015] 5[6] *Indian Journal of Applied Research*, 437.
[869]. (n 37).

companies in certain cases. The procedure of conversion is given in the rules 6 & 7 of the Chapter II. Such Company cannot carry out Non-Banking Financial Investment activities including investment in securities of anybody corporate.[870]OPC cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation, except where the paid-up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees. The Act further provides that if One Person Company or any officer of such company contravenes the provisions of the enactment, they shall be punishable with fine which may extend to ten thousand rupees and with a further fine which may extend to one thousand rupees for every subsequent day during which such contravention continues.[871]

Additionally, rule 6(1) of the Companies Incorporation rules 2014 stipulates that an OPC shall cease to be entitled to continue as an OPC if: its paid up capital exceeds 50 lacs, or its average annual turnover during the relevant period i.e. immediately preceding 3 consecutive financial years exceeds 2 crores or by an intimation for increase in the threshold limit has to be filed in form INC.5.

However, it is worthy of note that an OPC can get itself converted into a Private or Public company after increasing the minimum number of members and directors to two or minimum of seven members and two or three directors as the case may be, and by maintaining the minimum paid-up capital as per requirements of the Act for such class of company and by making due compliance of section 18 of the Act for conversion and filing Form INC-6. Therefore it logically follows that the Companies Incorporation Rules 2014 provides for compulsory and voluntary conversion/cessation of OPC in India.

In a similar vein, rule 7 of the Companies Incorporation Rules 2014 provides for the conversion of a private company into OPC, thus, it provides *inter alia*: a private company other than a company registered under section 8 of the Act having paid up share capital of fifty lakhs rupees or less or average annual turnover during the relevant period is two crore rupees or less may convert itself into one person company by passing a special resolution in the general meeting. Before passing such resolution, the company shall obtain 'No objection' in writing from members and creditors.[872]The one person company shall file copy of the special resolution with the Registrar of Companies within thirty days from the date of passing such resolution in Form No. MGT.14.[873]The company shall file an application in Form No.INC.6 for its conversion into One Person Company along with fees as provided in the Companies (Registration offices and fees) Rules, 2014, by attaching the following documents, namely: the directors of the company shall give a declaration by way of affidavit duly sworn in confirming that all members and creditors of the company have given their consent for conversion, the paid up share capital of the company is fifty lakhs rupees or less or average annual turnover is less than two crores rupees as the case may be; the list of members and list of creditors; the latest Audited Balance Sheet and the Profit and Loss Account; and the copy of 'No Objection' letter of secured

[870]. *Ibid.,* r. 3 (4).
[871].*Ibid.,* r. 6 (5); (n 35).
[872]. (n 37), r.7 (2).
[873]. *Ibid.,* r.7(3).

creditors.[874] Upon satisfaction and compliance with the above the requirements, the Registrar shall issue the Certificate of conversion from private company to OPC.[875]

Comparatively, it is abundantly evident that section 18 CAMA merely provides for the establishment of OPC in Nigeria without stating out practice procedures for a seamless operation of OPC in Nigeria as evident in India.

**(XII) Conclusion and Recommendations**

Generally in Nigeria, prior to the enactment of the Companies and Allied Matters Act 2020, the position of the law is that for the formation of a company, there must be the existence of a minimum of at least two or more persons. Nonetheless, the revolutionary concept of OPC aims to create a pathway for a more modern and dynamic business vehicle to enable growth and greater regulation of the corporate sector in Nigeria. Hence, OPC provides a whole new vista of opportunities for those who look forward to start their own ventures with a structure of organized business.

However, the current statutorily framework for OPC in Nigeria does not provide for formidable leverages that can overcome the challenges associated with sole proprietorship and concomitantly meet best practices on this regard. It is against this back drop that this paper strongly recommends as follows:

(i) The CAMA2020 should be amended to provide for a nominee who shall in the event of the subscriber‘s death or his incapacity to contract become the member of the company and the written consent of such person must also be filed with the Corporate Affairs Commission at the time of incorporation of the One Person Company along with its memorandum and articles as evident in section 3 (c) of the Indian Companies Act 2013;

(ii) Similarly, the above amendment to the CAMA 2020 should provide for interventions/procedures in circumstances of withdrawal of consent; death and incapacity of the contracted nominee to a OPC in Nigeria;

Again the CAMA 2020 should be amended to provide for circumstances in which an OPC in Nigeria can voluntarily or compulsorily cease operations as OPC or at best the Corporate Affairs Commission should as a matter of exigency amend the 2021 Companies Regulations and same timely approved by the Honourable Minister of Trade and Investments to provide for circumstances in which an OPC in Nigeria can voluntarily or compulsorily cease operations as OPC as stipulated in rule 6 of the India Companies Incorporation Rules 2014.

[874]. *Ibid.,* r.7(4).
[875]. (n 37), r.7(5).