

# Federal High Court Validates Single Shareholder Transition For Legacy Private Companies

## OALP ENTERPRISE NEWSLETTER

### INTRODUCTION

On 30 July 2024, the Federal High Court sitting in Abuja delivered a notable judgment in **Suit no: FHC/ABJ/CS/665/2023**, significantly impacting private companies in Nigeria. The case of Primetech Design and Engineering Nigeria Limited (Primetech) & Julius Berger Nigeria Plc (JBN) v Corporate Affairs Commission (CAC) clarified that section 18(2) of the Companies and Allied Matters Act 2020 (CAMA) 2020, which allows private companies to have a single shareholder, applies to all private companies, including those incorporated under the repealed CAMA 1990.

### BACKGROUND

The case arose when a shareholder of Primetech, transferred all his shares in Primetech to JBN, effectively making JBN the sole shareholder of Primetech. Primetech's Board of Directors approved this transfer, and the company notified the CAC, requesting an update to its Company Registration Portal (CRP) to reflect JBN as the new sole shareholder. The CAC challenged this request, on

the basis of sections 18(1) and (2) and 571(c) of CAMA 2020. The CAC argued that section 18(2), which permitted single shareholder companies, only applied to companies incorporated after the enactment of CAMA 2020 and consequently, that pre-CAMA 2020 companies like Primetech could not take benefit of that provision by transitioning to a sole shareholder.

### PRIMETECH'S ARGUMENT

Primetech argued that the literal interpretation of section 18(2) would lead to ambiguity, absurdity, or injustice. It highlighted that CAMA 2020 allows a single person to form a private company, a departure from CAMA 1990's two shareholding minimum requirement. This provision applies specifically to private companies, while public companies and companies limited by guarantee still require at least two shareholders/members. They contended that it was unlikely that the Legislature intended to limit the benefit of single-shareholder status to only companies incorporated post-CAMA 2020, as this would perpetuate the repealed CAMA 1990.

Primetech further pointed out that other provisions in CAMA 2020 indicate the Legislature intended to allow single-shareholder private companies regardless of incorporation date. Primetech cited the amendment of section 93 of CAMA 1990 by section 118 of CAMA 2020 as an example, showing the intent to exclude private companies from the mandatory requirement of having two or more members.

Primetech asserted that the CAC's position limiting section 18(2) to post-CAMA 2020 incorporations is untenable and unjustifiable.



#### **CAC'S ARGUMENT**

The CAC argued that section 18(2) of CAMA 2020 applies only to companies incorporated after the commencement of CAMA 2020. It emphasized that CAMA 1990 required a minimum of two persons to form and incorporate a company, whereas CAMA 2020 allows a single person to form a private company. CAC contended that section 18(2) is not retrospective and should not apply to companies incorporated before its enactment. Additionally, CAC argued that section 18(2) cannot be relied upon to reduce the shareholding of an existing pre-CAMA 2020 private company to one shareholder, as this would be grounds for winding-up under section 571(c) of CAMA 2020.

#### **COURT'S RESOLUTION**

The Court ruled that section 18(2) of CAMA 2020 applies to all private companies, regardless of their incorporation date. In rejecting the CAC's position that the provision only applies to companies incorporated post-CAMA 2020, the Court affirmed that such interpretation would be discriminatory and inconsistent with the reforms introduced by CAMA 2020. The Court held that the intention of the Legislature was to allow single-member private companies to exist irrespective of their formation date, ensuring uniformity and fairness.

The Court also addressed the point concerning the right of the CAC to validly refuse to approve or accept the share transfer documents that made JBN the sole shareholder of Primetech based on section 571(c) of CAMA 2020. The Court found in favour of the Plaintiffs, stating that section 571(c) applies specifically to companies mandatorily required to have at least two shareholders by virtue of section 118, which are public companies and companies limited by guarantee. Therefore, in the Court's view, private companies cannot be restricted by section 571(c) of CAMA 2020 and are thus permitted to operate with just one member/shareholder.



#### **CONCLUSION**

The Court declared that section 18(2) applies to all private companies, regardless of their incorporation date, and ordered the CAC to approve and accept the share transfer instruments making JBN the sole shareholder of Primetech. This ruling confirmed that the CAC's refusal to recognize the single-member status for companies incorporated under the old CAMA 1990 was unlawful and contrary to the intent of CAMA 2020. This decision marks a significant development in Nigeria's corporate law regime, and ensures that all private companies, regardless of their incorporation date, can benefit from this novel provision of sole shareholding by the CAMA 2020.

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