



## NIGERIA'S COMPANIES AND ALLIED MATTERS ACT 2020 AND THE POSITION OF THE LAW ON SINGLE SHAREHOLDING OF COMPANIES

### Introduction

In the recent judgment in Suit No: FHC/ANJ/CS/665/2023 between Primetech Design and Engineering Nigeria Limited (**Primetech**) & Julius Berger Nigeria Plc (**JBN**) v. the Corporate Affairs Commission (**CAC**), Nigeria's Federal High Court (the "**Court**") considered and provided much needed clarity as to the applicability or otherwise of Section 18(2) of the Companies and Allied Matters Act, 2020 ("**CAMA 2020**") which permits ownership of a private company by a single shareholder, to companies incorporated under the now repealed Companies and Allied Matters Act, 1990 ("**CAMA 1990**").

### Background

The Plaintiffs instituted the suit due to the refusal by Nigeria's companies' registry, the CAC, to accept filings made by Primetech in respect of the registration of a change in its shareholding structure that would have resulted in JBN becoming its sole shareholder. The CAC contended that such transfer was not permissible given that Primetech was a company incorporated under CAMA 1990 which required all companies to maintain a minimum of two (2) shareholders, and as such, Primetech could not take benefit of the provisions of Section 18(2) of CAMA 2020 that allows for the setting up of private companies with a single shareholder.

Primetech and JBN disputed the position of the CAC on the grounds that the legislative intent of Section 18(2) of CAMA 2020 could not have been to preclude companies incorporated under CAMA 1990 and before the enactment of CAMA 2020 (i.e., "**Pre-CAMA 2020 Private Companies**") from taking benefit of the innovations introduced by CAMA 2020. In this regard, it was noted that, following the passage of CAMA 2020 and per the provisions of Section 118 therein, only public companies and companies limited by guarantee are now required to maintain at least two (2) shareholders.

The Court agreed with the positions advanced by Primetech and JBN and delivered judgment in their favour. The Court noted that where the CAC's position was adopted, it would mean that all Pre-CAMA 2020 Private Companies would be subject to the repealed 1990 CAMA and this was not tenable under Nigerian law. It further stated that allowing for Pre-CAMA 2020 Private Companies with two or more members to transition to single-shareholder companies will effect the intention of the legislature in providing innovative measures that support the ease of doing business in Nigeria.

### **Implications of the Judgment on Private Companies**

This decision has profound implications for Pre-CAMA 2020 Private Companies, some of which include:

- all private companies in Nigeria, regardless of time of incorporation, may now exist as single shareholder companies;
- Pre-CAMA 2020 Private Companies that had previously ceded nominal shares to third parties to meet the minimum two (2) shareholder criteria under the CAMA 1990 may now commence the process of transferring such shares to the preferred single shareholder;
- the CAC, in the absence of an appeal or an interim order restricting the enforcement of this judgment, will be obligated to accept filings for the transfer of shares to a single shareholder from Pre-CAMA 2020 Private Companies; and
- holding companies may now wholly own their Nigerian subsidiaries and fully dictate the affairs of such companies without concern for minority interests or divergent views.

### **Conclusion**

The Federal High Court's ruling provides clarity on the legislative intent captured in CAMA 2020 for all private companies (irrespective of incorporation under CAMA 1990 or CAMA 2020) to have the option of holding all shares through a single shareholder.

It should however be noted that the position adopted by the Court is not yet sacrosanct as the CAC may seek to reverse the judgment by filing an appeal to Nigeria's Court of Appeal, and if unsuccessful, to the Supreme Court.

***Disclaimer: This ENR Advisory Note is not a legal opinion and is not designed to provide legal advice. Should you require legal advice on how the judgment may impact your business, do not hesitate to contact us.***

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